
THE MERGERS & ACQUISITIONS REVIEW

NINTH EDITION

EDITOR
MARK ZERDIN

LAW BUSINESS RESEARCH

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For further information please email
Nick.Barette@lbresearch.com

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Editor
MARK ZERDIN

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PUBLISHER
Gideon Robertson

BUSINESS DEVELOPMENT MANAGER
Nick Barette

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EDITOR'S PREFACE

By a number of measures, it could be argued that it has been some time since the outlook for the M&A market looked healthier. The past year has seen a boom in deal making, with many markets seeing post-crisis peaks and some recording all-time highs. Looking behind the headline figures, however, a number of factors suggest deal making may not continue to grow as rapidly as it has done recently.

One key driver affecting global figures is the widely expected rise of US interest rates. Cheap debt has played a significant part in the surge of US deal making in the first few months of 2015, and the prospects of a rate rise may have some dampening effects. However, the most recent indications from the Federal Reserve have suggested that any rise will be gradual and some market participants have pushed back predictions for the first rate rise to December 2015. Meanwhile, eurozone and UK interest rates look likely to remain low for some time further.

The eurozone returned to the headlines in June as the prospect of a Greek exit looked increasingly real. Even assuming Greece remains in the euro (as now seems likely), the crisis has severely damaged the relationship between Greece and its creditors. The brinkmanship exhibited by all parties means that meaningful progress cannot occur except at the conclusion of a crisis: the idea that reform will benefit Greece has been lost and each measure extracted by creditors is couched as a concession. However, while the political debate has become ever more fractious, the market's response to the crisis has been relatively sanguine. This is largely a result of the fact that the volume of Greek debt is no longer in the market, but in the hands of institutions. But it is also a sign of the general market recovery and expectations that major economies will continue to grow.

Perhaps one of the more interesting emerging trends in the last year is the interplay between growth and productivity. Some commentators have suggested that the recent rise in deal making is a symptom of a climate in which businesses remain reluctant to invest in capital and productivity. Pessimistic about the opportunities for organic growth, companies instead seek to grow profits through cost savings on mergers. It is difficult to generalise about such matters: inevitably, deal drivers will vary from industry to industry, from market to market. However, if synergies have been the principal motivation in

much of the year's deal making (it certainly has been in a number of large-cap deals) then it may be that the market is a little farther from sustainable growth than some would like to think.

I would like to thank the contributors for their support in producing the ninth edition of *The Mergers & Acquisitions Review*. I hope that the commentary in the following chapters will provide a richer understanding of the shape of the global markets, together with the challenges and opportunities facing market participants.

Mark Zerdin

Slaughter and May

London

August 2015

Chapter 53

PORTUGAL

Francisco Brito e Abreu and Joana Torres Ereio¹

I OVERVIEW OF M&A ACTIVITY

The Portuguese economy has showed some positive signs in the last year, in particular, with the GDP growing for the first time in the last years, with a growth rate of 0.9 per cent in 2014 and of 1.4 per cent in the first quarter of 2015 (in contrast with the 1.4 per cent decrease in 2013 and the 3.3 per cent decrease in 2012),² mainly due to the highest volume ever of the exports, reaching €48 billion, 4.6 per cent higher than in 2013,³ and the decrease of imports (also influenced by the decrease of the oil price).

In addition, 2014 saw the conclusion of the financial assistance programme with the European Commission, the International Monetary Fund and the European Central Bank, further to Portugal's bailout in 2011 and the execution of a memorandum of understanding with those entities in May 2011.

All these signs of growth have reflected positively in the Portuguese M&A activity last year, both in terms of number and volume of deals, with 188 M&A deals (representing

1 Francisco Brito e Abreu is a partner and Joana Torres Ereio is a senior associate at Uría Menéndez – Proença de Carvalho.

2 Information available at the Portuguese Statistics Institute website (https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaquas&DESTAQUESdest_boui=211100499&DESTAQUESmodo=2&xlang=en) and in the website of the Portuguese government (<http://www.portugal.gov.pt/pt/os-ministerios/ministerio-da-economia-e-do-emprego/mantenha-se-atualizado/20150529-me-pib.aspx>).

