

**VIBRA**



## MSCI Controversies Update

CADE allegations of anticompetitive practices in the aviation fuel market

Date: September 2020 Brazil

Assessment: Moderate

Status: Ongoing

***In September 2020, Brazil's anti-monopoly regulator, the Administrative Council for Economic Defense (CADE) alleged that several fuel distributors, including Petrobras Distribuidora, had engaged in anti-competitive practices in the aviation gasoline market. A recent securities deposit disclosed by Petrobras Distribuidora showed its alleged involvement, alongside competitors Raizen Energia SA, a joint venture between Royal Dutch Shell PLC and Cosan SA and Air BP, a subsidiary of BP PLC, in anti-competitive practices at Guarulhos's airport, in São Paulo. Companies involved in allegations of involvement in anti-competitive practices include Royal Dutch Shell PLC, Cosan, Petrobras Distribuidora SA and Raizen Energia SA.***

**Procedural Phase:** The trial started on 03/23/2022. The Reporting Councilor voted to close the Administrative Proceeding with regard to the alleged imposition of artificial barriers to entry and difficulties in accessing essential infrastructure, by the distributors Air BP, BR and Raízen and GRU Airport, in the kerosene market of aviation at Guarulhos's airport ("Conduct 2"); due to the absence of elements capable of demonstrating the generation of effects (potential or actual) to competition, pursuant to the provisions of art. 36, of Law No. 12,529/2011. The Rapporteur also determined that a copy of the vote and decision should be sent to ANP and ANAC. After the rapporteur's vote, the judgment was suspended due to the review request of Counselor Luis Braidó. The expectation of possible loss is maintained. The financial risk of BRL 89,802,917.69 was calculated based on the percentage of 5% (historical average of the percentages defined by CADE) of the gross revenue of the former GMAV (Aviation Marketing Management of the Company) at that airport (GRU), in the year prior to the opening of the Administrative Proceeding.

Fuel Distributors in Brazil Faced Cartel Investigation Related to Sale of Gasoline

Date: April 2019 Belo Horizonte, Minas Gerais

Assessment: Moderate

Status: Ongoing

***Fuel Distributors in Brazil faced a Cartel Investigation related to Gasoline Sale. Petrobras Distribuidora together with three fuel distributors, is facing an investigation initiated by the Administrative Council for Economic Defense (CADE) over its alleged involvement in a cartel for the sale of gasoline in Belo Horizonte. According to the regulator, fuel distributors allegedly combined prices to increase their gross profit margins between 2007 and 2008. In April 2019, the regulator ordered BR Distribuidora to pay R\$64.4 million (approximately US\$15.8 million) in fines. The company said it would appeal the decision.***

The Administrative Council for Economic Defense (CADE) installed as Administrative Proceeding No. 08700.010769 /2014-64 (Main Restricted Access Records No. 08012.002867 /2007-57) to investigate alleged cartels in Belo Horizonte. BR was acquitted of the charges of resale pricing conduct, hub-and-spoke cartel, distributor cartel, market division and exchange of competitively sensitive information. However, BR was ordered to pay a fine of BRL 64,445,861.88 for inducing uniform behavior to facilitate coordinated conduct (cartel) among dealers. BR then filed an action for annulment pending at 20th Federal civil court of the Federal District section (process No. 1027062-51.2019.4.01.3400) to declare CADE's decision null and void. The injunction was granted to suspend the effectiveness of the decision and any effects arising from it, including to prevent the imposition of fines. In addition, the Public Ministry of the State of Minas Gerais (MP/MG) filed Public Civil Action (ACP) n. 1195901-23.2013.8.13.0024 against 63 defendants,



including BR and two of his employees, alleging collective moral damages for an alleged cartel in the Belo Horizonte region in 2007/2008. The Public Ministry alleges, in the initial petition, that those involved engaged in market monitoring practices, implemented various tactics to raise prices and keep them above competitive levels. This process has been under judicial contestation at the TRF-2 since April 2018.

