# The Mergers & Acquisitions Review

Fourteenth Edition

**Editor**
Mark Zerdin

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# THE MERGERS & ACQUISITIONS REVIEW

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# PREFACE

While the previous edition of *The Mergers & Acquisitions Review* highlighted some causes for optimism for growth in the M&A market, the resilience of companies has been severely tested in 2020 in light of the covid-19 pandemic. Political uncertainty and economic shifts have taken a back seat to the wide-reaching global effects of the pandemic, which are leaving many jurisdictions and sectors in dire straits.

The figures for the first half of 2020 reflect this, as global deal value fell by 53 per cent and deal volume by 32 per cent (compared with the first half of 2019), while megadeals (over US$10 billion) were down by 48 per cent.[1] The global deal value figure is the lowest half-yearly total since the first half of 2010. The priority for many businesses in the wake of the crisis has been to conserve cash and protect their revenue streams rather than seeking to invest in M&A.

The Americas saw the largest fall in share of global M&A, as its value fell to 33.4 per cent from 52.8 per cent in 2019.[2] The US is facing not only political uncertainty with the upcoming presidential election and protests across the country, but also a sharp decline in economic productivity due to the lockdown enforced by the covid-19 crisis. M&A deal activity in the US fell to lower levels than the 2008 global financial crisis, with higher value deals particularly affected. Despite the bleak figures for the first half of 2020, though, there are signs that some sectors, notably the technology sector, are rebounding. This is perhaps unsurprising as the future of many industries will depend on technology services.

European M&A saw its lowest quarterly value since 2009 in the second quarter of 2020 of just US$83.6 billion. There was also a drop of 30.6 per cent in the value of European M&A in the first half of 2020 when compared with the figures in the first half of 2019. With economies beginning to open up towards the end of the first half of 2020, there are early signs as to where the focus of M&A activity will likely be in the aftermath of the crisis. Private equity buyouts have accounted for almost 20 per cent of deals targeting Europe, up from 18.9 per cent in 2019.[3] In Europe, as in the Americas, the tech sector is continuing to attract interest and reached a total of US$27.8 billion across 477 deals in the first half of 2020. By contrast, the consumer sector has been severely impacted and has fallen to its lowest value since 2009.

Looking forward to the remainder of 2020 and beyond, there are some reasons to be optimistic that the global M&A market will show some signs of recovery. There has already

1 Mergermarket, 'Global & Regional M&A Report 1H20'.
2 ibid.
3 ibid.

been a resurgence since the first half of 2020, with the third quarter seeing 36 deals worth US$5 billion-plus, making it the busiest third quarter on record.[4] The challenges caused by restricted international travel, less physical diligence and almost no face-to-face meetings are, for the most part, being surmounted. It is also anticipated that private equity funds will begin to put their dry powder to use as further clarity emerges on the duration and effects of the pandemic.

I would like to thank the contributors for their support in producing the 14th edition of *The Mergers & Acquisitions Review*. I hope the commentary in the following 42 chapters will provide a richer understanding of the shape of the global markets, and the challenges and opportunities facing market participants.

**Mark Zerdin**
Slaughter and May
London
December 2020

4 *Financial Times*, 'Dealmaking rebound drives busiest summer for M&A on record'.

**Chapter 29**

# PORTUGAL

*Francisco Brito e Abreu and Joana Torres Ereio*[1]

## I OVERVIEW OF M&A ACTIVITY

The Portuguese economy continued to show some positive signs in the past year, in particular with GDP growing 2.2 per cent in 2019[2] (GDP started to grow in 2014, at a rate of 0.9 per cent, and continued to grow in 2015, 2016, 2017 and 2018, at a rate of 1.5, 1.4, 2.7 and 2.1 per cent, respectively, in contrast with the 1.4 per cent decrease in 2013 and the 3.3 per cent decrease in 2012).

In addition, 2019 was the fourth year after the conclusion of the financial assistance programme with the European Commission, the International Monetary Fund and the European Central Bank, which was initiated in 2014 further to Portugal's bailout in 2011 and the execution of a memorandum of understanding with those entities in May 2011, and this has also contributed to restoring confidence in the Portuguese economy.