3 Information available at the Portuguese Statistics Institute website (https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaquas&DESTAQUESdest_boui=211223567&DESTAQUESmodo=2).

an increase of approximately 40 per cent in number of deals when compared to 2013), totalling €12.5705 billion.⁴

The following events have been key factors for this dynamic in the Portuguese M&A market:

- a* Several privatisations, foreseen under the Portuguese financial assistance programme, were carried out during the last year, such as the sale of CTT – Correios de Portugal (a company of the postal services sector, which was made public through an IPO in 2013 but whose privatisation was concluded in September 2014), the sale of EGF (a company engaged in the treatment and management of wastewater and solid urban waste, which was sold to SUMA, a joint venture between Mota-Engil and ACS, companies with activity in the Portuguese and Spanish construction sector, respectively), or the recent sale, in June 2015, of TAP (the leading Portuguese airline company, which was acquired in 66 per cent by a consortium headed by David Neeleman (owner, among others, of the Brazilian airline Azul) and Humberto Pedrosa (owner of the Portuguese transportation group Barraqueiro)).
- b* Portuguese banks and other entities of the financial sector have focused on selling non-core assets and businesses.
- c* In August 2014, Espírito Santo Group, a conglomerate which comprised, among other assets, one of the biggest banks in Portugal, Banco Espírito Santo (BES), collapsed, forcing a profound reorganisation in the group, including the transfer of part of BES' businesses to a new bank (Novo Banco) and leading to the divestment of several businesses.
- d* The collapse of the Espírito Santo Group resulted in significant losses in several relevant Portuguese companies and, in particular, had a relevant impact in Portugal Telecom, the biggest Portuguese telecommunications player, affecting its merger with the Brazilian Oi (a deal which was aimed at creating one of the world's 20 biggest telecom companies with more than 100 million clients) and leading to the acquisition of its Portuguese business by Altice, which was completed in June 2015.
- e* International investment and private equity funds have been particularly active in the Portuguese market, presenting bids in most of the relevant deals, from tourism to insurance or banking sectors.
- f* Chinese and Angolan investors have also played a significant role in the M&A activity, acquiring companies in several business sectors.
- g* 2014 was also a turning point for the real estate sector, with relevant deals in all segments, and this trend has been reinforced in 2015, where the deals in

4 According to information released by TTR - Transactional Track Record in January 2015 (<http://www.ttrecord.com/pt/ttr-in-the-press/Operacoes-de-MA-em-2014-batera-m-o-numero-realizado-em-2013-Portugal-Funds-People/1301/>).

offices, hotels and shopping centres segments in the first five months of the year (approximately €800 million) already exceed the ones registered in 2014.⁵

- b* The private equity funds Revitalizar created in 2013 by the Portuguese government and managed by Portuguese private equity firms invested more than €150 million in approximately 50 Portuguese small and medium-sized companies.⁶

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

The Portuguese legal framework governing mergers and acquisitions comprises, in particular, the following laws:

- a* the Civil Code, enacted by Decree-Law No. 47344, of 25 November, as amended, which contains the general rules governing sale and purchase and contracts;
- b* the Commercial Companies Code, enacted by Decree-Law No. 262/86, of 2 September, as amended (PCCC), which includes the general framework governing Portuguese companies (the most common are *sociedades anónimas*, which may be listed or non-listed companies, and *sociedades por quotas*, both of which are limited liability companies) and also the legal regime governing share capital increases and decreases, mergers and demergers, transfers of shares in *sociedades por quotas* and financial assistance;
- c* the Securities Code, enacted by Decree-Law No. 486/99, of 13 November, as amended, which is applicable to listed companies⁷ but also contains the general regime regarding some matters, such as the transfer of shares in *sociedades anónimas*;
- d* the Competition Code, enacted by Law No. 19/2012, of 8 May;
- e* the Labour Code, enacted by Law No. 7/2009, of 12 February, as amended, which contains, in particular, the labour rules applicable to a transfer of undertaking and some information obligations in case of a modification in the employer's shareholding structure; and
- f* the private equity legal regime, recently enacted by Law No. 18/2015, of 4 March, which revoked the previous regime, enacted in 2007.

