

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...

Q 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 of 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.

Q 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 used to hearing about violations of competition laws by the large operators without any practical consequences, particularly in what regards 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. In Portugal, clearly, one of the issues 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. Often, such decision is then challenged in Court and, quite frequently, is revoked by the Court.

Despite this "regulatory uncertainty", telecom



operators do continue to invest. Good examples are 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 are the laws passed on infra-structure building, 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, like it happened, also recently, with the law regarding the financing of ANA-COM (the law on regulatory taxes), where it is disputable that 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 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 do face.

Working with me, there is a solid team in the office quite knowledgeable on telecom matters, which includes Luís Neto Galvão also a long standing telecoms practitioner. We have been working together for many

years and client perception has been so far very good. Being a firm with an important international client base, we are used to serve both Portuguese and international clients.

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

Currently, the Portuguese Government is committed to the process of transposing into Portuguese law the European Directives from November 2009 that amend the initial Directives of 2002 (the 2002 Directives have approved the current telecoms European legal framework).

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

On “universal service”, the Portuguese Government has recently been condemned by the European Court of Justice. 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.

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