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Brazilian enforcers want Petrobras divestments

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Brazil's competition authority has recommended that Petrobras sell four of its 13 Brazilian oil refineries, to lessen the state-controlled company's control over the country's fuel supply.

The recommendation was included in a Technical Note jointly released on 7 January by Brazil's Administrative Council for Economic Defence (CADE) and the National Agency for Petroleum, Natural Gas and Biofuels (ANP). The sales would reduce Petrobras's share of the Brazilian oil refining sector from 98% to about 75%, but the company would retain control over nine of Brazil's 17 refineries, plus 36 inland and marine terminals.

Although Brazil's competition act does not make operating as a monopoly inherently illegal, the government agencies were concerned about both Petrobras's control over fuel sales and its influence over the collection, treatment and disposal of raw oil.

CADE began investigating Petrobras's alleged refinery monopoly in December. The company had already begun negotiating divestments with the government – which still owns a 64% stake in Petrobras – to pay off its US$70 billion debt, intending to complete all necessary sales by 2023.

The agencies' technical note said divestments would help to reduce distribution costs and stimulate competition in the refinery sector, which is struggling to recover after truck drivers nationwide protested rising gasoline prices last May. Hundreds of thousands of truckers went on strike for 11 days, which led to oil, food and medicine shortages throughout the country.

To end the strike, Brazil's government ordered refinery operators to cut fuel prices by 0.46 reais (US$0.13) per litre. But Petrobras competitor Manguinhos Refinery told the national petroleum agency that it could not afford to drop its prices accordingly, so Petrobras was able to further entrench its stronghold in the market by lowering its prices.

However, Petrobras faces challenges of its own as it embarks on its divestment plan. Last June, its attempt to sell a 60% stake in four of its refineries was indefinitely postponed after Brazil's Supreme Court issued an injunction that requires sales for all state-controlled companies to first be approved by Congress.

In December, the Supreme Court again halted Petrobras' divestments when it suspended a presidential decree that established rules for the company to follow when selling upstream assets. That ruling is currently under appeal.

Juan Ferres at Ferres & Associados in São Paulo said the government agencies are clearly trying to create a competitive environment in the gas industry for the first time in 16 years – but there is "still a lot of work to be done".

Although divestitures are necessary, they alone cannot create a competitive market, Ferres said. Regulators must also allow the gas transport system to operate more efficiently and encourage private players to sell gas to consumers, he said; currently, most business-to-consumer gas sales are controlled by Mitsui-Petrobras joint venture Gaspart.

Ferres suggested that CADE has already waited too long to intervene in Petrobras's monopoly. He said that the government made "heavy efforts" to consolidate the petroleum market, which included supporting the state-owned company's pricing policies and "huge and unrealistic" investments that created entry barriers for most potential competitors.

Daniel Oliveira Andreoli, a partner at Demarest Advogados in São Paulo, said government agencies are seeking to improve the "competitive scenario" in the Brazilian gas market and reduce the risk of creating state monopolies.

Although Petrobras does not own all of Brazil's oil refineries, Andreoli noted that only four other refineries compete with it. Of those, one is not operational, another is undergoing bankruptcy procedures and Petrobras holds an interest in the remaining two, he said.

Petrobras did not respond to a request for comment from Latin Lawyer's sister publication Global Competition Review.