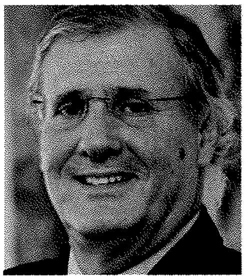


"So, as long as Europe and the emerging markets recover, I believe Portugal will follow with a different attitude and with a significant number of new and more sustainable players."
Jorge Bleck
Vieira de Almeida

we have seen capital market become more dynamic, says António Soares, Head of Corporate Finance at Linklaters, Lisbon, by means of right issues to recapitalise banks, LME exercises and IPOs, such as the issuance of high yield bonds.

Such bonds have been one of these main alternatives for bigger companies as has the issue of non-voting preferred shares and redeemable preferred shares. These share capital increases are now a very important source of financing, say lawyers, probably more than they have ever been before.

The setting up of the Revitalisation Fund under the 2014 State Budget is important, say lawyers. This is made up of three venture capital funds with an aggregate amount of €220m to strengthen credit lines for direct financing of SMEs. The State also intends to strengthen the national mutual guarantee, operating as a guarantor for companies' credit applications, under certain circumstances and provided some requirements are met. It is expected that these measures will help overcome the situation of under-capitalisation of many companies, particularly SMEs, and to support the revitalisation of companies, says Vítor Marques da Cruz, Founding Partner at Marques da Cruz e Associados, which, although in a difficult financial and economic situation, have recognised strategic potential.

All these are important signs that things could become quite positive in 2014 and that companies may be beginning to learn how to be less dependent on banking facilities and other more common instruments, says Jorge Bleck, Head of M&A and Corporate Finance at Vieira de Almeida. "So, as long as Europe and the emerging markets recover, I believe Portugal will follow with a different attitude and with a significant number of new and more sustainable players."

**Remodelling**

In recent years, the main changes to company structures have been the concentration of decision centres and centralisation of departments, says Adelaide Moura, Managing Partner at A.M. Moura Advogados, especially the creation of Iberian business units in the cases of multinational companies, to take advantage of common facilities and thus reduce costs.

Iberian subsidiaries are increasingly being configured by international groups as pure manufacturing centres, operating under tolling agreements with the relevant affiliates in order to benefit from the competitive labour costs in Spain and at the same time optimising taxation on a consolidated basis, says Carlos Pemán, Corporate and M&A Partner at Eversheds Nicea. "This trend poses recurrent questions about the need to develop the regulation of 'groups of companies' both at international and domestic levels."

Most companies are heavily focused on reducing

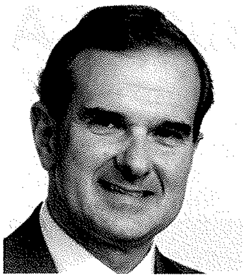
## Supporting SMEs

Recovery seems to be coming from the top of the Spanish corporate and financial pyramid, say lawyers, and that real recovery can only be achieved if the small and medium-size companies (SMEs) regain some of their previous market strength. But small to medium-sized companies (SMEs) are still facing problems in getting financing, says Alberto Frasquet, Corporate and Private Equity Partner at Herbert Smith Freehills, Spain, especially as they do not have access to capital markets in the same way as listed and blue chip companies.

To deal with this, the new Alternative Bond Market (MARF) was recently launched for SMEs to limit their dependency on bank financing. The mechanism will allow solvent enterprises to access short-term liquidity, attracting capital from both domestic and foreign institutional investors, says Alvaro Marco, Director of Corporate at BDO Abogados y Asesores Tributarios. "The efficacy of this new model will be seen in the following months."

In terms of costs and requirements, this alternative market could be very attractive say lawyers, in particular as one of its objectives is to facilitate new issues by eliminating certain burdens associated with traditional issues of securities. However, this method of financing is aimed at solvent companies that need access to working capital. Some recent reports point out that candidates must be companies with an annual revenue of at least €50m, a positive EBITDA exceeding €10m and a rating of BB or higher, explains Juan E Diaz, Corporate and M&A Partner at Eversheds Nicea. "Accordingly, most SMEs may not qualify under this criteria to benefit from this form of financing."

The Law on support for entrepreneurs and their internationalisation also recently came into force, which contains the strategic lines for fostering and stimulating an entrepreneurial culture and drive, says Jaime Espejo, M&A and Corporate Partner at Roca Junyent, and facilitating the creation of business, establishing support from the tax and social security authorities and financing for entrepreneurs. This is hoped to encourage business growth and job creation, as well as supporting the internationalisation of Spanish companies.