This evolution has been reflected positively in Portuguese M&A activity during the past year, both in terms of number and volume of deals: there were more than 420 M&A deals (15.09 per cent higher than the value registered in 2018), and the 175 transactions with disclosed value totalled approximately €13.395 billion (17.85 per cent higher than the value registered in 2018).[3] The following events have been key factors for this dynamic in the Portuguese M&A market during the past couple of years:

*a* Several privatisations, foreseen under the Portuguese financial assistance programme, were carried out, such as:
   - 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 active in the Portuguese and Spanish construction sector respectively);
   - the privatisation of CP Carga (a railway freight transport operator) through the sale of 95 per cent of the company's share capital to MSC Rail (a subsidiary of the Swiss MSC Mediterranean Shipping Company); and
   - the sale of TAP (the leading Portuguese airline company, 66 per cent of which was acquired by a consortium headed by David Neeleman (owner of, inter alia,

1 Francisco Brito e Abreu and Joana Torres Ereio are partners at Uría Menéndez – Proença de Carvalho.

2 Information available on the Portuguese Statistics Institute website: https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=353902247&DESTAQUEStema=55557&DESTAQUESmodo=2.

3 According to the 2019 annual report released by Transactional Track Record and Intralinks in December 2019: https://www.ttrecord.com/pt/publicacoes/relatorio-por-mercado/relatorio-mensal-peninsula-iberica/Mercado-Iberico-4T-2019/1919/.

the Brazilian airline Azul) and Humberto Pedrosa (owner of the Portuguese transportation group Barraqueiro), which was partially reverted upon the new government taking office in November 2015 and had a new twist in 2020).

*b* Portuguese banks and other entities in the financial and insurance sectors have focused on selling non-core assets and businesses.

*c* In August 2014, Espírito Santo Group, a conglomerate that comprised, inter alia, 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's businesses to a new bank (Novo Banco), and leading to the divestment of several businesses and to the sale of Novo Banco itself.

*d* The collapse of the Espírito Santo Group resulted in significant losses in several relevant Portuguese companies, and in particular had an impact on Portugal Telecom, the biggest Portuguese telecommunications player, affecting its merger with Brazilian Oi (a deal that was aimed at creating one of the 20 biggest telecoms companies in the world 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, and even though their interest in Portugal has been originated by the crisis, the truth is that they have maintained a very relevant role in the dynamic of the Portuguese economy, presenting bids in most of the relevant deals in the tourism, real estate, insurance and banking sectors.

*f* Chinese and Angolan investors have also played a significant role in M&A activity, acquiring companies in several business sectors.

*g* 2014 was a turning point for the real estate sector, with relevant deals in all segments and with real estate being the most active sector in the Portuguese M&A market, and this trend has been reinforced year on year.

*h* Tourism has been key for the revitalisation of the Portuguese economy and has also been growing every year, reaching 8.7 per cent of the GDP in 2019.[4]

This notwithstanding, due to the current pandemic situation, the first and second quarters of 2020 registered GDP volume decreases of 2.4 and 16.3 per cent, respectively, when compared with the first and second quarters of 2019, also respectively.[5]

This has caused, in particular, a turnaround in TAP. After months of speculation regarding the possible interest of international airlines in acquiring TAP, the pandemic has had a material adverse impact in the Portuguese airline company's financial situation, resulting in the need of the Portuguese state granting a €1.2 billion loan to TAP and reacquiring control over the company in July 2020, becoming the holder of a 72.5 per cent stake.

As far as transactional activity is concerned, the first wave of the pandemic has put several transactions on hold (some of which have already resumed) and has also caused the cancellation of some of them.

4 Information available at www.turismodeportugal.pt/pt/Turismo_Portugal/visao_geral/Paginas/default.aspx.

5 Information available on the Portuguese Statistics Institute website: https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=415333529&DESTAQUEStema=55557&DESTAQUESmodo=2 and https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=414810619&DESTAQUEStema=55557&DESTAQUESmodo=2.

Activity levels seem to be now improving, and the market is expected to be more resilient during the second wave of the pandemic.

## II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

The Portuguese legal framework governing M&A 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 sales, purchases 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 companies[6] but also contains the general regime regarding some matters, such as the transfer of shares in *sociedades anónimas*;

*d* the Competition Act, enacted by Law No. 19/2012, of 8 May, as amended;

*e* the Labour Code, enacted by Law No. 7/2009, of 12 February, as amended; and

*f* the private equity legal regime, enacted by Law No. 18/2015, of 4 March, as amended.

In addition, regulated sectors such as banking, financing and insurance are governed by specific laws and regulations, some of which are issued by the respective regulatory entities.[7]

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 the main goals for the financial sector, inter alia:

*a* the preservation of its stability;

*b* an increase of liquidity and a balanced deleverage of the banking sector;

*c* the reinforcement of banking regulation and supervision;

*d* the restructuring of Caixa Geral de Depósitos, the state-owned bank; and

*e* 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 the insolvency of natural and legal persons.