5 Information available at http://www.jornaldenegocios.pt/empresas/imobiliario/detalhe/investimento_em_imobiliario_atinge_maximo_historico_no_primeiro_semestre_de_2015.html.

6 Information available at <http://www.publico.pt/economia/noticia/fundos-revitaliza-r-investiram-153-milhoes-em-49-empresas-1676669>.

7 Listed companies are overseen by the Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários – CMVM).

In addition, regulated sectors such as the banking and financing and the insurance sectors are governed by specific laws and regulations, some of which are issued by the respective regulatory entities.⁸

Moreover, privatisations are specifically governed by laws enacted by the government containing the applicable regime for each privatisation.

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

i Financial sector - structural reforms

The memorandum of understanding established as main goals for the financial sector, *inter alia*, the preservation of the stability of the financial sector, the increase of liquidity and a balanced deleverage of the banking sector, the the reinforcement in the banking regulation and supervision, the restructuring of Caixa Geral de Depósitos (CGD), the state-owned bank, and the reinforcement of the legal framework governing the restructuring and winding-up of credit entities and of the deposit guarantee fund, as well as the legal framework applicable to insolvency of natural and legal persons.

In line with these goals, profound changes have been implemented in the legal framework governing the financial sector and most of said goals, even if to a variable extent, have been accomplished.

Recently, Decree-Law No. 298/92, of 31 December, which governs the credit institutions and financial entities (RGICSF) was object of an in-depth reform, enacted by Decree-Laws No. 114-A/2014, of 1 August, 114-B/2014, of 4 August, and 157/2014, of 24 October.

These two first Decree-Laws focus on the resolution of credit institutions, partially transposing Directive 2014/59/EU, of 15 May 2014, on the recovery and resolution of credit institutions.

One of the most relevant modifications introduced by these Decree-Laws is the establishment of the principle under which no creditor of a credit institution in the process of resolution may incur, as a result of the resolution, greater losses than those it would incur if the credit institution has been wound up at the time that the resolution decision is taken.

The possibility to grant collateral within the resolution process and to make a total or partial transfer of the assets and liabilities of the credit institution object of the resolution to a transitional bank have also been clarified.

In turn, Decree-Law No. 157/2014, of 24 October, transposes Directive 2013/36/EU, of 26 June 2013, which, together with Regulation (EU) No. 575/2013,

8 In particular, Decree-Law No. 298/92, of 31 December, as amended, governs the credit institutions and financial entities, which are supervised by the Bank of Portugal (Banco de Portugal – BdP), and Decree-Law No. 94-B/98, of 17 April, as amended, governs the activity of insurance companies, which are supervised by the Portuguese Insurance Institute (Instituto de Seguros de Portugal – ISP).

of 26 June 2013, is the base of the European legal framework on the access to credit institutions' activity, as well as on their supervision and prudential rules.

This legal act has amended, among others:

- a* the rules set forth in the RGICSF on corporate governance, with new rules regarding the requisites that need to be met by the holders of management and supervision offices, in particular, in what concerns their professional experience, qualifications, independence and availability, and also rules on the appointment of these persons, whose choice belongs to the credit institutions but is overseen by the BdP;
- b* the remuneration policies, transposing Directive 2006/48/EC, of 14 June, and establishing, in particular, the obligation to implement a remuneration policy that is in accordance with a prudent and effective management and risk control, with special focus on the variable components of remuneration; and
- c* the sanctions system, with new mechanisms aimed at the streamlining and efficiency of this system, both through the simplification of the administrative offence proceedings and through the strengthening of the BdP's powers, in particular, as regards corrective measures that intend to mitigate systemic risks.

This Decree-Law has also amended Law No. 25/2008, of 5 June, which establishes the regime on prevention of money laundering and terrorism financing.

ii Corporate laws

In February 2015 the legal regime governing the issue of preferred shares and bonds contained in the PCCC was amended by Decree-Law No. 26/2015, of 6 February.

