

Case Study on Economic Benefits in the Use of Business Mediation in Brazil

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Abstract

The purpose of this paper is to analyze conflict resolution, through mediation, in three private Brazilian companies and verify the economic benefits obtained in this matter carried out without a judicial decision, that is, through judicial and extrajudicial mediation. In addition, interviews with Legal Directors/Managers were conducted to identify financial aspects. This study aims to verify from a case study in Brazilian companies the economic benefits from business mediation. Three national companies were selected not only for their importance in the Brazilian Alternative Dispute Resolution (ADR) scenario in favor of using mediation but also due to the availability of their Legal Directors/Managers to participate in interviews with the researcher. In this research it was adopted the model of semi-structured interviews. Questions were sent to them by e-mail and complementary information was also gathered by phone calls or in person meetings scheduled during the period of October 23, 2018 through April 26, 2019. The cases analyzed confirmed that there are economic (mainly monetary) benefits in using both types of mediation (judicial and extrajudicial) to resolve business controversies.

Keywords

Business Mediation, Brazilian Case Studies, Economic Benefits, ADR
Brazilian Culture

1. Introduction

The resolution of conflicts is important not only for people but also for companies' sustainability. No matter their structure, sector, or number of partners/stakeholders, the maintenance of a dispute can cause the breakdown of these companies.

The Multi-Door Courthouse concept is being developed in Brazil, but the number of lawsuits in courts is still enormous (de Justiça, 2018: p. 73). By the end of 2017, there were 80.1 million lawsuits (de Justiça, 2018: p. 73). Due to this large number of lawsuits, a quick and efficient final decision by the courts is very difficult (approximately five years)¹ and in general the parties remain unsatisfied. In 2017, the total expenditure of the Judiciary corresponded to 1.4% of the national Gross Domestic Product (GDP). The cost for the justice system is R\$437.47 per inhabitant². The CNJ report indicates that 12.1% of lawsuits end in agreements; therefore, the number of trials in Brazil is huge.

Some Brazilian companies³ are designing their own conflict resolution systems, for instance, adopting a Multi-Door Courthouse concept and studying the most adequate methods to resolve their disputes with a client/consumer or with a commercial partner. These corporations noticed that the Judiciary is not the only entity that can provide an efficient and quick answer for their disputes.

In this paper, three companies that contemplate the resolution of queries in a different/non-traditional way were studied; in other words, they do not wait for a judge's intervention. They are searching for a better and more adequate method to resolve their conflicts. Two of them (The Oi Group and Mercado Livre) are very well-known in Brazil for their actions in this regard. The Oi Group was facing a judicial recovery and had to face many obstacles to develop methods to resolve their conflicts, mainly with clients/consumers and creditors. Mercado Livre completely changed its culture to develop this internal value. The third company is a multinational corporate with a Brazilian subsidiary. However, the Legal Director of this company did not authorize the full disclosure of the company's name and detailed information about it, but the essential data related to this research were authorized.

Considering this overall Brazilian scenario, this paper is divided into six sections. Section 1 describes the analyzed cases and the development of the hypothesis **H.1 The economic benefits arising from the use of mediation are a reality in Brazilian companies**. Section 2 is dedicated to the research methodology. Section 3 details the analysis, results, and discusses study findings. Section 4 will present implications for research and practice. Section 5 denotes limitations and suggestions for further research. Finally, Section 6 focuses on the conclusions.

2. The Analyzed Cases

According to Justice in Numbers Report (de Justiça, 2018: p. 73), a lawsuit can take approximately five years, followed by a judicial⁴ mediation taking approx-

¹According to CNJ Report (de Justiça, 2018).

²(de Justiça, 2018, p. 56). According to a Brazilian economic newspaper (Jornal Valor): US\$1 = R\$4.31. Available at <https://www.valor.com.br/valor-data>, captured on 08.28.2018, at 2pm.

³Example: companies that signed the Mediation Pledge to try to solve conflict without lawsuits". Available at http://cbma.com.br/us/mediation_pledge, captured on 09.05.2018, at 4pm.

⁴Mediation in court. Also called "court-connected mediation" by some authors as Lin Adrian & Solfrid Mykland, (Adrian & Mykland, 2014).

imately one year, and an extrajudicial mediation for one month⁵. Resolving matters costs money. After analyzing internal workflows, some companies have already realized this and are changing the way they deal with controversies.

In 2010, the concept of the Multi-Door Courthouse, developed by Harvard Law School Professor Frank Sander, was implemented in Brazil through Resolution n° 125 enacted by the National Counsel of Justice—CNJ. The “multi-door courthouse—a multifaceted dispute-resolution model currently used in several settings in the United States and abroad” (Crespo, 2008: p. 667) was seen as a methodology that needed to be implemented in Brazil in order to, among other reasons, diminish the number of lawsuits, achieve satisfaction for the parties involved, and provide welfare to the community.

In 2015, Law n° 13.140 on mediation was published presenting two types: judicial and extrajudicial. The new Brazilian Procedural Civil Code (Law n° 13.105/2015) also regulates mediation in lawsuits. In fact, the year of 2015 can be considered a benchmark period for the development of ADR in Brazil. In addition to the enactment of these two laws, there is another Law n° 13.129/2015 which provided improvements to the Arbitration Law enacted in 1996 (Law n° 9.306). All these statutes can be seen as the enforcement of this public policy implemented by the National Counsel of Justice in Brazil. The Brazilian legal system, that is, the Civil Law system, demands the enactment of laws in order to compel people to practice certain actions and to create a culture.

After comparing time, cost and creativity of lawsuit (adjudicative procedure) and mediation (judicial and extrajudicial - cooperative procedure), the author confirmed that mediation is less expensive.

This paper describes three companies that settled controversies through mediation and the economic benefits they achieved. For the purpose of this paper, the decision-maker is being rational⁶ and can figure out the expected value^{7,8,9} of

⁵Unpublished Research done by the author for the doctorate.

⁶The disputants’ choice of a method of conflict management is rational because the parties use a calculus that takes into account their concern for their own and their opponent’s outcomes, the feasibility, costs, and benefits associated with different methods (Bercovitch & Jackson, 2001: pp. 14-15).

⁷As mentioned by Lee, 1971: p. 30, “the expected value (EV) principle asserts that an option with maximum expected value should be chosen”. According to this author, EV is the most prominent principle (Lee, 1971: p. 40).

⁸To Schäfer & Ott, 2004: p. 279, the Expected value is equal to the value of the damage multiplied by the probability that the damage will occur. Risk can be considered: “the risk that each party will take responsibility for”. According to Cooter & Ulen, 2008: p. 48, “An expected value is the sum of the probabilities of each possible outcome times the value of each of those outcomes”.

⁹(Borne, 2017: p. 148) “The basic positive model of litigation—the so-called Landes-Posner-Gould model—was developed in the early 1970s (Landes, 1971; Posner, 1973; Gould, 1973: pp. 284-293). The simplest form of this model assumes risk-neutral parties and loyal attorneys paid on an hourly fee basis. In this model, parties make litigation choices that maximize their expected value. Expected value is a function of the likelihood of success on the merits (P), the expected trial award conditional on success (W), and the expected cost to the party of litigating the case through trial (C). To illustrate, consider a plaintiff’s original filing decision. If the plaintiff must pay her own attorney win or lose—as the American Rule requires—she will file suit if $PW - C > 0$, where C is the plaintiff’s expected cost of litigating the case through trial. If this condition holds, the suit is known as “positive expected value” (PEV); if not, it is known as “negative expected value” (NEV).” That is: for the plaintiff: $EV = (P.W) - C$. On the other hand, the expected value (EV) for the defendant is the value claimed (W) multiplied by the probability of not paying it (P) plus the transactional non-refundable cost (C). Defendant’s expected value can be written as the following formula: $EV = (P.W) + C$.

using mediation (judicial and extrajudicial) to resolve a company's conflicts. In the next topics, these companies will be presented.