"The old Council concentrated on reorganisation and restructuring, and succeeded in keeping a good Merger Control Department, however it had a poor enforcement record. The new Council is expected to take a proactive stance, especially in relation to enforcement."
Carlos Botelho Moniz, Morais Leitão, Galvão Teles, Soares da Silva & Associados

jurisdiction, says Patricia Liñán Hernández, EU & Competition Partner at CMS Albiñana & Suárez de Lezo.

### Courts and council

Lawyers praise the former CNC's more recent approach to competition enforcement. And in its last months the CNC opened a lot of investigations, but they are still pending before the new Regulator – and the clock is ticking, says Marcos Araujo, Head of EU & Competition at Garrigues, Spain. "Hopefully the appointment of Eduardo Prieto as Director of Competition will speed things up and ensure there is no further backlog."

The increase in the level of fines in recent years has been astonishing, both at national and EU level, say lawyers. Fines imposed by the Spanish competition authority for cartel infringements increased from €57m in 2007 to more than €454m in 2013. But at the same time, says Iñigo Igartua Arregui at Gómez-Acebo & Pombo, Madrid, the enhanced prosecution of cartels in Spain is constantly being questioned before Courts.

The Supreme Court has reviewed, frequently reduced and annulled many of the penalties imposed by the CNC, with lawyers estimating around 50 percent of appeals against fining decisions as partially or entirely allowed. "We have seen some judicial review moves by the Spanish Audiencia Nacional that are very relevant, in particular it has changed the way in which the amount of fines are determined," says Jaime Folguera, Head of Competition at Uría Menéndez, "which is a courageous move".

The appointment of a new Council has also raised some concern. "Unfortunately, with the appointment many feel we lost an opportunity to have made a real difference to their approach and include people with day-to-day legal and real world experience in the field of Competition Law," says Rafael Baena, Head of EU and Competition at Ashurst, Spain.

Given the lack of experience of part of the new Council, explains Casto González-Páramo, Head of Competition at Hogan Lovells, Madrid, it can probably be expected that, at least in the beginning, its decisions will mostly follow the proposals of the Directorate of Investigation.

But the new Council is made up of entirely new people and this may be a good thing as it could bring a fresh perspective and approach to certain improvable aspects of the decision phase, says Cani Fernández, Head of EU & Competition at Cuatrecasas Gonçalves Pereira, for example the use of hearings before the Council, something that was much needed.

### All change

Portugal also has a new Competition Council to contend with, as well as a Competition Law that has only been in force for a year. Lawyers say that so far the country has lacked a competition culture, however these two moves are a step in the right direction.

The new Law harmonised the domestic regime with that of the EU, created a specialised Competition Court, as well as the conditions for stronger competition enforcement. The PCA now has a complete set of tools, at the same level as that of the most advanced authorities in the world, says Gonçalo Anastácio, Head of EU & Competition at SRS Advogados. "The challenges of the past year have prompted a clear statement at political level that the country needs more efficient enforcement." And both the Government and Troika are pushing clear political messages addressing the lack of competition.

"The creation of a cartel unit is also a clear message that the Authorities are focusing on compliance," according to Ricardo Bordalo Junqueiro, Of Counsel in EU & Competition at Cuatrecasas Gonçalves Pereira, Lisbon.

However, with only just over a year in place, the practical impact of the new law is still difficult to assess, says Adelaide Moura, Managing Partner at A.M. Moura Advogados. "So far, it seems that the changes in the new law and especially the reinforced powers of the PCA have not produced significant additional changes or constraints to companies."

2013 has therefore been a very important year to analyse decisions of the new Court and the PCA in to be able to identify the trends in terms of law interpretation and application, says Sofia Ferreira Enriquez, Head of EU and Competition at Raposo Bernardo. And of the few relevant decisions available to date, the trend has been for the court to confirm the important conviction decisions of the PCA, say lawyers.

The PCA has also published a set of guidelines providing more transparency on the application of its terms, and last year disclosed its three priorities: to optimise its work on competition enforcement and advocacy, to contribute to effective application of the new Competition Act, and to bolster its capacity to act, explains Joana Gomes dos Santos, Associate in the Competition Department at Caiado Guerreiro & Associados.

Since then the PCA has been very active with cases spanning from ex officio merger control, to the application of fines for abuse of dominant position, anti-cartel investigations and effective enforcement and also sector regulatory policy advisory. "We believe that this increased active and intervening role has played an important part in preventing, or reducing the number of, abuses and anticompetitive practices that would otherwise have flourished in this crisis environment," says Ricardo Henriques, Senior Associate in Competition at pbbr.

### New leadership

The PCA also recently appointed a new Council, and lawyers are optimistic. Many of the problems Portugal used to have with competition law were that the PCA's interpret of the previous Competition Act sometimes failed at court. "The reason the past Council had no results is that