The main goal of these amendments is to decrease Portuguese companies' dependence on banking financing and stimulate the use of alternative financing structures, giving the companies more freedom to issue hybrid capitalisation instruments.

Regarding preferred shares, which are construed by the PCCC as shares that do not entitle their holders to voting rights but which grant them priority in receiving dividends, the main modifications brought by this Decree-Law are the following.

Nature of the priority dividend

The nature of the priority dividend was a controversial matter among Portuguese scholars, and this Decree-Law has clarified that as a general rule, the holders of preferred shares are entitled to participate in the company's profits in the proportion of their shareholdings in the company's share capital, but with the right to receive the amount corresponding to their priority dividends before profits are distributed to all shareholders. However, the new regime clarifies that it is possible to establish in the articles of association that the priority dividend has either an (1) additional nature, in which case it is deducted from the distributable profits, which are subsequently distributed between all shareholders according to the percentages held by them in the company's share capital; or (2) an exclusive nature, in which case the holders of the preferred shares only receive the priority dividend (this second alternative is reserved for shares exclusively subscribed by qualified investors and that are not traded in a regulated market).

Minimum amount of the priority dividend

Before this new regime the priority dividend had to correspond at least to 5 per cent of the nominal value of the respective shares. Currently, this threshold is of 1 per cent of the preferred shares' nominal value.

Lack of payment of the priority dividend

Before this new regime the priority dividends that were not fully paid in a given tax year had necessarily to be paid within the three subsequent tax years, provided that there were available profits. With the current regime, the articles of association may establish a longer period in which the priority dividends have to be paid, with no maximum number of years.

New exceptional regime

In addition to the third category of priority dividend referred to above, Decree-Law No. 26/2015 has introduced other important modifications in what concerns preferred shares exclusively subscribed by qualified investors and that are not traded in a regulated market, consisting, among others, in the possibility of the articles of association: (1) freely establishing the regime for the payment of the priority dividend that is not fully paid in a given tax year, as well as the loss of the priority dividend regarding the years where no profits are generated; (2) allowing the conversion of the preferred shares into ordinary shares in the terms set forth in the issue conditions based on the deterioration of the company's financial situation; and (3) establishing a period of more than two (but up to five) tax years after which, if the priority dividend is not fully paid, the preferred shares temporarily entitle their holders to vote.

In a nutshell, this new regime establishes a more flexible regime for preferred shares (especially if the same are subscribed by qualified investors), aiming at attracting investors to finance Portuguese companies through non-traditional instruments.

Regarding the issue of bonds, this Decree-Law has also introduced relevant modifications, which may be summarised as follows.

Financial autonomy ratio

Prior to this new regime, companies could only issue bonds in an amount below the double of their equity. Currently, companies that intend to issue bonds have to meet a financial autonomy ratio of at least 35 per cent after the issue of the bonds, which is calculated according to the formula indicated in this legal act and based on the company's most recent balance sheet. There are, however, some exceptions to this legal requisite, which mainly correspond to the ones set forth in the previous regime, with the two following new exceptions: (1) issues of bonds with nominal unitary value equal to or higher than €100,000, or whose subscription is made in minimum lots with a value equal to or higher than €100,000; and (2) issues fully subscribed by qualified investors, provided that the same are not subsequently placed, directly or indirectly, with non-qualified investors.

Common representative of the bondholders

The regime applicable to the common representative of the bondholders was substantially modified, in particular, as regards the following aspects: (1) eligibility:

financial intermediaries and the entities authorised to render representation services to investors in the EU Member States may also be appointed as common representatives of bondholders; (2) independence: this Decree-Law establishes new circumstances that prevent the appointment of a certain entity as common representative of bondholders, for instance, the direct or indirect ownership of 2 per cent or more of the issuing company's share capital or the existence of a control or group relationship with the issuing company (regardless of the location of the registered office or the corporate nature of the common representative); and (3) responsibility: the limitation of the common representative's liability is now expressly permitted, except in cases of wilful misconduct or gross negligence, and may not be inferior to the annual remuneration to which the common representative is entitled increased tenfold.

iii Private equity

The private equity legal regime has also been object of a relevant reform recently, with a new regime enacted by Law No. 18/2015, of 4 March (which partially transposes Directives No. 2011/61/EU, of 8 June 2011, on Alternative Investment Funds Managers, and No. 2013/14/EU, of 21 May 2013), replacing the regime enacted in 2007.