6 Listed companies are overseen by the Portuguese Securities Market Commission (CMVM).

7 In particular, Decree-Law No. 298/92, of 31 December, as amended, governs credit institutions and financial entities, which are supervised by the Bank of Portugal, 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 and Pension Funds Authority.

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.

Decree-Law No. 298/92, of 31 December, which governs credit institutions and financial entities, has been the object of an in-depth reform in the past few years, and enacted by several laws and decree-laws, in particular:

*a* Law No. 23-A/2015, of 26 March, which transposes Directives 2014/49/EU, of 16 April 2014, and 2014/59/EU, of 15 May 2014. Inter alia, the Law:
- increased the powers of the Bank of Portugal regarding recovery measures;
- amended the rules applicable to deposit guarantee schemes;
- increased the number of possible resolution measures that may be determined by the Bank of Portugal, allowing, in particular, the segregation of assets to an asset management vehicle;
- allowed the Bank of Portugal to determine internal recapitalisation measures (bail in);
- established specific rules regarding financial support between companies pertaining to the same group; and
- imposed an evaluation of the assets and liabilities of the entities subject to resolution measures before the same are implemented.

*b* Decree-Law No. 20/2016, of 20 April, which sets forth that shareholders' general meetings of credit institutions whose articles of association establish voting caps must take place every five years to resolve on the maintenance or revocation of said voting caps (otherwise, said voting caps will be considered forfeited).

*c* Law No. 16/2017, of 3 May, which requires banks to disclose the identification of the shareholders with qualified shareholdings within the banks, as well as the beneficial owner of those same shareholdings.

## ii Corporate laws

In 2017, there were two relevant amendments to the PCCC.

### *Bearer securities*

Aiming at preventing corruption, money laundering and tax fraud, and increasing transparency in the capital markets, Law No. 15/2017, of 3 May prohibits the issue of bearer securities, and created a transitional six-month period (until 4 November 2017) to convert existing bearer securities into registered securities. This Law came into force on 4 May 2017.

As a consequence, all securities issued by Portuguese entities, including shares, must be registered securities, meaning that issuers must be able to identify their holders at any time.

Pursuant to this Law, bearer securities that were not converted into registered securities within the aforementioned six-month period cannot be validly transferred, and their holders' right to participate in the distribution of results is suspended until such conversion is completed.

### *Conversion of shareholder loans into share capital*

Pursuant to Decree-Law No. 79/2017, of 30 June, shareholders of limited liability companies by quotas that gather the necessary votes to approve the amendment of a company's articles of association may approve a share capital increase by conversion of shareholders' loans granted by them to the company by means of a simple communication to the company's directors.

After receiving said communication, the directors must inform the remaining shareholders, who have 10 days to oppose the share capital increase, which only becomes effective if none of the latter opposes the conversion.

***Covid-19***

In addition, among the extensive legislation enacted within the context of the covid-19 pandemic, there were some relevant changes introduced from a corporate standpoint, in particular the following.

*Electronic meetings*

The corporate bodies (in particular, but without limitation, shareholders' general meetings and boards of directors) of companies and other entities (such as associations) have been allowed to meet by means of electronic meetings (e.g., meetings by means of audio or video conference), even if the articles of association do not expressly authorise them, aimed at simultaneously allowing the members of corporate bodies to participate in the corporate matters (thus guaranteeing normal day-to-day of companies) and comply with the government's sanitary rules and recommendations which impact gatherings and events.

*Restrictions to distributions to shareholders*

The companies benefiting from the simplified lay-off procedure or from the gradual activity recovery procedure (which provide financial assistance to entities that have suffered a material impact caused by the pandemic and are aimed at securing jobs) may not distribute dividends, at any title whatsoever, while the obligations resulting from these procedures are in force.

Failing to comply with the above entails the immediate termination of incentives and the refund or payment of the amounts received or exempted.

In addition, entities benefiting from the debt legal moratorium cannot distribute dividends, at any title whatsoever, reimburse credits to their shareholders or acquire treasury shares while the moratorium is in force.

Failing to comply with this entails the automatic termination of the moratorium.

## IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS[8]

### i M&A transactions headed by strategic foreign investors

Activity in the Portuguese M&A market in the past has been to a large extent due to the role of foreign investors – especially Chinese, US, Spanish, German and Angolan investors – who have played a key role in the revitalisation of the Portuguese economy.