2.1. Judicial Mediation

The Company—The Oi Group

The Oi Group¹⁰ offers fixed and mobile telephones, broadband pay TV, data transmission, and internet provider services, in addition to other corporate and wholesale services, including transportation networks and international back-bone services. This corporation also offers more than two million public Wi-Fi hotspots at several locations, e.g., airports and shopping malls.

The company is Brazil's leading telecommunications service provider, with a fully integrated nationwide presence which purpose is to provide telecommunications services and undertake other activities necessary or useful for the execution of these tasks, in compliance with the concessions, authorizations, and granted permissions.

The Oi Group is a switched Fixed-line Telephony Services (STFC) concessionaire operating in Regions I and II of the General Concession Plan (PGO), which covers all Brazilian states except for São Paulo and the Federal District. The concession agreements are effective until December 31, 2025. In addition, ANATEL (the regulatory agency responsible for the telecommunications sector created by Law n° 9.472/1997) authorized The Oi Group to provide Mobile Telephony Services (SMP) throughout the entire country.

In short, the company offers a diversified range of services. However, aiming to make its offerings more comprehensive and based on the strategic advantages of convergence and integration, by the end of 2011, the company changed its way of doing business by adopting a customer segmentation approach (Residential, Personal Mobility, and Business-to-Business (B2B)) instead of segmentation by product.

Based on this new approach, the customer-base in 2017 was 59.7 million, divided into:

- 15.9 million residential RGUs, including wireline and broadband pay TV;
- 36.6 million customers in the personal mobility segment, 29.9 million of which were prepaid users and 6.7 million were post-paid users;
- 6.5 million B2B users, divided into wireline, mobile, and broadband;
- 0.6 million public telephones.

The Oi Group filed for judicial recovery in 2016 in the jurisdiction of Rio de Janeiro. The number of the lawsuit is 0203711 - 65.2016.8.19.0001 and it can be viewed at www.tjrj.jus.br. This case is considered one of the largest and most complex judicial recovery lawsuits in Brazil because it deals with 55,000 creditors (physical and legal persons) spread all over the country and abroad (Portugal), and the amount of debt involved is greater than R\$63 billion.

¹⁰These data were collected in company's website. Available at https://www.oi.com.br/ri/conteudo_en.asp?idioma=1&conta=44&tipo=43737&id=160337, captured on 04.11.2019, at 7pm.

The next topic presents the companies selected due to the use of extrajudicial mediation.

2.2. Extrajudicial Mediation

2.2.1. The Company—Mercado Livre

Mercado Livre¹¹ is a technology company that aims to democratize e-commerce by providing the best platform and services which are possible for people and businesses to buy, sell, ship, advertise, and run their businesses on the internet.

The company was established in 1999 in Argentina and currently operates in 18 countries, including Brazil (the subsidiary is located in São Paulo, in the Southeast region). The marketplace, MercadoLivre.com, is the largest in Latin America, bringing together millions of sellers and buyers with more than 60 million offers of products, cars, and services in real time.

The site registers six thousand searches and nine sales per second, with 90% of the products sold being new. These numbers directly impact the Brazilian economy, where more than 111 thousand people make their sole or main income from the Free Market. In Brazil, there are 15,480 sellers with billings that allow Mercado Livre to support 98,648 jobs. These numbers represent 0.12% of the Brazilian Gross Domestic Product (GDP).

Mercado Livre provides a service ecosystem for commerce, with the main one being its Marketplace (the huge online shopping mall where millions of sellers and retailers advertise products, vehicles, real estate, and services to millions of buyers). In addition, there is Mercado Pago, Market Shipments, Market Shops, and Free Market Advertising. The company offers solutions so that people and companies can buy, sell, advertise, ship, and pay.

In 2017, Mercado Livre surpassed the mark of 211 million registered users in Latin America and acquired net revenue of 1.4 billion dollars thanks to the consolidation of the ecosystem in the countries where the company operates. There are 10 million sellers and 34 million active buyers.

In Brazil, MercadoLivre.com is the 5th most visited site on the internet, with 52 million unique visitors per month. It is the largest e-commerce site in Brazil and occupies a prominent position in the ranking of the 10 sites with the highest audience in the country, according to a ComScore study from January 2018. Today, the company is worth about US\$15 billion.

2.2.2. The Company—A Multinational Company with a Subsidiary in Brazil

The third company to be presented restricted the information, which is one of the limitations of this study. It is noteworthy that the principle of confidentiality in mediation, especially in the extrajudicial, narrows for empirical research (Carroll & Mackie, 2000).

However, despite the imposed limitation, it is pertinent to show the collected data, as they may signal an important path for the business sector. Therefore, the

¹¹These data were collected in the company's website. Available and captured from <https://www.mercadolivre.com.br/> on 04.11.2019, at 6pm.

topic related to the company will not be fully developed. It remains to be noted that the interviewed company requested confidentiality in the description of its activities. The Legal Director did not authorize much detailed information about its headquarters, the Brazilian subsidiary's address, purpose, value, or the sector to which it belongs. The only information authorized was that it is a multinational company with a Brazilian subsidiary.

About the conflict resolution system, nowadays, the Brazilian subsidiary does not have a Multi-Door Courthouse development in place. The Legal Director is trying to change this culture and analyzing each conflict to elect the adequate method to resolve it. However, he/she is facing resistance from other parties for different reasons.

For the purposes of this research, the relevance of bringing this case is the characteristics of such mediation: business matter, companies involved as parties and it was extrajudicial. The economic benefits obtained in this context will be highlighted, since the methodological approach is company that acquired such benefits in mediation during 2016 and 2017.

3. Methodology

This item will describe the methodology used in the analysis of the companies mentioned which begins with the stipulation of criteria that can support the answer to the research problem and confirm or refute the hypothesis launched:

H.1 The economic benefits arising from the use of mediation are a reality in Brazilian companies.

As already mentioned, the companies above were selected due to their importance in Brazilian ADR scenario: 1) The Oi Group was the first case of judicial recovery to use judicial mediation with creditors. Besides, this recovery is the second largest in history in Brazil¹²; 2) Mercado Livre was the winner of a prize offered by Judiciary in 2016 and was also recognized by the use of mediation with consumers and the development of an internal ADR culture. (1st place in "Conciliar é Legal"¹³ offered by the CNJ and 2nd place in the XVI Prêmio ABT offered by the private sector); 3) a multinational company with a subsidiary in Brazil participated in a mediation whose characteristics are: business matter, companies involved as parties and it was extrajudicial.

All these three companies presented the economic benefits they obtained using mediation in 2016 and 2017 in public conferences. Therefore, they are recognized for obtaining such benefits. The researcher attended these events and contacted the speakers afterwards. The researcher conducted semi-structured interviews by email and collected complementary information by telephone and

¹²Nowadays, Odebrecht is the first judicial recovery with R\$83 billion. Available at <https://www.conjur.com.br/2020-out-06/juiz-homologa-plano-recuperacao-judicial-oi>, captured in 10.11.2020, at 2pm.

