

## Telecommunications Law Q&A - Portugal

**With Portugal Telecom to pay R\$8.32bn (\$5bn) for a 22.4% stake in Oi, Brazil's largest telecoms group, this deal will see the Brazilian company replace Spain's Telefónica as the largest shareholder in the Portuguese operator; making it evident that Portugal's telecoms market has stabilised itself and is now well on its way to making a substantial profit. *Lawyer Monthly* speaks to Octávio Castelo Paulo from SRS Advogados to find out more about the Portuguese Telecommunications industry...**



**M&A activity is on the up, such cases include Portugal Telecom who recently acquired 22.38% of Brazil's Oi for \$4.98 billion – how will this impact the Portuguese economy?**

I believe the impact will be positive. The Portuguese market is quite mature with fierce competition. Chances for real growth are limited. For a group of companies with the dimension of PT Group, to become more international and to invest in emerging markets like Brazil or Angola seems to be one of the obvious choices.

Other telecom companies, like Zon, are on the same path, considering the recent investments of Zon in Angola and Mozambique.



**There have been recent allegations that Telefonica has violated anti-trust regulations, do you feel this may have a negative effect on future investments?**

I do not think so. The market is accustomed to hearing about violations of competition laws by the large operators without any practical consequences, particularly regarding future investments.

Even when such allegations are grounded, which is not always the case, competition authorities (and sector regulators) do take their time to assess the situations and to decide on a course of action. It is clear that in Portugal one of the issues that the market faces is “regulatory uncertainty”. Whenever there is a complaint, either addressed to the Competition Authority or to ANACOM (the Portuguese regulatory authority in Telecoms), the time taken to decide is quite long. The decision is then challenged in court and, quite frequently, is revoked by the court.



Octávio Castelo Paulo

Despite this “regulatory uncertainty”, telecom operators continue to invest. Good examples include the recent investments made by several Portuguese operators, like Portugal Telecom, Zon, Vodafone and Optimus on Next Generation Access networks. Also, mobile operators are either deploying new Wi-Max networks (like Mobizapp) or preparing for the LTE auction to be launched by ANACOM before the end of the year.



**Q** With the constant technological advancement, what sort of approach has the government taken vis-à-vis telecommunications law?

In general, the Portuguese government has been supportive of the telecoms sector, talking to the operators and understanding the sort of laws that are needed.

Recent examples include the laws passed on building infrastructure, paving the way to the roll-out of Next Generation Access networks.

However, in some cases, the Government is not able to reach the right balance, such as the recent dispute with the law regarding the financing of ANACOM (the law on regulatory taxes), where it is questioned whether all operators are being treated in the same fair and equal manner.

**Q** How can you as a firm help your clients involved in telecommunications law?

I have been a telecoms law practitioner for more than twenty years. Having worked for the Government, for the Regulator and for almost all operators with a presence in the Portuguese market, I believe that I have a good understanding of the telecoms and media industries, of the legal and regulatory environment and of the several competition issues that telecom operators usually face.

All members of my team are quite knowledgeable on telecom matters, this includes Luís Neto Galvão, who I

have worked with for many years and who is also a long standing telecoms practitioner. Throughout the years we have been able to enjoy very positive client feedback.

Being a firm with an extensive international client base, we serve both Portuguese and international clients.

**Q** What, if any, legislative progressions do you see for telecommunications law?

The Portuguese government is currently undergoing the process of incorporating the European Directives from November 2009 that amend the initial Directives of 2002 (the 2002 Directives have approved the current telecoms European legal framework) into Portuguese law.

Some of the amendments introduced by the new directives are quite sensitive, like those regarding universal service and number portability.

The Portuguese government has recently been condemned by the European Court of Justice regarding 'universal service'. This is because Portugal has not complied with the rules regarding appointment of the universal service provider through a public tender. The current universal service provider has been directly appointed by the Government without any open procedure, which the European Court has found to be unlawful. **LM**

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