This phenomenon is related not only to the pressure of Portuguese companies and the 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.

Moreover, Portugal continues to be very open to foreign investment and has a flexible foreign direct investment regime when compared to other European countries (many of which have recently enacted stricter direct investment regimes aimed at preventing opportunistic foreign investment in strategic sectors during the crisis caused by the covid-19 pandemic).

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

Chinese investment has played a particularly relevant role in this, beginning with the acquisition, in 2011, by China Three Gorges Corporation from the 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. At the beginning of 2014, Fosun International acquired from the state 80 per cent of Caixa Seguros, the largest Portuguese insurance group, including the companies Fidelidade and Multicare, for €1 billion, and 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 initial public offering at the beginning of 2014 for more than €455 million.

The following are some of the most relevant deals featuring Chinese investors in the past few years:

*a* in August 2016, Hainan Airlines acquired 23.7 per cent of Azul, the Brazilian airline company that is part of the consortium that won the privatisation of TAP, for €450 million. By July 2016, Hainan Airlines had already paid €30 million for bonds convertible in TAP's share capital. In March 2019, Hainan Airlines sold its interest in TAP to Azul and Global Aviation Ventures, both controlled by David Neeleman;

*b* in November 2016, Fosun acquired 16.7 per cent in Millennium BCP in a share capital increase reserved to it and increased that stake to 24 per cent in a new share capital increase that took place in February 2017 for a global investment of €549 million;

*c* in June 2017, a subsidiary of China Three Gorges Group (ACE Portugal Sàrl) acquired 49 per cent of EDPR PT – Parques Eólicos, a 422MW wind farm, for €248 million;

*d* in November 2017, China Tianying acquired the insurance companies Groupama Seguros de Vida and Groupama Seguros for an undisclosed amount;

*e* in June 2017, EDP sold 49 per cent of EDPR PT – Parques Eólicos to a subsidiary of China Three Gorges Group for €242 million;

*f* in May 2018, China Three Gorges launched a takeover offer over EDP and EDP Renováveis, subject, in particular, to the withdrawal of the voting cap in EDP's articles of association by EDP's shareholders' general meeting. Since the withdrawal was not approved, in May 2019 the CMVM put an end to the takeover offer based on non-compliance with the conditions established by China Three Gorges;

*g* in November 2018, the Macao businessman Kevin Ho, through KNJ Investment, acquired a 30 per cent stake in Global Media Group for €15 million;

*h* in July 2018, Bison Capital Financial Holdings completed the acquisition of Banif Banco Investimento from Oitante; and

*i* in October 2019, CESL Asia acquired the agricultural group Monte do Pasto to Novo Banco for €30.5 million.

European investors have been more active in recent years. Examples include the acquisition of SAPEC Agro Business (engaged in crop production products and crop nutrition, with sales in over 70 countries) by Bridgepoint, completed in January 2017, for €456 million (recently sold to Partners Group for €1.1 billion); the takeover launched by Caixabank on Banco BPI, which was successfully completed and entailed an investment of €645 million; and the acquisition of Ascendi by Ardian for €600 million. In July 2018, Blackstone sold Fórum Almada to Merlin Properties for €406.7 million. In 2019 EDP – Energias de Portugal agreed to sell a portfolio of hydric power plants located in the North of Portugal (representing a total of 1,689MW of hydroelectric power) to the French consortium formed by Engie, Mirova and Predica acquired from for €2.2 billion.

In 2020, relevant transactions took place, in particular, CF Infrastructure and Power Assets Holdings agreed to sell Iberwind to Ventient; José de Mello Group and Arcus have sold an 81.1 per cent stake in Brisa to the consortium formed by APG, NPS and Swiss Life; and Galp agreed to sell to Allianz a 75.01 per cent stake in Galp Gás Natural Distribuição (GGND) for €368 million. In line with this trend, of the 184 inbound acquisitions completed in the past year, 139 were carried out by European investors, with Spain and the United Kingdom sitting in first and third places, respectively.[9]

