



## Petrobras settles with CADE, to sell eight refineries

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- CADE approves TCC by 4-2
- TCC unrelated to investigated conduct – tribunal minority
- Collective ruling useful to counter individual, ideological opinions – CADE president

Petrobras and Brazil's competition authority CADE today (11 June) signed a cease-and-desist agreement (TCC) under which the state-run oil company has committed to sell eight refineries.

The TCC will settle an abuse of dominance investigation into Petrobras opened by CADE on 5 December 2018, according to CADE General Superintendent Alexandre Cordeiro, who made an exceptional appearance in today's tribunal hearing.

CADE approved the TCC by a 4-to-2 vote, with commissioners João Paulo de Resende and Paula Azevedo dissenting.

Cordeiro hailed today's agreement as "historic", saying that it would foster Brazil's economic development. Petrobras has committed to sell the Landulpho Alves (Rlam), Abreu e Lima (Rnest), Lubnor, Isaac Sabbá (Reman), Presidente Getúlio Vargas (Repar), Alberto Pasqualini (Refap), Gabriel Passos (Regap) refineries and the Shale Industrialization Unit.

Petrobras' divestiture process, which will also include transportation assets, will be divided into three stages and is set to be concluded by 31 December 2021, Cordeiro said. The TCC also provides for a monitoring trustee, and Petrobras will be required to submit quarterly reports to CADE and the trustee.

Prospective buyers will be required to have the financial resources and incentives to maintain the assets as feasible competitors and some of the assets will not be able to be acquired by the same buyer or buyers from the same economic group, Cordeiro noted.

Rlam (Bahia state) and Rnest (Pernambuco) will not be able to be acquired by the same economic group, and neither will Repar (Paraná) and Refap (Rio Grande do Sul), and Regap (Minas Gerais) and Rlam, Cordeiro specified.

"The idea is that the refinery in Rio Grande do Sul state will be able to compete with [the refinery based in neighbour] Paraná state", CADE President Alexandre Barreto clarified. There's no impediment, however, for a single buyer to acquire refineries based in the states of Rio Grande do Sul (in the South of Brazil) and Amazonas (in the North), he added.

PROPRIETARY

**Sector:** Energy  
**Topics:** Abuse Of Dominance/Single Conduct

**Grade:** Confirmed

#### Companies

Petroleo Brasileiro SA

#### Agencies

Brazilian Competition Authority - Conselho Administrativo De Defesa Economica (CADE)

There are no files associated with this Intelligence

If Petrobras fails to comply with the terms of the TCC, the investigation into Petrobras will be resumed, Cordeiro said.

Commissioner Resende argued that Petrobras' decision to sell 50% of its refining assets was a unilateral choice that was unrelated to CADE's investigation. Petrobras does not need CADE's approval to effect the sale and CADE would be better off proceeding with the investigation, he stated.

Meanwhile, Azevedo argued that Petrobras cannot reach a settlement when it has not been charged with any anticompetitive conduct. The TCC solely establishes that Petrobras will make a voluntary sale in the refining sector, she said.

According to Azevedo, it is "inconceivable" that a company's size or market structure alone would justify enforcement actions by the government. CADE has the jurisdiction to take enforcement action against abuses of economic power but not economic power itself, she said.

Additionally, the TCC does not purport to cease any anticompetitive conduct, and Petrobras' divestiture program could be implemented "tomorrow" without any harm to Petrobras or its shareholders, Azevedo stated. She concluded by saying that she was not arguing for or against the asset sale *per se*.

Azevedo was the sole commissioner who voted against opening the investigation into Petrobras last December, similarly arguing that CADE should prevent market concentration before it takes place, but is not tasked with correcting market failures once they are already in place when there is no evidence of unlawful conduct. Resende was absent from the hearing in which CADE decided to open the investigation.

Citing Brazil's competition law, Cordeiro countered that CADE has the dual jurisdiction to enforce and prevent conduct that may be characterized as abuse of dominance. Through the TCC, CADE addressed its enforcement and prevention duties: enforcement by opening the investigation and prevention by "looking at the future of the market" and negotiating the divestitures, he argued.

Cordeiro added that CADE's priority is to stop anticompetitive conduct: "we cannot wait five years so that CADE can have precedents", he said, adding that "Brazil needs energy".

Petrobras CEO Roberto Castello Branco, who attended the tribunal hearing and participated in the "symbolic signing" of the TCC, said that the company decided to take pre-emptive action and negotiate a settlement agreement with CADE to close the investigation. Additionally, Petrobras is "against monopolies", according to the CEO.

In addressing the disagreement within the tribunal, CADE President Alexandre Barreto said that commissioners could be individually for or against state intervention in the economy, but he was not interested in these personal opinions. According to Barreto, what matters is that the tribunal majority's decision to

approve the TCC was technically sound from a competition standpoint. He added that CADE's collective rulings (the tribunal currently comprises six members) are a "necessary remedy to mitigate ideological ideas" that may be individually espoused by one commissioner or another.

Barreto further said that, if the investigation were to proceed and Petrobras were to be convicted, the company would likely be subject to fines between BRL 9bn (USD 2.3bn) and BRL 10bn (USD 2.6bn).

by Camila Pavanelli de Lorenzi in São Paulo

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