¹³For more information about the award, see <http://www.cnj.jus.br/programas-e-acoes/conciliacao-e-mediacao-portal-da-conciliacao/premio-na-cional-da-conciliacao>, captured on 04.11.2019, at 7pm and <http://www.premioabt.com.br/19edicao/premio.asp>, captured on 04.11.2019, at 7pm.

in person meetings (October 23, 2018 through April 26, 2019). Two of them authorized the complete release of the data. The only exception was the multinational company with a subsidiary in Brazil. In this case, the company did not authorize a full data release.

It is important to clarify that the mediation procedure is confidential; however, in judicial mediation, the settlement agreed upon by the parties is an integral part of the lawsuit and it is possible to get access to it because, according to Brazilian law^{14,15}, lawyers have access to any public lawsuit. Therefore, one of the authors, who is a lawyer, was able to analyze the lawsuits in a detailed way in order to collect data for the research related to the Oi Group's judicial recovery.

The most prestigious Brazilian mediation institutions¹⁶ were contacted for this research, but all of them would not provide detailed information related to mediation processes due to the principle of confidentiality. Therefore, the researcher sought Legal Directors/Managers who were available to talk about the methods used to solve companies' conflicts that were pertinent. The researcher searched for companies that obtained economic benefits by: 1) using judicial mediation; 2) changing their internal culture, from litigation to election of ADR methods (including mediation), and 3) participating in extrajudicial mediation.

The case study as a research method can be used in many situations to contribute to the knowledge of individuals, groups, organizational, social, political, and related phenomena. It can also be used in psychology, sociology, political science, anthropology, social work, business, education, nursing, and community planning. Even in economics. "In brief, the case study method allows investigators to retain the holistic and meaningful characteristics of real-life events" (Yin, 2009: p. 4).

There is some controversy about how the case study can be used and its role in the production of knowledge, for example, if a combination of methods is necessary (case studies with quantitative methods) or a single method should suffice (e.g., Newton's theory of gravity). However, there is consensus on the continuing and popular use of case study in research practice, including law and business (Longhofer et al., 2017: pp. 190-191).

Case studies are important to understand and to consider actions of nations, organizations, and businesses (Longhofer et al., 2017: p. 195). Through the cases studied by the author of this research it can be seen that companies are worried about resolving their conflicts quickly, efficiently, with reduced costs and outside courts.

Yin, 2009: p. 8 emphasizes that there are five major research methods: experiments, surveys, archival analyses, histories, and case studies. Each one has its

¹⁴Law n° 8.906/1994 Art. 7°.

¹⁵Brazilian Civil Procedure Code. Art. 11.

¹⁶CAMARB (<https://www.camarb.com.br/>), CBMA (<https://www.cbma.com.br/>),

FGV (<https://www.camara.fgv.br/>), MEDIARE (<https://www.mediare.com.br/>),

ICC (<https://www.iccwbo.org/>), CAM-CCBC (<https://www.ccbc.org.br/>),

CIESP-FIESP (<http://www.camaradearbitragemsp.com.br>). The ranking is available at

<https://www.leadersleague.com/en/rankings/dispute-resolution-ranking-2020-arbitration-centers-brazil>, captured at 08.29.2020, at 6am.

importance and should be used appropriately depending on the research question. He illustrates as demonstrated in **Table 1**.

Considering that the research question is: if there are companies in Brazil electing business mediation to resolve conflicts and obtain economic benefits, the case study methodology will apply to identify how these companies are implementing this process.

The comparison done on research methods by **Hancock and Algozzine, 2006**, p. 10, as demonstrated in **Table 2** that establishes a comparison of general research

Table 1. Relevant situations for different research methods. Source: **Yin, 2009**.

METHOD	(1) Form of Research Question	(2) Requires Control of Behavioral Events?	(3) Focuses on Contemporary Events?
Experiment	how; why?	yes	yes
Survey	who, what, where, how many, how much?	no	yes
Archival Analysis	who, what, where, how many, how much?	no	yes
History	how; why?	no	no
Case Study	how; why?	no	yes

Table 2. Comparison of general research traditions. Source: **Hancock and Algozzine, 2006**.

Quantitative Studies	Qualitative Studies	Case Studies
Researcher identifies topic or question(s) of interest and selects participants and arranges procedures that provide answers that are accepted with predetermined degree of confidence; research questions are often stated in hypotheses that are accepted or rejected using statistical tests and analyses.	Researcher identifies topic of question(s) of interest; collects information from a variety of sources, often as a participant observer; and accepts the analytical task as one of discovering answers that emerge from information that is available as a result of the study.	Research identifies topic or question(s) of interest, determines appropriate unit to represent it, and defines what is known based on careful analysis of multiple sources of information about the “case.”.
Research process may vary greatly from context being investigated (e.g., survey of how principals spend their time) or appropriately reflect it (e.g., observation of how principals spend their time).	Research process is designed to reflect, as much as possible, the natural, ongoing context being investigated; information is often gathered by participant observers (individuals actively engaged, immersed, or involved in the information collection setting or activity).	Research process is defined by systematic series of steps designed to provide careful analysis of the case.
Information collection may last a few hours or a few days, but generally is of short-term duration using carefully constructed measures designed specifically to generate valid and reliable information under the conditions of the study.	Information collection may last a few months or as long as it takes for an adequate answer to emerge; the time frame for the study is often not defined at the time the research is undertaken.	Information collection may last a few hours, a few days, a few months, or as long as is necessary to adequately “define” the case
Report of the outcomes of the process is generally expository, consisting of a series of statistical answers to questions under investigation.	Report of outcomes of the process is generally narrative, consisting of a series of “pages to the story” or “chapters to the book”.	Report of outcomes of the process is generally narrative in nature, consisting of a series of illustrative descriptions of key aspects of the case.

traditions, corroborates the methodology chosen in this paper due to the cases selected, their importance in ADR Brazilian scenario and the illustrative descriptions of key aspects of the cases that will be presented in the next topics.

The case studies described in this text aim to identify the real-life benefits achieved by those companies that changed/reinforced their internal cultures and are using mediation.

The characteristics that define case study research (Hancock & Algozzine, 2006: p. 15) can be observed in this paper:

- 1) A focus on companies that are representative of a group, that is, companies that are rationally electing ADR, mainly mediation, and obtaining economic benefits;
- 2) The phenomenon researched is studied in its natural context, bounded by space and time;
- 3) Richness of information (deep and varied sources);
- 4) Exploratory;
- 5) Additional questions due to the act of investigating a topic in detail.

The case study allows full investigation of a particular research question. These cases that were studied are historical (focusing on events as they change over time and information collected from papers, records, and other sources) and intrinsic (focusing on specific companies involved in judicial and extrajudicial mediation).

The Legal Directors/Managers interviewed were selected not only due to the importance of these companies in the Brazilian ADR scenario but also for their availability to talk to the researcher (mainly because of the confidentiality that mediation involves). One of them (The Oi Group) is the first case where judicial mediation was used in judicial recovery and was mainly online. The other one (Mercado Livre) received a national award granted by the Brazilian Judiciary (CNJ). And the third one is a multinational company with a subsidiary in Brazil that obtained economic benefits in using extrajudicial mediation in a business matter.

The researcher conducted semi-structured interviews with Legal Directors/Managers of these companies (period extended from October 23, 2018 through April 26, 2019). The questions are in **Appendix 1**. This type of interview was chosen by the researcher to allow respondents to express themselves openly and freely, so they could define the world from their own perspectives (Hancock & Algozzine, 2006: p. 40). The questions were sent by email to the interviewees and, if necessary, some further clarifications were obtained by telephone and in person meetings. The only face-to-face meeting occurred with The Oi Group team because they wanted to understand the researcher's objectives. Nevertheless, the data collection occurred as explained above.