American funds have also been very active in the Portuguese market, and have participated in most of the bids for relevant transactions in the past few years. In particular, in January 2016, North Bridge acquired a minority stake in OutSystems, a Portuguese company engaged in the production and development of software, which holds subsidiaries in Brazil, Dubai, the Netherlands and the United States, for €50 million. In March 2016, the Carlyle Group acquired 50 per cent of Logoplaste (an industrial group engaged in the manufacturing of rigid plastic packaging) for €570 million. In June 2018, OutSystems raised US$360 million from KKR and Goldman Sachs in exchange for a minority stake. In the third quarter of 2018, Morgan Stanley Infrastructure Partners and Horizon Equity Partners acquired a 75 per cent stake in Towers of Portugal from Altice for €495 million. In December 2018, the Carlyle Group and Explorer Investments acquired Penha Longa Hotel and Golf Resort for €100 million and in February 2019, Oaktree acquired a stake in Belas Clube de Campo, with a global estimated investment of €500 million. In 2019, Certares LP acquired 40 per cent of Mystic Invest (a global travel, tourism and hospitality investment firm) for €250 million. In 2020, Altice sold a minority stake of 49.99 per cent in Altice Portugal FTTH to Morgan Stanley Infrastructure Partners for €1.5 billion.

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

In 2019, 56 per cent of the outbound registered deals completed in the past year were carried out in European companies, with Spain clearly leading the rankings (with approximately 27 per cent of the deals), then followed by France and Brazil (both with 9 per cent of the outbound deals).[10]

## V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

In addition to the transactions listed in the preceding section, the following are some other important M&A deals that have taken place in the past few years.

9 According to the 2019 4Q report released by Transactional Track Record and Intralinks in December 2019: https://www.ttrecord.com/pt/publicacoes/relatorio-por-mercado/relatorio-mensal-peninsula-iberica/Mercado-Iberico-4T-2019/1919/.

10 According to the 2019 4Q report released by Transactional Track Record and Intralinks in December 2019: https://www.ttrecord.com/pt/publicacoes/relatorio-por-mercado/relatorio-mensal-peninsula-iberica/Mercado-Iberico-4T-2019/1919/.

### i M&A transactions related to financial and insurance 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 and insurance groups have been selling non-core businesses. The increasingly strict regulatory requirements in both the banking and insurance sectors have also led to strategic divestments by several players.

The following are examples of deals in these sectors:

*a* in April 2016, Bankinter (a Spanish bank) acquired the retail and insurance business of Barclays Portugal for approximately €160 million;

*b* in December 2016, Real Vida Seguros (pertaining to the Portuguese Patris group) acquired both a controlling stake in Banif Pensões from Oitante and 100 per cent of Finibanco Vida from Montepio Geral;

*c* in February 2017, the Chinese conglomerate Fosun completed the acquisition of a 24 per cent stake in Millennium BCP for a global investment of €549 million (see above);

*d* again in February 2017, Caixabank successfully completed its takeover of Banco BPI, raising its stake from 45 to 84.5 per cent, for €645 million;

*e* in August 2017, Novo Banco entered into an agreement to sell 90 per cent of its Cape Verdean subsidiary (Banco Internacional de Cabo Verde) to IIBG Holdings BSC, a transaction that was approved by the Cape Verdean antitrust authorities in May 2018;

*f* in October 2017, Lone Star completed the acquisition of 75 per cent of Novo Banco, a bank that resulted from the transfer of part of Banco Espírito Santo's businesses after its collapse in August 2014, for a global investment of €1 billion. Portugal's bank resolution fund retained the remaining 25 per cent of Novo Banco;

*g* in March 2018, Novo Banco sold the business of its Venezuelan subsidiary to Bancamiga, Banco Universal for an undisclosed amount;

*h* in May 2018, Santander Totta (a Spanish bank) acquired Banco Popular Portugal for €1;

*i* in June 2019, Deutsche Bank completed the sale of the retail, private and commercial client business of its Portuguese branch to the Spanish bank Abanca;

*j* in July 2019, Generalli acquired the insurance group Tranquilidade from Apollo for €600 million;

*k* in October 2019, Novo Banco completed the sale of the insurance company GNB Vida to Bankers Insurance Holdings, a company held by Apax Partners (Global), for €168 million; and

*l* in October 2020, Novo Banco, together with its subsidiaries Banco Best and GNB Gestão de Ativos, signed an agreement for the sale of its 25 per stake stake in GNB – Companhia de Seguros, a non-life insurance company, to Crédit Agricole Assurances, for €15.9 million.

### ii Energy sector

The energy sector has also been particularly active in the past few years.

