

## Petrobras' New Price Policy

On October 14 Petrobras announced a new policy for the pricing of its oil products. The new rules frustrated those who expected major changes, but nevertheless amount to an important step towards competitive markets in the downstream segment of the oil & gas industry in Brazil.

The most important innovation is the fact that prices of oil products will be reviewed often. A newly instituted *Executive Group for Markets and Prices* will meet at intervals which shall not exceed one month in order to set new prices in the light of the evolution of international markets, the exchange rate and other relevant factors.

Previous administrations at Petrobras typically referred to the need to avoid excess volatility as a justification to keep prices unchanged for long periods of time. This often led to wide gaps between domestic prices and international ones; this practice now seems to have been abandoned, and this is welcome. The federal administration itself implemented automatic parity with international prices at the time it kept prices under formal control, during the phase which led up to the enactment of the Oil & Gas Act (Law No. 9,478, of August 6, 1997) and to price liberalization.

As widely commented, in the recent past the federal administration interfered with price policies at Petrobras in order to fight inflation and to boost, or not compromise, its popularity. Before the Oil & Gas Act such interference was legal and would generate a credit on the part of Petrobras vis a vis the National Treasury, which was eventually settled in 2001. Since then there is no legal basis for government interference or for Petrobras to be reimbursed by the Treasury. As a result, any losses incurred by Petrobras in this context are irreversible. This led to shareholders and investors filing numerous claims for indemnification; it also led to investigations being opened by the SEC and by Brazil's CVM. A recent and comprehensive report by a special task force of Brazil's public prosecutor's office produced a great volume of information and documents which seem to prove undue government interference, including minutes of board meetings at Petrobras.

The limits to what Petrobras can do in setting the prices of fuels are also determined by antitrust law and policy. Petrobras cannot, for instance, cut prices in a specific region in order to undermine the activities of a particular emerging competitor. In the past Petrobras' price policy was subject to scrutiny by Brazil's antitrust authority CADE, which upheld it.

Petrobras market dominance in all segments in which it is present in Brazil inhibits commercial and investment decisions by its competitors and helps understand why one of the main goals of the Oil & Gas Act of 1997 – namely, to allow for competitive markets – is still a distant objective. The Oil & Gas Act instituted the National Council for Energy Policy and placed it in charged of pursuing the policy goals written into the Act itself; these include competition advocacy and the protection of consumers in relation to fuel prices. It is about time the Council plays its role in more active fashion.

Petrobras is under no legal obligation to adopt transparent rules for its price policy. That said, it is in its best interest to do so. Not only because this will be instrumental to attracting new investors to its upstream activities, but also because it will help protect the value of its shares – as demonstrated by the positive reactions to the new rules announced recently.

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