

Boosting competition authority

As other European countries merge their competition and regulatory authorities, the big question is whether Portugal will follow their example



Nuno Ruiz

Así como en otros países europeos se fusionan sus autoridades reguladoras con las de la competencia, la gran pregunta es si Portugal seguirá su ejemplo, según Nuno Ruiz de Vieira de Almeida & Associados. El tema ha sido debatido pero, hasta la fecha, continúan funcionando de manera independiente.

It has been a busy 18 months for EU competition authorities. These organisations tasked with ensuring that cooperation and M&A benefits the markets have themselves been consolidating, says Nuno Ruiz, Head of EU and Competition at Vieira de Almeida & Associados. As an example, the Spanish Government recently reviewed their regime and established the National Commission for Markets and Competition, tying in the country's existing industry regulators with the national competition authority.

"There is a clear desire from some EU countries to bring together their competition and regulatory authorities into a single entity," says Ruiz. "There are a host of reasons but the crux is that competition authorities alone do not always have enough power to address the issues in the market, and competition authorities and regulators have not been properly articulated in the past."

In Portugal, Ruiz says that the issue has been discussed but, so far, competition and regulation remain separate. Even so,

he believes it could be a good thing for the market. "The Portuguese Competition Authority has increasingly been getting involved in regulatory matters when cases are not really about competition rules."

Ruiz believes combining the competition and regulation bodies in Portugal would help from a management perspective and to simplify the process, although it must ensure a different approach to each sector. "The regulation of telecoms, energy or health faces issues of a very similar nature and there has been a lot of red tape across the various organisations. It would make sense to bring them into a single body with the competition authority but retain their individual functions within the larger, single entity." So while the European Commission can – and has – been enforcing anti-competitive breaches there is nothing in the various treaties that give it the power to directly enforce sector regulation. Therefore, concludes Ruiz, whether Portugal will follow the actions of its Iberian neighbour remains to be seen.

Market investigations on the rise



Pedro Suárez

Las autoridades de defensa de la competencia han aumentado sus investigaciones sectoriales, según Pedro Suárez de Ramón y Cajal Abogados. Las empresas están cada vez más preocupadas, ya que los informes de las autoridades se producen con muy poca interacción directa entre las partes interesadas.

Since the Competition Act 2007 was enacted, the Spanish Competition Authority has been growing in stature. And its recent merger with several regulatory authorities, into the National Commission for Markets and Competition, might give it even more power, according to Pedro Suárez, Head of EU and Competition at Ramón y Cajal Abogados.

An interesting development is the increased activity of the Authority in the advocacy area. In particular, the Authority has been increasing its investigations into how different markets work, says Suárez. And, as they grow in significance, companies are becoming more concerned that the Authority's reports are often produced behind closed doors, with very little direct interaction with stakeholders.

"The lack of a formal consultation with stakeholders means that the market has little input in these investigations or what the Authority recommends," he explains. "Companies are becoming increasingly proactive in their approach to liaising with

the Authority. Not doing so means missing an important chance to participate."

Companies in sectors such as fuel and transport have complained about some of the Authority's conclusions in recent reports into their market practices. Yet with no formal written or oral processes available, clients are turning to law firms to represent their viewpoints at an earlier stage.

"I would like to see a similar scenario to the UK Competition Authority where formal submissions are accepted from all interested parties," Suárez says. The key difference is that, under UK law, stakeholders have the right to be heard during the investigation process and can appeal to a court to have any reports or recommendations reviewed. That is not the case in Spain.

"This is an important issue for reputation too," Suárez concludes. "If the Authority claims a sector is uncompetitive, then the perceived implication is often that companies in that sector are also uncompetitive."