As far as renewable energy is concerned, the past couple of years have seen some of the biggest wind asset portfolios being sold, including the sale of Iberwind to Chinese group Cheung Kong for €1 billion, the sale of Finerge to First State for €900 million and the sale of a stake in EDF Energies Nouvelles' wind business in Portugal to Lancashire County Pension Fund, all in 2015. In June 2018, New Finerge, the company that acquired the Finerge wind farm business in 2015, acquired five companies engaged in the wind sector. In May 2019, Finerge announced the acquisition of two wind asset portfolios from Martifer and SPEE, and in June 2019 announced that it will be one of the bidders in the solar energy auctions to be launched by the government as from July 2019. In March 2019, Total Eren acquired from Novenergia Fund the company Novenergia Holding Company, which owns, in particular, Generg, one of the biggest renewable energy players in Portugal that also has activities in six other European countries.

2020 brought some relevant deals, such as the sale of Iberwind to Ventient and the sale of EDP's portfolio of hydroelectric power plants from to Engie, Mirova and Predica (see above).

Several deals also took place in the gas sector. In October 2016, Marubeni and Toho Gas acquired from Galp Gás a 22.5 per cent stake in its natural gas distribution business (GGND) for €138 million. In March 2017, Artá completed the acquisition of Gascan from Portuguese private equity Explorer for €70 million. In February 2019, Gascan was then sold by Artá to UBS Asset Management for €100 million. In October 2017, REN completed the acquisition of EDP Gás from EDP for €532 million. In 2020 Galp agreed to sell to Allianz a 75.01 per cent stake in GGND (see above).

In 2018, Aquila Capital acquired the entire share capital of EDP Small Hydro, a company engaged in the operation of hydroelectric power plants, for €164 million.

The sale of Partex Oil and Gas by Fundação Gulbenkian to Thai company PTTEP for €555 million was completed in November 2019.

### iii Real estate and construction sectors

The real estate sector has contributed very significantly to the activity levels in Portuguese M&A, and 2019 confirmed this trend: real estate continued to be the most active sector by number of deals, with some of the highest levels of activity ever seen.

Since 2017, the sale of shopping centres has been particularly prevalent. For instance:

*a* in 2017, Fórum Coimbra and Fórum Viseu were sold by Locaviseu to Greenbay and Resilient for a global amount of €220 million;

*b* in January 2018, Dolce Vita Tejo (the second-biggest shopping centre in Portugal) was sold by Baupost and Eurofund to AXA Investment Managers for €230 million;

*c* also in January 2018, Sintra Retail Park, Fórum Sintra and Fórum Montijo, valued at €400 million, were sold by Blackstone to Auchan;

*d* in July 2018, Blackstone sold Fórum Almada to Merlin Properties for €406.7 million;

*e* in April 2019, Leiria Shopping was sold by Sonae Sierra Fund to DWS Grundbesitz for €128 million; and

*f* in February 2020 Sonae Sierra, APG, Allianz and Eloa announced a strategic joint venture in six shopping centres in Iberia with a gross asset value over €3 billion.

The hospitality and residential sectors have also thrived, with deals such as the acquisitions of the Penha Longa Hotel and Golf Resort by a joint venture formed by the Carlyle Group and Explorer Investments and the acquisition by Oaktree of a stake in Belas Clube de Campo (see above).

In addition, Teixeira Duarte, one of the biggest Portuguese construction companies, put in place a divestment plan, in the context of which it sold Lagoas Park, SA in June 2018, the company that owns a business park near Lisbon, to the private equity fund Kildare for €375 million, and in August 2018, its 7.5 per cent stake in Lusoponte to Vinci and Mota-Engil for €23.3 million. More recently, in September 2020, Lagoas Park, SA was sold again, this time to the UK investment fund Henderson Park Capital Partners.

In January 2019, InterCement Brasil completed the sale of the Portuguese and Cape Verdean business of Cimpor to the Turkish group Oyak for €700 million. In July 2019, the office tower at Avenida Fontes Pereira de Melo in Lisbon was purchased by the German fund Deka Immobilien to the ECS Capital fund for €125 million.

## 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.

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 and are expected to have an important role in the period ahead, as the economic impact of the pandemic will likely result in interesting investment opportunities.

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

In recent years, 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 seen before, where companies felt the need to go to foreign markets to obtain financing. In addition, financing through the issuance of bonds is becoming more and more common.

## VII EMPLOYMENT LAW

In the past 12 months, due to the outbreak of the covid-19 pandemic, several laws were passed with a view to helping companies maintain their level of employment and avoid making employees redundant. Among these measures, the simplified lay-off procedure and the extraordinary incentive for the maintenance of the positions are the most relevant ones.

