

## NATIONAL ENERGY POLICY COUNCIL - CNPE

### RESOLUTION No. 9, of May 9, 2019

#### Establishes guidelines for the promotion of free competition in the refining activities in Brazil.

THE PRESIDENT OF THE NATIONAL COUNCIL FOR ENERGY POLICY (*Conselho Nacional de Política Energética*) – CNPE, exercising its duties, pursuant to the provisions of article 1<sup>st</sup>, item III, article 2<sup>nd</sup>, caput, item IX, of Law No. 9,478, of August 6, 1997; article 2<sup>nd</sup>, paragraph 3<sup>rd</sup>, item III of Decree No. 3,520, of June 21, 2000; article 7<sup>th</sup>, item III and article 14, caput, of the CNPE Internal Regulations, approved by Resolution No. 7 of November 10, 2009, resolved in the 4<sup>th</sup> Extraordinary Meeting, held on May 9, 2019; in accordance with the Proceeding No. 48380.000080/2019-11, and

Considering the purposes of the National Energy Policy (*Política Energética Nacional*) established in article 1<sup>st</sup>, items I, III, V, IX and XI and the activities that are part of the monopoly of the Union established in article 4<sup>th</sup> of Law No. 9,478 of August 6, 1997;

Considering that the national supply of fuels is considered as public utility pursuant to paragraph 1<sup>st</sup> of article 1<sup>st</sup> of Law No. 9,847, of October 26, 1999, which covers the refining activity;

Considering the powers of the Brazilian National Agency for Petroleum, Natural Gas and Biofuels (*Agência Nacional do Petróleo, Gás Natural e Biocombustíveis*) - ANP established in article 8<sup>th</sup> of Law No. 9,478 of August 6, 1997;

Considering the powers of the Energy Research Company (*Empresa de Pesquisa Energética*) - EPE established in article 4 of Law 10,847 of March 15, 2004;

Considering the guidelines established by CNPE Resolution No. 15, of June 8, 2017, for the development of the market of fuels, other petroleum by-products and biofuels in Brazil;

Considering the recommendation of the complete sale of the assets included in the Partnerships and Divestments Program (*Programa de Parcerias e Desinvestimentos*) of the dominant refining company, without passive participating interest, aiming at a competitive environment, in accordance with a study prepared by the Brazilian Administrative Antitrust Council (*Conselho Administrativo de Defesa Econômica*) – CADE in the scope of the Technical Working Group established by CADE/ANP Ordinance No. 4, of June 11, 2018, resolves:

**Article 1.** To establish, for purposes of the National Energy Policy, the following guidelines that must be complied with to promote free competition in the refining sector, in the event of divestitures by dominant players in such sector, without prejudice to the legislation applicable to the companies involved:

**I** - concomitant sale of refineries and respective infrastructure assets required for the handling of their inputs and products;

**II** - transfer of potentially competing refineries to different economic groups;

**III** - transfer of refining assets without maintaining the ownership interest of the seller in such assets; and

**IV** - transfer of assets for handling of inputs and products, preferably, to non-vertically integrated economic groups, considering the relevant market and pursuant to ANP regulations on third-party access.

**First Paragraph.** In the event of infrastructure sharing by more than one user, compliance with the provision of item I may be waived.

**Second Paragraph.** In the event of operations that fall within the scope of article 88 of Law 12,529 of November 30, 2011, the ANP and the EPE, within the scope of their duties, may submit technical opinions to support CADE's analysis of the divestitures set forth in the caput of this article.

**Article 2.** This Resolution shall enter into force on the date of its publication.

**BENTO ALBUQUERQUE  
MINISTRY OF MINES AND ENERGY**