The most relevant modifications introduced by this law (which also regulates, for the first time, the investment in social entrepreneurship and in specialised alternative investment) are, *inter alia*, the following.

One of the main modifications of this new regime is the creation of two different regimes applicable to private equity companies, depending on the value of the portfolios under their management, with a stricter regulatory regime applicable to entities that manage private equity funds whose portfolios' value is higher than €100 million, when said portfolios include assets acquired with the use of leverage, or €500 million, when said portfolios do not include such assets and in relation to which there are no reimbursement rights that may be exercised within a period of five years as of the date of the initial investment. Private equity companies that do not fall under these thresholds may also be governed by this stricter regime provided that they opt-in.

The stricter regime applicable to the private equity companies referred to in the preceding paragraph entails, in particular: (1) an authorisation from the CMVM prior to their incorporation (as opposed to a prior registration with the CMVM for the remaining private equity companies); (2) that all reasonable measures shall be taken and adequate procedures shall be implemented to identify, prevent, manage and monitor conflicts of interest that may be harmful to the interests of the private equity funds under their management and their investors; and (3) the obligation to functionally and hierarchically separate the functions of risk management from the operating units, including the portfolio management.

Private equity companies falling under the lighter regime set forth in this Law but which manage portfolios whose net value exceeds €250 million must incorporate an additional amount of equity that shall be equal to 0.02 per cent of the amount by which the portfolio's value exceeds €250 million.

The management regulations of private equity funds may establish the division of the fund in several independent sub funds, represented by one or more categories of investment units.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS⁹

i M&A transactions headed by strategic foreign investors

As referred to above, last year was a very active year for the Portuguese M&A market, to a large extent due to the role of foreign investors – especially Chinese, Angolan and US investors – who have been playing a key role in the revitalisation of the Portuguese economy.

This phenomenon is related not only to the pressure of Portuguese companies and the Portuguese state to divest, which has created excellent opportunities for investors, but also to the fact that Portugal is regarded as a strategic hub between Europe and countries such as Angola, Brazil, Mozambique and other former Portuguese colonies.

Chinese investment has played a particularly relevant role on this (beginning with the acquisition, in 2011, by China 3 Gorges Corporation from the Portuguese state of a 21.35 per cent shareholding in EDP, the biggest electricity producer, distributor and trader in Portugal, for €2.7 billion, followed by the acquisition in 2012, by State Grid Corporation of China, of a 25 per cent shareholding in REN, the largest Portuguese energy grid company, for approximately €387 million) and reached €2 billion only in 2014.¹⁰

The following are some of the most relevant deals featured by Chinese investors in the last year:

- a in the beginning of 2014, Fosun International acquired from the Portuguese state 80 per cent of Caixa Seguros, the largest Portuguese insurance group, including the companies Fidelidade and Multicare, for €1 billion;
- b in October 2014, Fidelidade acquired 96 per cent of Espírito Santo Saúde, one of the biggest health groups in Portugal, after this company's successful IPO in the beginning of 2014, for more than €455 million; and
- c in December 2014 Haitong International Securities Group reached an agreement for the acquisition of BESI (the investment banking unit of the Espírito Santo Group and the largest Portuguese investment bank) from Novo Banco, for approximately €400 million.

Angolan investors have been very active in the Portuguese market. Key players include names such as Isabel dos Santos, daughter of the Angolan president and Africa's richest woman, who already owns shareholdings for instance in GALP (the largest Portuguese oil and gas company), BPI (one of the biggest Portuguese private banks), NOS (one of the leading companies in the telecommunications sector, resulting from the merger between Optimus and ZON) and BIC (an Angolan private bank based in Portugal) and António Mosquito, who owns controlling shareholdings in Controlinveste (one of the largest Portuguese media groups) and Soares da Costa (from the construction sector).