Considering that the Social Security and the Employment and Professional Training Institute are granting financial assistance through the payment of public funds to companies that resort to these measures, the latter are unable to dismiss employees due to economic reasons during the execution of the public programme and within the 60 days after the programmes have ended. Accordingly, M&A deals now need to take this into consideration, because many companies benefited from these programmes and, therefore, are unable to implement redundancy procedures for a given period of time.

Other than the above we would only note that the Portuguese market and legal community are still adjusting to the substantial amendments, approved by Law No. 14/2018, of 19 March, on the Portuguese Labour Code, which considerably changed the employment-related rules governing transfers of undertakings or parts of undertakings. In this regard, a special mention should be made about the now-express acknowledgement of employees' right to oppose the transfer of their employment agreements upon a transfer of an undertaking or establishment.

In fact, the recent changes to the regime now expressly make it possible for employees who oppose a transfer to stay with their existing employer whenever such a transfer causes them serious damage. However, the amendments do not give a complete definition of what is to be considered serious damage but merely provide some abstract examples, such as where there is an evident lack of solvency or a precarious financial situation of the transferee, or even when, in the employees' view, the transferee's human resources policies do not warrant their trust. Considering the lack of conceptual rigour of these new rules, it will be up to the labour courts to determine how easy or difficult bringing an allegation of serious damage will be.

In the past year, the ultimate consequences of an employee's objection to a transfer have also been called into question, given the unclear wording of the new provisions. In fact, if an employee objects to a transfer and stays with the transferor, the latter could refuse to keep the employee and force him or her to bring a lawsuit to prove the alleged serious damage. If successful, the employee's right to stay with the transferor would be recognised, but it is unclear what would happen if the employee is unsuccessful. Would the employee be deemed to have transferred to the acquirer of the business? Will the illegal enforcement of the opposition right be qualified as a resignation without the right to compensation? The answer to these questions is unclear, and it will be up to the courts to provide additional guidance in this regard.

The opposition right is particularly ill-designed in respect of situations where a transferor ceases to exist (notably, in the case of a merger). The most sensitive solution would be to consider that the right of opposition could only determine that an employee would be entitled to terminate a employment agreement and claim the payment of an indemnity from the transferor (equivalent to the severance compensation paid in the event of redundancy), but until the courts issue rulings with this understanding, the answer will remain unclear.

It is also worth mentioning that the new changes also set forth that an employee who did not oppose the transfer of his or her employment agreement may later on terminate the contract with the acquirer of the business and demand payment of a compensation, if he or she sustains he or she has suffered serious damage as a result of the transfer. However, the deadline for enforcing this right is controversial: for instance, is there a statute of limitations or a deadline to operate the termination? Some scholars maintain that the right to terminate the agreement and claim the payment of severance compensation from the acquirer of the business would only be possible in relation to the transfer of an undertaking as a whole and not a (partial) transfer of a business. Again, this is also debatable and, given how recent these changes are, it is not yet possible to anticipate where the courts will stand in this matter.

These rules concerning a transfer of an undertaking entered into force on 20 March 2018 and apply to all such transfers occurring as of that date.

It should be stressed that these labour rules do not apply to share purchase deals. In fact, this regime merely concerns the transfer by any means (spin-off, merger, assignment, etc.) of an undertaking, an establishment, or part of an undertaking or an establishment constituting an autonomous unit.

## VIII TAX LAW

No significant developments had an impact on M&A activity in the past 12 months.

## IX COMPETITION LAW

Even though no relevant modifications to the merger control legal framework were registered in the past 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 materially unaltered since), the simplified filing form and pre-notification contacts have been increasingly used, enabling a swifter assessment and earlier decisions regarding uncomplicated matters.

During the past year, the Portuguese Competition Authority (PCA) has been heading the transposition of the ECN+ Directive[11] into Portuguese law, having already submitted to the Portuguese government the final draft transposition proposal, also taking advantage of this opportunity to propose some adjustments to the existing Portuguese competition law framework. However, no relevant changes were proposed with respect to the merger control legal framework.