Strong, 2016: p. 1995 identified that mediation is suitable for empirical consideration because there are few studies related to commercial (business) mediation. This study was constructed with a specific goal in mind to discover and de-

scribe current companies that are using ADR in business matters, mainly mediation, and are obtaining economic benefits (besides monetary gains).

In the next topic, the data collected are analyzed and the results presented.

4. Data Analysis, Results, and Discussion of Findings

As mentioned before, the data collection in this area is very difficult due to the principle of confidentiality in mediation, the necessity to maintain detailed and strategic information far from competitors' reach, and to protect the shareholders. The companies chosen by the researcher are large corporates and are representative of their sectors. Besides, two of them have been well-known in Brazil for their internal change of culture. The results presented by them are deemed relevant.

4.1. The Group Oi

4.1.1. The Adoption of an ADR System

The company adopts an ADR system because there is a prior analysis to identify which method is better for each case. This method could be Judicial or Extrajudicial, and the most common being:

Judicial

- 1) Direct negotiation with both the party and the party's lawyer: The company directly contacts either the party or his/her lawyer to initiate negotiation to settle an agreement and terminate the lawsuit.
- 2) Concentration of Judicial Hearings ("Mutirão de Audiência"): An effort is made to handle many judicial hearings referring to the same (or similar) subject on the same day. This approach optimizes time and the analysis of cases.
- 3) Judicial Mediation: The company analyzes the case in advance to offer a realistic proposal in judicial mediation.
- 4) Concentration in Small Claim Courts ("Mutirão dos Processos Extraconcurais"): This is a partnership between The Oi Group and small claims courts. There are company employees inside the court accompanied by a lawyer (externally contracted Law Office) to solve conflicts and set up agreements.
- 5) Judicial Recovery: The judicial mediations realized in the lawsuit are classified under this section. It will be explained in future topics.

Extrajudicial

- 1) Internal/Administrative Procedure: There is direct contact with the client/consumer, prior to the lawsuit, to meet such a demand.
- 2) "Expressinhos": This is a partnership between The Oi Group and Judiciary. There are company employees inside the court to solve conflicts and avoid a lawsuit. There are 14 company representatives in Rio de Janeiro courts and other 15 spread across courts in other Brazilian states.
- 3) PROCON (government service): PROCON is an agency of the municipal or state executive branch for the protection and defense of the rights and interests of consumers. It maintains direct contact with citizens and their affairs. It can be

a state, municipal, or of the Federal District. It functions as a monitor and a supervisor of relations between suppliers and consumers. Among other activities, PROCON functions as a forum for investigation and judgment, within the scope of its competence and complementary legislation, for regular administrative procedures. An administrative process within the scope of PROCON is a set of acts ordered and established by law with the objective of subsidizing a motivated decision that concludes with the reception (or not) of a complaint from a consumer. The availability of an administrative process ensures greater transparency for PROCON's acts and those related to it. In case of intermediation of conflicts, and within the administrative process, PROCON pursues agreements between consumer and supplier. There is a partnership between Oi and PROCON. There are company employees inside the public organ to resolve conflicts by settling agreements.

There is a specific sector in the company named Mediation and Agreement Management to monitor the fulfillment of the agreements and to deal with ADRs. This department functions in both ways: preventive (acting as soon as the conflict starts trying to avoid lawsuit) and contingency (if the plaintiff sued the company, trying to settle in court).

4.1.2. Mediation through the Judicial Recovery Lawsuit

The Oi Group filed a lawsuit requesting judicial reorganization on June 20, 2016¹⁷, based on the Judicial Recovery and Bankruptcy Law (Law n° 11.101/2005). The 7th Business Court of the Capital District of the State of Rio de Janeiro was the competent forum to hear it and decided (on February 8, 2018) that the group needed to be in Judicial Recovery for two years. The corporation requested judicial mediation that was granted.

This judicial mediation received much attention. The first question was to identify if this was technically a mediation because The Oi Group had some limited offers:

- 1) All creditors would be able to be part of the mediation regardless of the amount of their credit, provided that the agreement only regulates the payment of R\$50,000.00, and the remaining amount is paid in accordance with the reorganization plan;
- 2) Pre-arranged fixed payment terms: 90% of the credit paid on the date of the signing of the agreement and the remaining 10% paid after the approval of the reorganization plan;
- 3) The respective creditor must renounce any challenge related to the amount of its credit;
- 4) The respective creditor has to commit itself to vote in favor of the reorganization plan yet to be presented, by granting a power of attorney to a trustee appointed by the bankruptcy court;

¹⁷More information about this judicial recovery is available at <http://ojs.imodev.org/index.php/IJIL/article/view/229/370>, captured on 12.10.2018, at 3pm and in Cesar Cury's article (Cury, 2022: pp. 143-162).

5) The approval of the reorganization plan by the General Meeting of Creditors is a condition to the validity of the agreement¹⁸.

This specific ADR system¹⁹ was developed by FGV (Fundação Getulio Vargas) Projetos for The Oi Group in 2017 and its main objectives were:

- The democratization of access to justice in judicial recovery;
- Handling ongoing relationships;
- Image redemption and company credibility;
- Enabling the Creditors' Meeting;
- Reaching most lenders with a low economic impact;
- Suitability to the negotiating nature of the business recovery process.

Almost 35,000 (34,787) agreements were settled and 140 judicial mediators worked on The Oi Group's case in 40 Brazilian cities during 2017. At the time, this case was the largest Brazilian judicial recovery, and according to the president of NUPEMEC (the Judicial Permanent Nucleus of Conflict Resolution Consensus Methods) in Rio de Janeiro, High Court Judge Cesar Cury, without this specific Design of System Disputes (using mediation) it would not have been possible to achieve this result (Cury, 2022).

In this project, the company reports that the economic benefits were relevant to the company's image. It was important to maintain a good image with clients/consumers. 32,344 agreements were totally fulfilled because the consumers' credits were below R\$50,000.00.

4.1.3. The Economic Benefits Obtained by the Oi Group

The company reports that it gained an economic benefit of 44% through the method of Concentration in Small Claims Courts. The company also indicated that the only project that led to additional costs was Judicial Mediation in Judicial Recovery. In the other programs, the cost is already included in the company's expenses. The Oi Group reinforces that the monetary benefit is very important. However, it is not the only one. The preservation of the company's image with public institutions and consumer/client satisfaction are also contemplated. Moreover, it was indicated that the same system is used with commercial partners.

The consequence of the reduction in the number of lawsuits can also be noted in the annual financial report²⁰, consequently, the company does not have to provision this amount and can use this monetary value in other areas. This report indicates that the majority of lawsuits are related to tax claims.

Using mediation, The Oi Group was able to fulfill the necessary requirements to obtain judicial recovery and reduce the expenditure on lawsuits by 44%. Due to its presence in all five Brazilian regions, this company has many customers

¹⁸More information about the legal structure is available at

<http://ojs.imodev.org/index.php/IIIL/article/view/229/370>, captured on 12.10.2018, at 3pm.

¹⁹More information about the ADR system see Brandão and Maldonado, 2022, pp. 163-167.

²⁰Pages 12. Available at

https://www.oi.com.br/ri/conteudo_en.asp?idioma=1&conta=44&tipo=43744, captured on 04.12.2019, at 7pm.

and clients. Therefore, there are high probabilities of conflicts.