9 All amounts indicated for the transactions indicated below result from publicly available sources.

10 Information available at <http://www.publico.pt/economia/noticia/portugal-foi-o-pais-da-ue-com-maior-peso-de-investimento-chines-em-2014-1693637>.

In November 2014, Isabel dos Santos launched a takeover of Portugal Telecom SGPS (valued at €1.2 billion). In March 2015, in the context of the takeover launched over BPI by Caixabank, Isabel dos Santos put a merger between BPI and Millenium BCP on the table, which would create the largest Portuguese bank. After the withdrawal of Caixabank's takeover in June 2015, the probability of success of this merger has increased. In June 2015 Isabel dos Santos acquired 65 per cent of Efacec Power Solutions (the core company of Efacec Group, the largest Portuguese electric group) from Mello Family and Têxtil Manuel Gonçalves for approximately €200 million.

International funds have also been very active in the Portuguese market and have participated in most of the bids for relevant transactions in the past year. In particular, in December 2014 Blackstone acquired a portfolio of 10 properties (five commercial areas and five warehouses) from ESAF (an asset management company pertaining to Espírito Santo Group), for approximately €200 million. In January 2015 Apollo Global Management acquired Tranquilidade (Espírito Santo Group's insurance business) from Novo Banco for approximately €40 million (with the obligation to inject €150 million in the company). In March 2015 Lone Star acquired Garvecat (owner of the resort Vilamoura in the Algarve) from its creditor Caixa Catalunya, for €200 million. In May 2015 Blackstone acquired two shopping centres in Portugal, Fórum Montijo, with a gross area to let of 59,000m² and Fórum Almada, with a gross area to let of 41,000m², for an undisclosed amount.

ii M&A transactions headed by national investors in key destinations

Angola has been one of the fundamental investment destinations for Portuguese companies, even though not necessarily from an M&A perspective.

In fact, several Portuguese companies, from the most diverse business segments, have found in Angola the opportunity to diversify their risk and expand their activities during the Portuguese crisis.

Currently, this trend persists for companies such as Mota Engil (one of the biggest Portuguese construction companies), who has recently been awarded by the Angolan government with works valued in approximately €75 million and Visabeira (a telecommunications company comprised in a multi-sectorial group, already with a strong presence both in Angola and in Mozambique, which jointly represent 25 per cent to 30 per cent of its turnover), which intends to reinforce its investment in Angola.

Portuguese construction companies have also been active in other African countries, such as Argelia. Teixeira Duarte (other of the biggest Portuguese construction companies) has recently been awarded with works valued in more than €200 million in this country.

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

The financial crisis and restructurings made in compliance with the obligations undertaken in the memorandum of understanding have strongly influenced Portuguese M&A activity in the last year.

In addition to the transactions listed in the preceding section, the following are also some of the most important M&A deals that have taken place in this period.

i M&A transactions related to financial institutions

In the context of the requirements both at a local and at an EU level regarding ring-fencing and the separation of banks' deposit-taking functions from more risky businesses, several banking groups have been selling non-core businesses. For example, in May 2015 Millenium BCP sold its asset management company, Millenium Gestão de Ativos, to Grupo Corretaje e Información Monetária y de Divisas, for €15.75 million; and in June 2015, Cofidis Participations (a French financial group) acquired Banif Mais (the specialised credit unit of Banif, a Portuguese bank) for €410 million.

ii Privatisations

In compliance with the calendar established in the financial assistance programme and with the main purpose of reducing the national budget deficit, the Portuguese state has continued the wave of privatisations with the following deals:

- a* In June 2014 the Portuguese state and the state-owned bank CGD sold their remaining 11 per cent shareholdings in REN in a public offering, concluding the privatisation of this company with a cash inflow of approximately €150 million;
- b* in September 2014 the Portuguese state concluded the privatisation of CTT in the stock market, with the sale of shares representing 31.5 per cent of CTT's share capital for approximately €340 million;
- c* in September 2014, the joint-venture SUMA formed by Mota-Engil (the largest Portuguese construction company) and ACS (a Spanish construction company) won the privatisation of EGF (a company engaged in the treatment and management of wastewater and solid urban waste), acquiring from the Portuguese state 95 per cent of EGF for approximately €150 million; and
- d* in June 2015 the consortium headed by David Neeleman and the Portuguese transportation group Barraqueiro won the privatisation of TAP (the largest Portuguese airline company) and signed the agreement for the acquisition, by the latter, of 61 per cent of TAP's share capital, for €10 million, but with the assumption of important losses and the obligation to capitalise the company, in a bidding process disputed with Germán Efromovich.

