

July 10, 2019

## Approved ANP Resolution n. 794/2019, which aims to increase competition in the Brazilian natural gas market

Following the guideline of promoting a competitive gas market in Brazil defined in [CNPE Resolution n. 16/2019](#), it was published [ANP Resolution n. 794/2019](#) on July 8, 2019 (“**Resolution**”), which aims to increase transparency on the price of natural gas supplied to the market. In this sense, the Resolution amended some provisions of ANP Resolution n. 52/2011 which is the regulation that governs the granting of authorizations for the trading of natural gas and the registration of gas sales agreements (“**GSAs**”). The new rules will come into effect within 60 days following its publication.

See below our comments to the Resolution with special focus on relevant changes:

### **GSA Registration**

All GSAs remain subject to registration before the ANP, so the seller agents shall submit the GSAs to the ANP within 30 days from its execution. However, the Resolution provides new rules on the disclosure of such GSAs and related information to the public as mentioned below.

### **Full disclosure of GSAs with local distribution companies (“LDCs”)**

The GSAs entered with LDCs with the purpose of meeting the needs of ‘captive markets’ will be fully disclosed by the ANP. For purposes of the Resolution, ‘captive markets’ means the market in which potential customers have a limited number of competing suppliers or only one supplier. The change is designed to give consumers better access to such information so they can better understand the price formation.

### **Disclosure of other GSAs**

The Resolution also changed the provisions in connection with the disclosure of information related to other GSAs usually executed upstream of the city gate such as the ones entered between gas producers at the wellhead. The seller of such GSAs are required to inform to the ANP not only the volumes but also the price and other information pursuant to a standard form prepared by the ANP.

ANP will then monthly disclose to the market the information provided by the seller agents such as: (i) average daily volume traded; (ii) average sale price, weighted by volume sold, by type of supply; (iii) percentage, weighted by contractual volume, of minimum monthly commitments to

take gas by type of supply; and (iv) percentage, weighted by contractual volume, referring to the capacity charge per type of supply.

The Resolution clarifies that ANP shall not disclose any commercial information contained in the GSAs (except aggregated information or to the extent required to comply with a legal or judicial determination).

**Prohibition of destination clauses (*cláusulas de restrição de destino*)**

The Resolution forbids the use of the so-called ‘destination clauses’ in GSAs. Such clause prevents buyers from freely reselling natural gas to any customer and, therefore, may be seen as hurdles to the development of a competitive and liquid market.

**Antitrust measures in case of anti-competitive practices**

Agents holding authorization for the sale of natural gas are now expressly forbidden to limit or adversely influence free market competition or abusively use their dominant position in any segment of the natural gas industry.

Whenever the ANP becomes aware of any fact that may be construed as possible infraction of said obligations, it shall promptly communicate it to Brazilian Antitrust Authority.

Our Oil & Gas team remains available to provide any further clarification on this or any other matter.

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