This company designed a specific system of solving conflicts that articulates many possibilities for solving controversies without resorting to a trial: judicial mediation, extrajudicial mediation, public institutions, and direct negotiation with the other party and his/her lawyer. Even when they are engaged in a lawsuit, there is always space to attempt a settlement. Moreover, the company developed a special area in the Legal Department to monitor the fulfillment of all agreements and to deal directly with ADRs. In order to accomplish this objective, the company decided to abandon the culture of litigation. Thus, the consequences of the reduction in the number of lawsuits were noticed in their annual financial report, besides it was possible to facilitate the assembly of creditors (with unprecedented numbers), reduce the debt list by more than 90%, in addition to maintaining continued healthy relationships with customers, suppliers and workers, adding image gain and credibility in the market (Brandão & Maldonado, 2022).

In the next item, a case presenting a change in the internal policy of resolving conflicts will be described.

4.2. Mercado Livre

4.2.1. The Adoption of an ADR System

In 2017, the company created the project named “Empodera” (empowerment), after the success of the Project Action (detailed below), which has three pillars: 1) partnership with the Brazilian Consumer Ministry, 2) reduction in the number of lawsuits, and 3) promotion of the project and the new method for resolving conflicts.

To address the first pillar, one of the main actions is the company’s adhesion to consumidor.gov.br (this is a public platform designed by the Brazilian government to be used by any consumer who wants to complain about a purchase/service). This is a free tool developed by the Brazilian Consumer Ministry for the consumer and the time it takes to resolve a controversy is at most one month²¹.

Referring to the second pillar “reduction in the number of lawsuits,” it was noticed that the consumer was not aware of the available methods to resolve conflicts. The company also changed its Terms & Conditions of Use to clarify this and to offer online dispute resolution (including mediation) to the consumer at the moment he/she chooses to use the website to sell/purchase. The company noticed that in 40% of the lawsuits, no previous contact was made to attempt to resolve the controversy due to the fact that the consumer’s first option was resorting to court.

For the last pillar on project promotion, Mercado Livre created a video to play on the appropriate media (for example, YouTube²²) with comprehensible language and instructing the consumer on how to solve his/her controversy using

²¹ Available at <https://www.consumidor.gov.br/pages/conteudo/sobre-servico>, captured in 10.11.2020, at 9pm.

²² Available at <https://www.youtube.com/watch?v=aR8LbXM4uOs&t=7s>, captured on 04.11.2019, at 6pm.

the company's dispute resolution system without going to court.

Project Action was created in 2016, and during the first year there was a 99.3% decrease in the number of lawsuits due to the resolution of conflicts with agreements being reached when otherwise the consumer would have resorted to court instead. Only 1% of the controversies required the Judiciary (162 consumers initiated lawsuits out of 20,168 complaints in the public ADR website consumidor.gov.br). The achievements of this project were announced in the Brazilian media²³ and Mercado Livre received many awards for this project in 2016 (1st place in “Conciliar é Legal” offered by the CNJ and 2nd place in the XVI Prêmio ABT offered by the private sector).

This project changed the way Mercado Livre handles a conflict. The previous procedure can be seen in **Figure 1** that designs the Mercado Livre's prior flow to resolve a matter.

It should be noted that the procedure favored a triangular structure involving the court because the consumer filed a lawsuit without initiating an administrative proceeding in Mercado Livre and the company claimed for the seller in a different lawsuit. On the other hand, the model implemented by the Project Action, that is, if the consumer makes a claim in court without starting an administrative procedure with Mercado Livre, the company organizes a mediation between the buyer/consumer and the seller, as explained in **Figure 2** which designs the current flow to resolve a conflict.

Mercado Livre created a specific internal group (named Legal Intelligence) in its Legal Department to act in favor of avoiding litigation lawsuits and to develop ADR methods to resolve the company's conflicts. The flow can be seen in **Figure 3** that draw the specific internal group in its Legal Department.

In this new model, Mercado Livre adopted an online platform for its mediation process. It changed its system for resolving conflicts after many studies have identified that avoiding the Judiciary was beneficial for both the company and its clients. Nowadays, this company is focusing its Legal Department's efforts on avoiding conflicts.

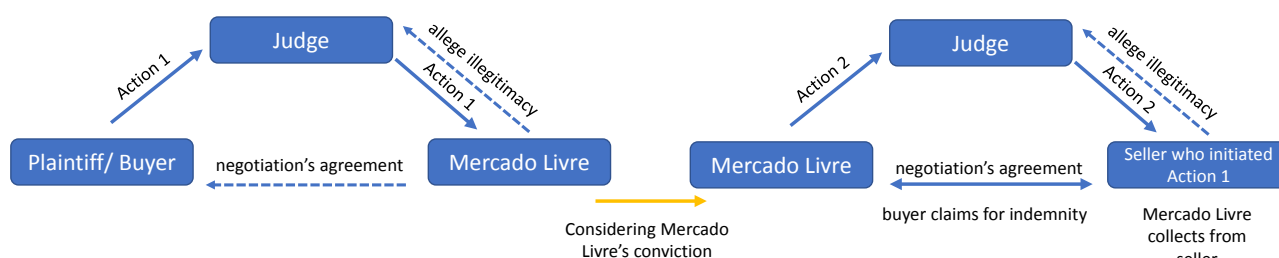


Figure 1. Mercado Livre's previous flow to resolve a conflict. Source: Mercado Livre (The author of this paper did the English version).

²³ Available at

<https://www.migalhas.com.br/Quentes/17.MI286497.71043-MercadoLivre+cria+canal+para+facilitar+acordos+e+promover+a>. Captured on 04.10.2019, at 6pm. Available at

<https://www.conjur.com.br/2018-set-19/mercado-livre-lanca-plataforma-online-resolucao-disputas>, captured on 04.11.2019, at 6pm.

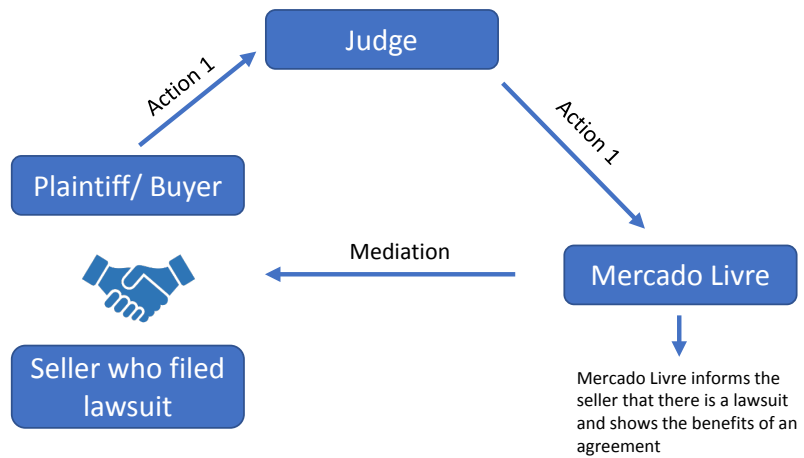


Figure 2. Mercado Livre's current flow to resolve a conflict. Source: Mercado Livre (The author of this paper did the English version).