iii M&A related to the collapse of Espírito Santo Group

Further to the fall of Espírito Santo Group and to the insolvency or pre-insolvency of some of the holdings of the Group, several deals took place as a way to divest non-core assets. In particular, the following transactions were carried out in this context:

- a* in September 2014 the Swiss fund Spring Water Capital acquired from Rioforte (one of Espírito Santo Group's Luxembourg holdings, declared insolvent in December 2014) Espírito Santo Viagens (leader in the Portuguese travel and tourism market), for an undisclosed amount;
- b* in January 2015 the Thai company Minor International acquired from Espírito Santo Group six hotels pertaining to the Tivoli hotel chain, four of which are in Portugal and two in Brazil, for €168.2 million; and

c the collapse of Espírito Santo Group also affected the announced merger between the telecommunications company Portugal Telecom and the Brazilian Oi, mainly due to an investment of around €897 million made by Portugal Telecom in commercial paper issued by Rioforte. As a result, in June 2015 Altice completed the acquisition of Portugal Telecom's Portuguese business, in a deal of €7.4 billion.

iv Other relevant M&A deals

In November 2014 the Portuguese private equity firm Oxy Capital acquired 75 per cent of Amorim Turismo (one of the largest Portuguese tourism and hotel groups). This deal included a casino and three five-star hotels located in Portugal.

Several real estate deals took place, in all segments, with the highest levels of activity in recent years.

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

As a result of the financial crisis, and of the considerable decline of leveraged loan transactions and longer-term financings by bank syndicates, Portuguese companies have resorted to alternative sources of financing to support both their M&A investments and their current businesses. In particular, the issuance of corporate bonds (including high-yield bonds), as well as factoring and financial leases have become more and more common.

The bank restructurings in Portugal have also opened a window of opportunity for an influx of alternative financing to traditional banking, notably through hedge funds, private equity and capital venture operations.

In particular, private equity funds, both local players and some of the major international private equity funds, have been quite active in Portugal seeking to turn the recession into an advantage for specific investment transactions.

Additionally, a shift from Portuguese style (short-form) documentation to LMA-based documentation governed by Portuguese law is a new trend noted in the banking sector, triggered by the risk aversion of Portuguese banks.

Currently, and in line with the revitalisation of the Portuguese market, banks are more willing to finance companies, both local and foreign investors (even though most foreign players obtain financing abroad). This contrasts with the situation registered until recently, where companies felt the need to go to foreign markets to obtain financing.

VII EMPLOYMENT LAW

In the last 12 months, no significant developments occurred that had an impact on M&A activity.

VIII TAX LAW

In the last 12 months, no significant developments occurred that had an impact on M&A activity.

However, in January 2014, a Corporate Income Tax Reform was enacted, with several relevant amendments, *inter alia*, related to tax-neutral restructuring operations.

IX COMPETITION LAW

Even though no relevant modifications to the merger control legal framework were registered in the last year (the Portuguese merger control framework was further aligned with the EU merger control framework with the entry into force of the new Competition Act in 2012, which has remained unaltered since then), 2015 has already brought some interesting decisions issued by the Portuguese Competition Authority (PCA).

In particular, the PCA has recently sanctioned Petrogal, Galp Açores and Galp Madeira (all of which are part of the Galp Energia group and active in the oil and gas sector) with a fine of €9.29 million for exclusive distribution agreements that allegedly restricted passive sales.¹¹

According to a statement issued by the PCA,¹² its priorities for 2015 are the following:

- a* protecting and promoting competition in the Portuguese economy;
- b* strengthening its presence in the relevant international fora;
- c* increasing personnel and infrastructure efficiency;
- d* diversifying resources and maximising their use;
- e* ensuring speedy and technically accurate decisions; and
- f* providing public services of excellence.