To increase transparency, at the end of each year, the PCA publishes its strategic priorities regarding competition policy for the following year on its website. According to a statement issued by the PCA,[12] its main priorities for 2020 include the following:

*a* strengthening the capacity to investigate and detect anticompetitive practices unofficially;
*b* intensifying the PCA's strategy for public procurement;
*c* ensuring speed, accuracy and efficiency in merger control proceedings;
*d* increasing the transparency of the PCA's actions through the best and easiest access on its website to its decisions and judicial decisions, studies, opinions and recommendations;
*e* strengthening the PCA's internal capacity to meet challenges related to the impact of digital ecosystems, algorithms and big data on competition.[13]

In line with this set of priorities, the PCA continues to actively pursue its goal of protecting and promoting competition in the Portuguese economy. With regard to merger control, the PCA is expected to continue to promote the use of the simplified filing form, as well as pre-notification contacts, to deliver swifter decisions and enhance transparency in the market.

In 2019, according to the available information in its website, the PCA issued 59 final decisions in merger control proceedings, each of which was a clearance decision. In 2020, so far, the PCA issued 30 final decisions, including only one prohibition decision.[14] Among

11 Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, to be transposed until February 2021, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0001.

12 Available at www.concorrencia.pt/vPT/A_AdC/Instrumentos_de_gestao/Prioridades/Documents/Prioridades%20da%20Pol%C3%ADtica%20de%20Concorr%C3%AAncia%20para%202020.pdf.

13 On this matter see the PCA's Report on Digital ecosystems, Big Data and Algorithms, of July 2019, Available at www.concorrencia.pt/vPT/Estudos_e_Publicacoes/Estudos_Economicos/Outros/Documents/Digital%20Ecosystems,%20Big%20Data%20and%20Algorithms%20-%20Issues%20Paper.pdf.

14 Decision of the PCA of October 2020, in the case Grupo Transdev/Grupo Fundão (the public decision was not yet available at the time of publishing this article, see press release 14/2020, available

those cases, three decisions included in-depth investigation. In addition, what emerges from the recent activity of the PCA relating to merger control is that it has given increasing importance and attention to gun jumping cases, imposing more severe fines. In fact, between 2019 and 2020, the PCA opened 10 investigations for alleged merger implementations without prior authorisation from the PCA (i.e., 'gun jumping') and has already issued one sanctioning decision[15] and one statement of objections[16] related to this infringement. Before this, the PCA had issued only two sanctioning decisions for gun jumping, with minor fines.[17]

## X OUTLOOK

Predictions for the M&A activity in Portugal for the next months are difficult to make due to the pandemic situation we live in.

According to most analysts, the pandemic will most likely lead to a crisis in some activity sectors, the effects of which are still unknown (and have been mitigated mainly due to the governmental assistance measures such as the debt legal moratorium).

However, and as we have seen in the previous financial crisis, this may simultaneously constitute an opportunity for investment, mainly inbound, but also outbound. Private equity funds seem to be particularly relevant players in this context.

Also, after a first wave of the new coronavirus, the market seems now to be more resilient, as the signing and closing of several relevant deals in the past months have shown. In fact, after an activity reduction in April and May 2020, activity levels are recovering and there are some relevant transactions in the pipeline as well.

In addition, the National Recovery and Resilience Plan, to be implemented within the context of the European Recovery and Resilience Fund and that will bring an unprecedented financial assistance package, is expected to create relevant dynamism in the Portuguese economy, thus potentially benefiting, even if indirectly, the M&A activity.

To sum up, the uncertainty we are facing, not only at a national but also at a global level, renders it particularly difficult to predict how M&A activity will develop in the next year. However, there are signs that allow us to believe that the 12 months ahead will contain significant activity as the opportunities that appear in the market in this context of low interest rates are likely to be received with appetite by investors, be they private equity funds or industry players looking for consolidation transactions.

at www.concorrencia.pt/vPT/Noticias_Eventos/Comunicados/Paginas/Comunicado_AdC_202014.aspx?lst=1&Cat=2020).

15 Decision of the PCA of March 2020, in the case HPA/HSGL (the public decision was not yet available at the time of publishing this article, see press release 04/2020, available at www.concorrencia.pt/vPT/Noticias_Eventos/Comunicados/Paginas/Comunicado_AdC_202004.aspx?lst=1&Cat=2020).

16 Case Fidelidade SGOII/Fundo Saudeinveste (see press release 13/2020, available at www.concorrencia.pt/vPT/Noticias_Eventos/Comunicados/Paginas/Comunicado_AdC_202013.aspx?lst=1&Cat=2020).

17 Decisions of the PCA of 26 June 2014, in the case Farminveste/Farminveste SA/ANF (PRC/2012/01) and of 27 December 2017, in the case Fundos Vallis (PRC/2012/05).

**Appendix 1**

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