

Being confident in the system



If Portugal's National Competition Authority is to perform its role adequately it needs the necessary framework and resources, says Nuno Ruiz at Vieira de Almeida.

While there is no doubt the Portuguese National Competition Authority (Autoridade da Concorrência – AdC) is doing a difficult job in testing circumstances, there remain however fundamental issues with Portugal's merger clearance and cartel investigation regimes, says Nuno Ruiz, Head of Competition at Vieira de Almeida.

"Depending on the type of client and their business sector, and whether they are the defendant or a complainant in a matter, they may offer a very different perspective of their dealings with the AdC. But in many instances recurring problems do occur – there is no simplified merger notification



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procedure, and the abuse cases that the AdC does focus on tend not to be the most challenging."

Agenda

The AdC has done very well to put "competition issues" into the daily news and onto the business agenda, but it can always perform better, choose better targets, and deal with situations more clearly, believes Ruiz.

Portugal is a small market, which is centralised in many respects, and where he says there has traditionally been a very limited competition culture. "Nonetheless the AdC, with a small team, worked on 77 merger clearances in 2007 with most of the decisions reached comparable in quality with any authority in Europe with much greater means."

The AdC has now however, he believes, reached the very limit of its abilities to deal with concentration issues, largely because of the very broad remit of the role it is asked to perform.

"In Portugal there is a lack of a simplified merger notification procedure, which means that when a company with a €150m turnover acquires a company with a €2m turnover a full merger notification must be made. In many instances clients do not understand the concerns of the regulator, and it can be equally hard in some instances to justify them."

Seemingly small matters therefore often

face a lengthy investigation procedure, he cautions. "This requires a large amount of information, takes time and often means significant regulatory and legal fees for the client."

There is no firm guidance as to when a merger notification might warrant a simplified procedure, or even what a simplified procedure should comprise, he adds.

"The result is that companies often do not notify the AdC of their merger intentions, which obviously results in legal uncertainty. We need therefore to find other ways to make the competition system more relevant."

In any event, once a notification has taken place a decision on the relative merits of what has been proposed needs to be forthcoming from the Authority as quickly as possible.

"It is not acceptable for companies to put their investment plans on hold while the AdC undertakes its deliberations. Parties need clear deadlines and to have an awareness of the main issues from the outset of an investigation."

Confidence

The success of the AdC in raising and tackling competition issues has also brought further problems, suggests Ruiz. The growing awareness and willingness of parties to present concerns over anti-competitive behaviour has not been met with an equal rise in resources.

"We are now approaching what we call the Latin American problem – 90% of the AdC's time and effort is spent on mergers, leaving very little to focus on concerns over issues such as market dominance or cartels," he says.

The issue is such that serious matters are being left on file for unacceptably long periods, he believes. "The European Commission is correct in its assertion that these issues should be dealt with locally, but in Portugal they cannot. There are not adequate resources."

Despite obvious successes, the issue is however particularly acute in the most "difficult" cases, says Ruiz. "If clients, regardless of their viewpoint, are to have confidence in the system, they need to believe that the regulator is sufficiently able to perform its role."

La percepción que las empresas puedan tener respecto a las autoridades portuguesas de defensa de la competencia dependerá mucho de su propia experiencia, afirma Nuno Ruiz, director del departamento de competencia de Vieira de Almeida. Sin embargo afirma que aún hay aspectos que no funcionan bien, al margen del sector en el que se trabaje, lo cual puede ser indicativo de un defecto en el sistema. Estos defectos o irregularidades pueden ser dañinas y no permitir que la autoridad reguladora cumpla con su función como cabe esperar.