In line with this set of priorities and in the context of restrictive practices, the PCA will continue prioritising actions taken against cartels through the use of the leniency programme and also focusing on concerted practices in public procurement. The detection of vertical infringements will also be a priority.

The PCA continues to actively pursue the goal of protecting and promoting competition in the Portuguese economy. It is becoming more dynamic and has invested in its technical capacity, having recently created two sub-divisions in its antitrust division (namely, an Anti-Cartel Unit and a special unit for other restrictive practices). 2015 is expected to be a busy year for the PCA.

X OUTLOOK

Portuguese M&A activity is expected to continue at a good pace in the coming months.

The continuing improvement of the Portuguese economy, the ring-fencing process and restructuring of local players, the increasing access to financing and the sustained interest of foreign investors, including major international investment funds,

11 PCA press release of 3 February 2015.

12 Available at http://www.concorrenca.pt/vPT/A_AdC/Instrumentos_de_gestao/Prioridades/Documents/AdC_Prioridades_2015.pdf.

in our country point to the maintenance of the levels of activity in the M&A sector in Portugal.

Some interesting transactions have already been announced for the short term. For instance, Novo Banco is expected to be sold in the upcoming months. The international fund Apollo and the Chinese Fosun and Anbang were announced as having presented binding offers. Further to the withdrawal of Caixabank's takeover over BPI and the proposal presented by Isabel dos Santos, the merger between BPI and Millenium BCP is likely to continue to be discussed. As a condition imposed by the antitrust authorities for the acquisition of Portugal Telecom, Altice will have to sell its telecommunication companies Cabovisão and Oni. Vodafone and NOS were announced as potential buyers. The privatisations of CP Carga and EMEF (companies from the railway sector, engaged, respectively, in the rail freight transport and in the maintenance and repair of trains) are also scheduled for 2015 and the legal framework governing the privatisation process has already been enacted. News of June 2015 indicates that the state received four proposals for the acquisition of CP Carga (including one from Cofina, a group with investments in areas such as the media and the paper and pulp sector, and another from Springwater Capital), and two for EMEF (from Alstom, the French producer of the TGV, and from Bavaria Industries Group, a German private equity investment firm).

Appendix 1

ABOUT THE AUTHORS

FRANCISCO BRITO E ABREU

Uría Menéndez – Proença de Carvalho

Francisco Brito e Abreu joined Uría Menéndez in 2001 after working as in-house counsel in the Portuguese subsidiary of a multinational corporation, a privately owned holding company and a listed Portuguese company and as a lawyer in another prestigious Portuguese law firm. He was made partner of Uría Menéndez in January 2005.

He focuses his practice on commercial and corporate law issues and has extensive experience in corporate restructuring, M&A and private equity transactions.

He is recognised by major publications (*Chambers Global, IFLR 1000, PLC Which Lawyer?*) for his work in M&A and private equity.

JOANA TORRES EREIO

Uría Menéndez – Proença de Carvalho

Joana Torres Ereio joined Uría Menéndez as a trainee lawyer in September 2007 and became a senior associate in September 2012. Prior to joining Uría Menéndez, Joana completed a summer traineeship in another major Portuguese law firm and worked at the Portuguese Association for Consumer Protection.

She spent the period from October 2011 to February 2012 on secondment to the Uría Menéndez offices in Madrid.

Joana focuses her practice on corporate and commercial law, mergers and acquisitions, private equity and restructurings, and is regularly involved in cross-border transactions.

Joana has a postgraduate qualification in commercial law from the Universidade Católica and also completed an intensive course on corporate finance at the Universidade de Lisboa and an executive course on Finance and Accounting at Universidade Católica's Business School.

URÍA MENÉNDEZ

Uría Menéndez – Proença de Carvalho

Rua Duque de Palmela, 23

1250-097 Lisbon

Portugal

Tel: +351 21 030 8600

Fax: +351 21 092 0101

francisco.abreu@uria.com

joana.ereio@uria.com

www.uria.com