TTR
TRANSACTIONAL TRACK RECORD

TTR Interview: Monthly Report January 2015

Interviewee:

Leyre Prieto

Associate
Telles de Abreu Advogados

Online profile: http://www.telles.pt/equipa/associados/leyre-prieto/

- **European and Competition Law in M&A in Portugal**

1. In 2014 we have seen many transactions requiring the authorisation of the Competition Authority (Autoridade da Concorrência - AdC in Portuguese) such as the takeover bid for Espírito Santo Saúde. From a legal point of view, to what extent are transactions that depend on the approval of the National Competition Authority or the European Commission more complex? What differences are there between operations that require authorisation and those that do not?

   Reply: All transactions resulting in a stable exchange of control of the entirety or part of one or more companies following a merger, an acquisition or the creation of a joint venture must be analysed from the point of view of competition law, not only at the appropriate national level but at the Community level.

   It should be recalled that the penalties for failure to comply with the provisions of competition law are not exactly "soft" for companies.

   When it is concluded, after the aforementioned analysis, that the transaction requires the approval of a national authority or the European Commission, the transaction is more complex in that, in principle, the transaction itself will be larger in terms of the effects that it can produce in the relevant markets and in terms of turnover.

   In addition, an extremely important issue is that the transaction cannot be carried out until the express or tacit authorisation of the Authority has been issued or is enforceable, except in the event of a suspension being lifted. This "time" factor is, in a great many cases (in our experience), crucial for companies and their interest in the transactions. It will thus be necessary to prepare a dossier, as early as possible, and submit it to the competent Authority (Competition Authority in Portugal, Spain or another country or even the European Commission), which will naturally imply investment in certain specific resources, such as lawyers specialising in competition law.

2. Does a foreign entity that does not belong to any Member State of the European Union have more obligations to comply with or face more regulation issues when making an acquisitoin in Portugal than a foreign company from the European community?

   Reply: No. Actually, a foreign company that is not domiciled in any European Union country will not have difficulties and/or regulatory obligations.

   There will undoubtedly be some Community principles that will not be applicable to the company in question, such as the principle of free circulation and others, but of course they will not face difficulties when investing in Portugal and presenting a dossier to the *Autoridade da Concorrência.*

3. Does a transaction rejected by the Competition Authority or by the European Commission entail more work for the legal advisor? Is it more difficult to reach agreements in this type of operation?

   Reply: According to the competition law rules in most (if not all) Member States of the European Union, and certainly in the cases of Spain and Portugal, a decision to prohibit a transaction means that the Authority has already completed a first phase of investigation and that, considering that the transaction may hinder effective competition in the market, it has decided to start a second phase of investigation.

   There is no doubt that the transaction, as originally planned, will not go ahead.

   So far, we have never had a prohibition decision. Prior analysis of the transaction is undoubtedly a fundamental factor to avoid this type of decision. But that is not all. Throughout the procedure, the parties in the transaction, with the help of experts in competition law and bearing in mind the concerns that it might raise with the Authority, may present certain carefully studied and duly structured remedies to permanently and firmly exclude any type of concern for the Authority.

   As to your question of whether this entails greater effort for the legal advisor, I would way that it is a great challenge! What we want is for our clients to carry out their proposals, even if this means assuming certain remedies, as we have said.

- **Transactions advised by TELLES**

4. What are the main sectors of the transactions for which TELLES has provided advice?

   Reply: TELLES has advised clients on transactions related to dental clinics, specialised engineering companies, companies that sell spare parts and accessories for vehicles, transport companies, companies specialising in the transport and storage of products at controlled temperatures, travel agencies, fruit and vegetable wholesalers, catering companies and vehicle inspection centres.

5. What is the role of the advisor in an operation of this type?

Reply: The role of an advisor in competition law is increasingly important. And particularly at a stage prior to the acquisition, during which a thorough and detailed analysis should be made to ensure that the company's practices and the agreements entered into are fully compliant with competition law rules. This type of prior analysis in the context of Due Diligence, for example, is absolutely decisive to prevent any surprises for the new shareholders or directors, after the acquisition.

After conducting this analysis of the conformity of the target, and once the acquirer has taken the decision to complete the acquisition, "screening" is required to determine, first of all, whether or not the transaction complies with the requirements of the definition of concentrations between undertakings and, secondly, whether the concentration should be subject to prior control.

If the transaction should be subject to prior control, as already mentioned, a dossier must be prepared and submitted to the Authority and, if necessary, the necessary remedies must be drawn up.

In any case, and this is increasingly important and interesting, the role of the advisor in competition law will continue to being essential in the context of a company's activity in the market, and in its relations with clients, suppliers and competitors.