Operation Car Wash: Alleged corruption and money laundering in Brazil involving inflated acquisition and contractor costs

Date: August 2020

Assessment: Severe

Status: Ongoing

***Alleged corruption and money laundering in Brazil involving inflated acquisition from contractor costs: Petrobras Distribuidora and its former parent company, Petróleo Brasileiro SA (Petrobras), are involved in a major investigation by Brazilian federal authorities into an alleged large-scale bribery scale, corruption and money laundering, an eight-year scheme involving its executives, contractors and politicians. It was also reported that the company's estimated losses were equivalent to R\$23 million (approximately US\$7 million) and kickbacks of up to R\$31 million (approximately US\$9.5 million). The scandal is locally called Operation Lava Jato. In August 2017, investigations resumed and the new phase of Operação Lava Jato was named Operação Abate. Prosecutors claimed in August 2017 that former Brazilian President Fernando Collor allegedly took about \$9. million bribes between 2010 and 2014 in several transactions at Petrobras Distribuidora. As of December 2017, investigations by Brazilian authorities continued to be ongoing and new allegations continued to emerge, notably an arrest in May 2017 of two former executives who allegedly continued to accept bribes years after the investigation began. U.S. Investigations in USA by the Department of Justice (DOJ) and Securities and Exchange Commission (SEC) are ongoing.***

It is undeniable that the robust governance that Vibra (former BR) has today is, in large part, a response to the risks identified with the outbreak of the investigation called Operação Lava Jato, in March 2014. This investigation initiated at Petrobras (holding company, at the time) and extended to some of its subsidiaries revealed a scheme of improper payments involving not only construction companies, but also financial operators, politicians and public agents. Based on the information available, this scheme consisted of (i) overbilling in contracts entered into by Petrobras and BR with a group of companies, generating the use of amounts by these companies to make irregular payments; and (ii) possible influence between administrators, politicians and representatives of companies with a commercial relationship with BR.

The fact is that we can categorically state that we have learned from the results of Operation Car Wash and, today, we are much better prepared to prevent similar risks from materializing. Therefore, we can say that Operação Lava Jato already represents a learned chapter or a turning page in our history. Although there are still ongoing investigations at the Federal Supreme Court (STF) and before the Federal Judiciary of the State of Paraná, most are still confidential, which may also deal with illicit acts committed to the detriment of VIBRA's interests and to which the Company has not yet had full access. Based on the questions already made public, it is worth mentioning inquiries No. 4112, No. 3990 and 4162. These inquiries dealt with the alleged political influence of Senator Fernando Collor de Mello and Deputy Vander Loubet, and criminal practices within the scope of BR in relation to, among others: (i) Contracts with DVBR and UTC Engenharia Service Station Network; (ii) Transaction involving Laginha Agroindustrial; and (iii) agreements with FTC Cards Processamento e Serviços de Fidelização Ltda. Investigation No. 4112 was the subject of a complaint filed and received by the STF, giving rise to criminal action No. 1025, without a decision on the merits. In inquiry 3990, an acquittal judgment was handed down, which has already become final. In inquiry No. 4162, there was a complaint that had

already been considered by the STF, which declared the punishment of Fernando Affonso Collor de Mello extinct by a decision that had already become final, and the case was subsequently archived.

As a result of the investigations carried out in Operação Lava Jato, We concluded that part of the expenses incurred for the construction of certain fixed assets of BR included additional expenses due to the overpricing of contracts with suppliers involved in the illegal scheme described above. Therefore, it should not have been included in the historical cost of these fixed assets of BR. Thus, in the third quarter of 2014, BR recognized a write-off of R\$23 million.

On 02/03/2021, the MPF announced the dissolution of the Task Force of Federal Prosecutors assembled in 2014 in Curitiba. However, it is always possible that additional complaints or claims may be filed in the US, Brazil or other countries against Petrobras in connection with Operação Lava Jato or other investigations in the future. It is also possible that additional information that affects the interests of Petrobras or subsidiaries may come to light in the course of ongoing investigations. Petrobras' board of directors may be required to make an effort to defend these claims or claims, to the detriment of Petrobras.