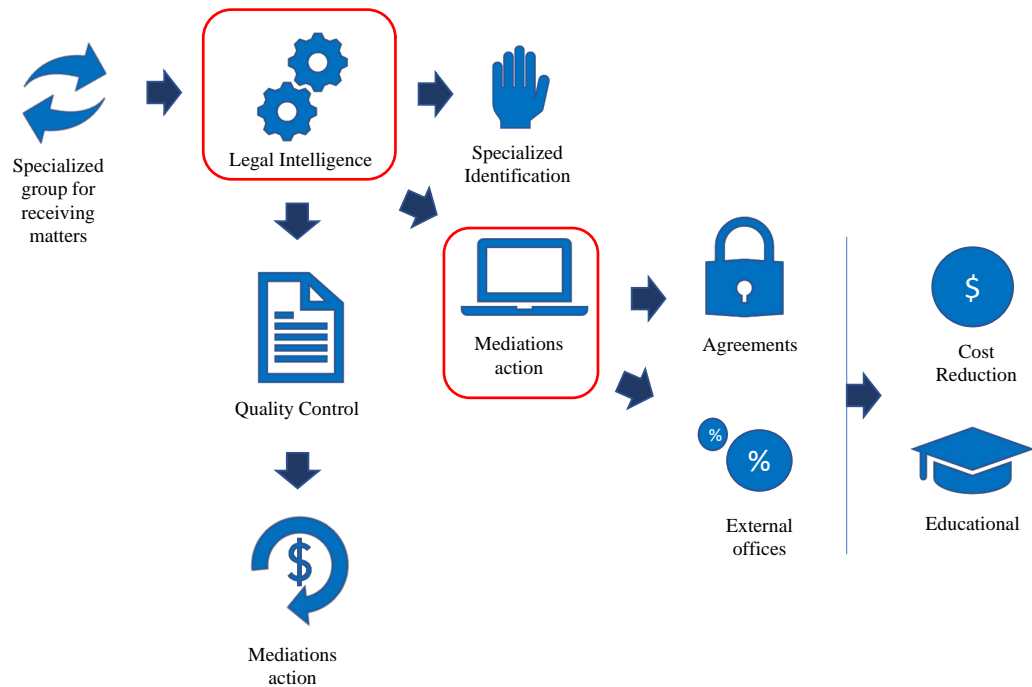


Figure 3. Mercado Livre's specific internal group in its Legal Department. Source: Mercado Livre (The author of this paper did the English version).

4.2.2. Extrajudicial Mediation

As mentioned above, this company is adopting extrajudicial mediation and other ADR methods to extinguish/manage the matters related mainly with consumers. This new policy changed the way Mercado Livre faces conflicts and this transformation is being recognized by Judiciary and other institutions. The new workflow was tailored for this company and includes a “mediation phase” in it.

4.2.3. The Economic Benefit Obtained by Mercado Livre

Mercado Livre, as revealed by its Legal Manager, obtained a measurable economic benefit from Project Action of approximately R\$2 million related to cost

spent in lawsuits and the dissolution of approximately 1500 lawsuits (from August 2016 to August 2018). There is another economic benefit that cannot be precisely measured: improvement of the company's image. Resolving consumers' complaints (conflicts) and keeping the clients pleased can create an environment where they may post good reviews spontaneously on the internet and help improve the company's image (Farnsworth, 2007: p. 141). Some happy consumers posted favorable comments about Mercado Livre as follows²⁴: "I was very satisfied with the attention and solution I received from Mercado Livre. It is a company that, thanks to this position, I would do business with again." (Bruno); "I did not expect it to be resolved. I even went to see a lawyer, however, I was surprised by the speed of the resolution of the case. I will use the free market again. I recommend it." (Jéssika); "The problem was solved in the best possible way. CONGRATULATIONS!!!!" (Renato)

As a result of this new way of treating conflicts, the company can also achieve customer loyalty so that the consumer will continue to be a client and do more transactions, thus creating more economic benefits (in this case, monetary). Ce-bola, 2014: p. 164 corroborates such observation identifying another advantage: the company can collect information to improve its activity.

The consequence of the reduction in the number of lawsuits can also be seen/verified in the annual financial report²⁵, consequently, the company does not have to provision this amount and can use this monetary value in other areas. This report indicates that the majority of lawsuits are related to tax claims.

Mercado Livre estimates that the mediation project adopted reduced their costs by R\$1 million Brazilian reais per year. In order to achieve this result, it was necessary to completely change the Legal Department and to invest in publicity to educate the consumer to use and understand the new options available. The decrease in lawsuits is also very significant: 99.3%. Only 1% of the controversies required the assistance of the Judiciary (just 162 consumers initiated lawsuits out of 20,168 complaints in the public ADR website consumidor.gov.br). The results of this project were announced in the Brazilian media and Mercado Livre received many awards for this initiative. Besides this recognition by official institutions, this internal change has also pleased the consumers. Many clients provided their voluntary reviews on the company's website. The positive feedback from their customers definitely contributes not only to the company's public image but also to the maintenance and growth of their commercial relationships.

The company noticed that in 40% of the lawsuits, no previous contact was made by their customers to attempt to resolve the controversy. The consumer's first option was always to resort to court. The company was only aware of the customer's dissatisfaction at the time it received the summons. This attitude

²⁴These comments were offered by Mercado Livre in the material to the researcher. The consumers' full names were omitted by the researcher to guarantee privacy.

²⁵Note 15. Pages 44-47. Available at <http://investor.mercadolivre.com/static-files/f0e96886-2199-4ebe-8c02-38c61aaf26eb>, captured on 04.12.2019, at 7pm.

clearly reflects the still prevailing culture of litigation in Brazil. Most of the time, the parties do not examine the likelihood of adopting an ADR method before a lawsuit. However, as this aspect is not the main subject of this paper, the reasons for such a culture in the country will not be discussed here.

Another innovation implemented by this company was the adoption of an on-line platform for its mediation process. At the time of the initial phase of this project, resolving conflicts using an online platform was not very common.

The next topic details the last case studied.

4.3. A Multinational Company with a Subsidiary in Brazil

4.3.1. The Adoption of an ADR System

As previously seen in topic 1.2.2, the Brazilian subsidiary does not have a Multi-Door Courthouse system in place. The Legal Director is trying to change this culture and analyze each conflict to elect the adequate method to resolve it. However, as mentioned in the interview, he/she is facing resistance from other parties for different reasons.

4.3.2. Extrajudicial Mediation

Due to the absence of a developed ADR system, the Legal Director analyses each case individually to identify if an extrajudicial mediation is the most appropriate method for that conflict.

4.3.3. The Economic Benefits Obtained by the Brazilian Subsidiary

During the interview, the Legal Director emphasized the following points:

- There was an economic benefit of 50% of the monetary amount involved (without considering the time) the mediations the company has participated in. Millions of dollars were saved. Due to the confidentiality principle, the calculus done in the case could not be divulged by the Legal Director;
- The cost of a lawsuit, the legal fees, the maintenance costs of a legal department, and the collection of documents by other company's department must be considered;
- There is a cost to wait for the final judicial decision. Besides, a judge's decision is unpredictable;
- It is more difficult to obtain a settlement in court than in an extrajudicial mediation because of the conflict environment that the parties and their lawyers are in;
- In an extrajudicial mediation, the parties are the leading figures and the adequate solution is created by them. It does not depend on an unpredictable decision of a third party;
- Participation in an extrajudicial mediation requires a lot of preparation and consciousness that the parties need to work together with a win-win mentality in order to reach a mutually acceptable agreement. The agreement should not be seen as "who has a weak thesis" or "who is losing";
- A lawsuit demands a financial budget (financial contingency) for its duration

in courts, and this can disrupt the financial status of the company if the cost is high;

- Another advantage is the re-establishment of the commercial relationship that also brings along further economic benefits;
- The conflict resolution was very fast. The period for ending the conflict was 6 months (including internal preparation). The mediation sessions took place over a maximum period of 2 days;
- Quick conflict closure allows the company's administration to focus on the company's main business;
- In an extrajudicial mediation, many issues are negotiated, including monetary elements. It is not a bargain environment but a dispute at a lower cost;
- Time is extremely precious for the company;
- There is a corporate emotional factor involved, but it is necessary to isolate it and decide/act rationally for the best option (the mediator's transparency about the reality is very helpful);
- The agreement settled in mediation was fulfilled;
- The company is trying to implement mediation projects in the civil and labor areas. However, it is facing difficulties, mainly due to the lack of such a culture in other parties.

