



CADE preemptively warns against Avianca divestment plan

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Brazil's competition authority released a technical note last week examining the anticipated divestment of a bankrupt airline's flight routes, and warning that distribution of those assets to the country's largest airlines would raise serious competition concerns.

The Administrative Council for Economic Defence's advisory [note](#) analysed Brazil's air transport sector in light of airline Avianca's reorganisation plan, which intends to divest assets to rival airlines. Acquisitions by rivals Latam or Gol would be the "most worrisome" from a competition standpoint, the note said, and recommended divestment to a new market entrant instead.

Avianca Brazil filed a *recuperação judicial*, a type of voluntary insolvency proceeding, in São Paulo last December. Creditors approved its judicial reorganisation plan last week.

This plan includes creating seven separate units that bundle certain flight routes, air operator certificates and the use of some Avianca planes and employees, and selling those units to competing airlines.

In anticipation of these divestments, CADE on Friday published a non-binding technical note warning that the plan could raise significant competitive concerns if the units are sold to other major airlines. The highly concentrated air transport sector is characterised by legal barriers to entry, infrastructure difficulties at airports and high levels of investment, the note said.

Against this backdrop, the enforcer examined Avianca's planned divestments, which allow the buyers to use its brand for 180 days on flight routes in and out of Congonhas, Santos Dumont and Guarulhos airports. The divestment of even one of Avianca's seven segmented units would harm competition, the note said, as Avianca acted as a competitive constraint on the region's largest airlines, Latam, Gol and – to a lesser extent – Azul.

The enforcer therefore recommended that Avianca's assets should be distributed to a new market entrant, as this would not change the level of concentration in the market.

It also recommended that Avianca's creditors consider the regulatory risks associated with the reorganisation plan. Not only could CADE block the divestments, it said, but rival airlines could refuse to purchase Avianca's assets; or the airline's bankruptcy situation could change before the enforcer completes its 240-day merger review.

The technical note is not formally part of the enforcer's review of Avianca's anticipated divestments; CADE has not yet been notified of any deals regarding the sale of Avianca's assets.

However, Eric Jaspas at Gico Hadmann & Dutra Advogados in Brasília said technical notes are a "very well respected part of CADE", and could influence how the authority analyses any acquisitions resulting from Avianca's breakup.

"It will, of course, influence the strategies of Avianca's creditors and of the other airlines," he said. "As there is no indication that the technical note is part of a broader review of the airline sector in Brazil, it appears it was exclusively prepared as a study of Avianca's bankruptcy and restructuring plans."

Jaspas said any proposed acquisition by Latam, Gol or Azul of Avianca's assets "very likely" will trigger CADE's merger review. This makes the enforcer's "clear" statement that any acquisition by Latam or Gol would be the most worrisome all the more significant, he said, as it could affect the negotiations between the parties.

The enforcer's technical notes have previously suggested how it will act in an investigation. In January, it [recommended](#) in a note that Petrobras divest 13 Brazilian oil refineries to combat an abuse of dominance allegation. Last April, a note [suggested](#) dropping an investigation into drugmaker Lundbeck's alleged sham litigation one week before the enforcer officially ended the probe.