This last perception was also verified in the research done by David B. Lipsky and Ronald L. Seeber in their *Report on the Growing Use of ADR by U.S. Corporations* (Lipsky & Seeber, 1998: p. 9). For the Legal Director of this company, the elements indicated above can be measured because the expected value must be considered²⁶. The Director reinforced the maintenance/re-establishment of the commercial relationships and the settlement of new agreements. Moreover, it was highlighted that the economic benefits in mediation are not only monetary but also relate to the company's image. In addition, by reducing the time it takes for conflict resolution, the business manager can dedicate his/her time to focus on main objectives: the income-producing activities of the company and its quest for profits. It is noted that this perception reported by the Director is aligned to the doctrine and in this sense Leathes, 2004: pp. 17-18 indicates that an agreement "results well beyond the remedial abilities of a court or arbitration panel" and the mediation can restore broken relationships.

The Legal Director of this multinational company emphasized that mediation may not be the most appropriate ADR method for all conflicts. Carroll and Mackie, 2000: p. 14 corroborates such observations identifying the situations in which mediation is particularly suitable for business/legal circumstances because parties want to put optimal effort into achieving an agreement rather than entering into or continuing formal legal proceedings:

- Where business relationships make it essential that the parties negotiate a mutually acceptable outcome or amicable "divorce",

²⁶For Ariely, 2008: pp. 2-3, "We don't have an internal value meter that tells us how much things are worth. Rather, we focus on the relative advantage of one thing over another, and estimate value accordingly".

- Where executives need to be assured they have given their “best shot” at trying to settle a case, and
- Where it would be helpful to have a final try at negotiating a settlement²⁷ before triggering litigation/arbitration proceedings or going to trial.

The third company analyzed (a multinational enterprise with a Brazilian subsidiary) estimated savings of 50% after having participated in extrajudicial mediation. In the interview, the Legal Director emphasized many benefits of mediation beyond the economic one, such as: 1) the reduced cost and risk of waiting for the final judicial decision; 2) the amicable scenario involved in extrajudicial mediations; 3) no need to provide a financial provision as if it were a case of a lawsuit (financial contingency); 4) the re-establishment of the commercial relationship due to a prompt solution. The mediation sessions took place over a 2 days period only. The whole issue was resolved in 6 months; 5) a quick conflict closure allows the company administrator to focus on the company’s business and make profits; and 6) in an extrajudicial mediation, many issues are negotiated and not only monetary ones (it is not a bargain environment where a simple dispute takes place for a lower cost). The culture of litigation in this third company was not totally abandoned, but through this research it could be inferred that there is an internal movement to change it toward the adoption of mediation and the Multi-Door concept.

In the next topic, a comparison between the use of mediation in these three companies analyzed will be presented.

4.4. A Comparison between the Three Cases Studied

Comparing the three cases, it is observed that The Oi Group and Mercado Livre tailored specific design systems for their needs. One major benefit for both companies was the reduction in the number of lawsuits. Another advantage was the evasion of The Oi Group’s bankruptcy which could have jeopardized many consumers, partners, and the whole Brazilian telecommunications network due to the few players in this sector. In the third case studied, mediation was elected ex post the conflict. It was also observed that the Legal Director analyzes each case individually to identify if an extrajudicial mediation is the most appropriate method for the conflict since there is not a tailored ADR system designed to the company.

The election of ADR can be ex ante or ex post (Shavell, 2003: p. 1, Chapter 19) and it can influence the deterrence of adequate volume of socially desirable numbers of lawsuits in courts. In the first two cases (The Oi Group and Mercado Livre), it is clear that the election of ex ante decreased/avoided the number of lawsuits. In the third case studied (a multinational enterprise with a Brazilian

²⁷As explained by Shavell, 2003: p. 10: “A mutually beneficial settlement amount exists as long as the plaintiff’s and defendant’s estimates of the expected judgment do not diverge too much. Indeed, it can be shown that a mutually beneficial settlement exists as long as the plaintiff’s estimate of the expected judgment does not exceed the defendant’s estimate by more than the sum of their costs of trial.”

subsidiary), the parties elected mediation after the controversy mainly to 1) reduce costs, 2) avoid a risk decision in courts, and 3) save time which is an important element in this domain.

These companies demonstrated that the parties rationally evaluated each decision considering many aspects, but in the end, the parties settled upon an agreement because it was advantageous (Kaplow & Shavell, 2006: p. 155). Each company has its internal methods for calculating the expected value of a procedure considering many elements. This analysis is not relevant for this research. The internal comparisons made by the companies and the results reported are the most important. The benefits of avoiding the use of Judiciary for all questions.

The economic benefits derived from the reduction in the number of lawsuits in the Mercado Livre case can also be noticed/verified in the annual financial report. In comparison to previous years, this impact and the savings are clearly observed in their financial report. In The Oi Group, besides this same advantage, another one was the evasion of bankruptcy. In the multinational enterprise with a Brazilian subsidiary, the settlement of an agreement monetarily economic and the restorage of the business relationship.

These companies are not only demonstrating that it is possible to re-model, but also to gain economic benefits with this cultural shift.

Consequently, it is demonstrated/confirmed that:

H.1 The economic benefits arising from the use of mediation are a reality in Brazilian companies.

5. Implications for Research and Practice

This study provides researchers, lawyers, and company decision-makers with a body of contemporary detailed information to demonstrate the economic benefits of electing mediation for business controversies. These companies are references in the Brazilian scenario, and their examples can stimulate other entities to consider business mediation.

The study of these three companies demonstrates that when they decided to design a tailored system for solving their conflicts focusing on economic benefits, and for this purpose, they had elected extrajudicial mediation, one outcome thereafter obtained was the maintenance of a positive relationship with their public.

In the current pandemic scenario caused by the COVID-19 virus, where people have been forced to work in the online environment while reconciling household chores and caring for children along with corporate activities, an increase in conflicts would be expected. However, the Judiciary has been impacted and in-person activities have also been suspended. ADR, especially online, means ODR (online dispute resolution) has been helping to resolve these conflicts and ensuring that the corporate world can thrive even during this pandemic.

Furthermore, in the post-pandemic scenario, an increase in the number of requests for company recovery and contract re-negotiation is expected due to financial recession. Mediation has already been applied and proved to be successful in a precursor case of judicial reorganization (The Oi Group Case). This scenario demonstrates further the strong need for it. ODR has also proved to be an excellent tool for resolving conflicts with cost reduction (the Mercado Livre Case). Specific research on this impact must be carried out, but the holding of live webinars and news disseminating the events of mediation sessions (not only judicial, but extrajudicial as well) demonstrates the recognition of ADRs.

6. Limitations and Further Research

Nevertheless, different companies may have varied perceptions of any economic value under this scenario, and purportedly also in regard to various economic benefits. This study presented companies that achieved economic benefits using business mediation (both judicial and extrajudicial). Therefore, the perception of how companies calculate economic value should also be contemplated for future research. Besides, the confidentiality principle in business mediation prohibited to reveal some details.

There is no claim to generalization with the presentation of these cases, but to demonstrate the reality experienced by Brazilian companies with the use of mediation and its economic benefits.

7. Conclusion

The need for the efficient and effective conflict resolution has demanding an internal change of culture in companies to deal with these questions. Some companies have been designing detailed conflict systems to avoid courts due to economic benefits.

Data collection in this domain has been very difficult not only due to the principle of confidentiality in mediation but also to the companies' strategic need to safeguard information from their competitors and to protect their shareholders. However, despite this obstacle, it was possible to study three national companies that are using mediation and obtaining economic benefits. They were selected not only for their importance in the Brazilian ADR scenario but also due to the availability of their Legal Directors/Managers to be interviewed by the researcher. All of these organizations have been using mediation and measuring such gains (revealing either the specific value or percentage of their monetary benefits while using valid criteria for assessment).

As demonstrated in this paper, all the corporations studied are 1) large and representative of their sectors, 2) strategically changing the way they resolve conflicts, namely, adopting/reinforcing the Multi-Door Courthouse concept and avoiding the reliance on the Judiciary's assistance for all questions due to the fact that Judiciary has not always been the adequate source for resolving all queries, and 3) have been analyzing their cost to gauge the economic benefits.

Using mediation, The Oi Group has been able to fulfill the necessary requirements to obtain judicial recovery avoiding the evasion of its bankruptcy which could have jeopardized many consumers, partners, and the whole Brazilian telecommunications network due to the few players in this sector. Besides, it was possible to reduce the cost of lawsuits by 44%. Mercado Livre has calculated retrenchments of R\$ 1 million per year due to this culture change and can collect information to improve its activity achieving customer loyalty so that he/she can continue to be a client and do more transactions, thus creating more economic benefits (in this case, monetary), as clients statements posted in internet. Moreover, there is another economic benefit that cannot be precisely measured: improvement of the company's image due to the efficiency and efficacy in resolving conflicts. The third company analyzed (a multinational with a Brazilian subsidiary) estimated savings of 50% after having participated in extrajudicial mediation and settling an agreement monetarily economic. Further, the restorage of the business relationship was very important for the maintenance of the alliance.

These changes and the reduction in the number of lawsuits can also be noted in these companies' annual financial reports. These reports indicate that the majority of lawsuits are related to tax claims. Moreover, a quick conflict closure allows the company's administrator to focus on business and to attract more economic benefits.

The conclusion reached in this paper contributes to the confirmation of the hypothesis initially presented, that is: **H.1 The economic benefits arising from the use of mediation are a reality in Brazilian companies.** Accordingly, it can be inferred that, in Brazil, there are companies that obtained economic benefits by solving their conflicts not only through the use of mediation but also by designing an entire new conflict resolution system to avoid resorting to courts.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

References

- Adrian, L., & Mykland, S. (2014). Creativity in Court-Connected Mediation: Myth or Reality? *Negotiation Journal*, 30, 421-439. <https://doi.org/10.1111/nej.12069>
- Ariely, D. (2008). *Predictably Irrational*. HarperCollins Publishers.
- Bercovitch, J., & Jackson, R. (2001). Negotiation or Mediation? An Exploration of Factors Affecting the Choice of Conflict Management in International Conflict. *Negotiation Journal*, 17, 59-77. <https://doi.org/10.1111/j.1571-9979.2001.tb00227.x>
- Borne, R. G. (2017). Economics of Civil Procedure. In F. Parisi (Ed.), *The Oxford Handbook of Law and Economics: Volume 3: Public Law and Legal Institutions* (pp. 143-170). Oxford Academic. <https://doi.org/10.1093/oxfordhb/9780199684250.013.003>
- Brandão, B. B., & Maldonado da Silveira, I. W. (2022). O processo de recuperação judicial na sistemática autocompositiva do CPC/2015: O caso da Oi. In J. Loss, & D. Arbix (Eds.), *Resolução online de disputas: Casos brasileiros* (pp. 163-167). FGV Editora.

- Carroll, E., & Mackie, K. (2000). *International Mediation—The Art of Business Diplomacy*. Kluwer Law International.
- Cebola, C. M. (2014). *A Mediação* (IV, pp. 155-166).
- Cooter, R., & Ulen, T. (2008). *Law & Economics* (5th ed.).
- Crespo, M. H. (2008). Transcript a Dialogue between Professors Frank Sander and Mariana Hernandez Crespo: Exploring the Evolution of the Multi-Door Courthouse. *University of St. Thomas Law Journal*, 5, 665-674.
- Cury, C. (2022). O processo de recuperação judicial na sistemática autocompositiva do CPC/2015: O caso da Oi. In J. Loss, & D. Arbix (Eds.), *Resolução online de disputas: Casos brasileiros* (pp. 143-162). FGV Editora.
- Farnsworth, W. (2007). *The Legal Analyst—A Toolkit for Thinking about the Law*. The University of Chicago Press. <https://doi.org/10.7208/chicago/9780226238364.001.0001>
- Gould, J. P. (1973). The Economics of Legal Conflicts. *Journal of Legal Studies*, 2, 279-300. <https://doi.org/10.1086/467499>
- Hancock, D. R., & Algozzine, B. (2006). *Doing Case Study Research: A Practical Guide for Beginning Researchers*. Teachers College Press.
- Justiça, C. N. de. (2018). *Justiça em Números*. <http://www.cnj.jus.br/files/conteudo/arquivo/2018/08/44b7368ec6f888b383f6c3de40c32167.pdf>
- Kaplow, L., & Shavell, S. (2006). *Fairness versus Welfare*. Harvard University Press.
- Landes, W. M. (1971). An Economic Analysis of the Courts. *Journal of Law and Economics*, 14, 61-107. <https://doi.org/10.1086/466704>
- Leathes, M. (2004). *Why Businesses Need Mediation*. CPR Master Guides on Conflict Prevention and Resolution.
- Lee, W. (1971). *Decision Theory and Human Behavior*. John Wiley & Sons, Inc.
- Lipsky, D., & Seeber, R. (1998). *The Appropriate Resolution of Corporate Disputes: A Report on the Growing Use of ADR by US Corporations* (pp. 1-40).
- Longhofer, J., Floersch, J., & Hartmann, E. (2017). A Case for the Case Study: How and Why They Matter. *Clinical Social Work Journal*, 45, 189-200. <https://doi.org/10.1007/s10615-017-0631-8>
- Posner, R. A. (1973). An Economic Approach to Legal Procedure and Judicial Administration. *Journal of Legal Studies*, 2, 399-458. <https://doi.org/10.1086/467503>
- Schäfer, H.-B., & Ott, C. (2004). *The Economic Analysis of Civil Law*. E. E. P. Limited.
- Shavell, S. (2003). *Economic Analysis of Litigation and the Legal Process*. National Bureau of Economic Research. <https://doi.org/10.3386/w9697>
- Strong, S. I. (2016). Realizing Rationality: An Empirical Assessment of International Commercial Mediation. *Washington & Lee Law Review*, 73, 1973-2068. <http://search.ebscohost.com/login.aspx?direct=true&db=aph&AN=123030830&site=ehost-live>
- Yin, R. K. (2009). *Case Study Research—Design and Methods* (4th ed.). S. Ltda.

Appendix 1. Questions to Companies

1) Did the company have an economic benefit with extrajudicial mediation? What was this benefit? How was this value calculated? (I define economic benefit in the thesis as “save money”)

2) How long did the mediation procedure last? Has the agreement been fulfilled?

3) Is the company developing a new scenario for the development of ADR? Is the company’s culture changing? Does the financial fact (economic benefit obtained) influence this decision making?