BALANCING STATE AID IN M&A TRANSACTIONS - ROCA JUNYENT

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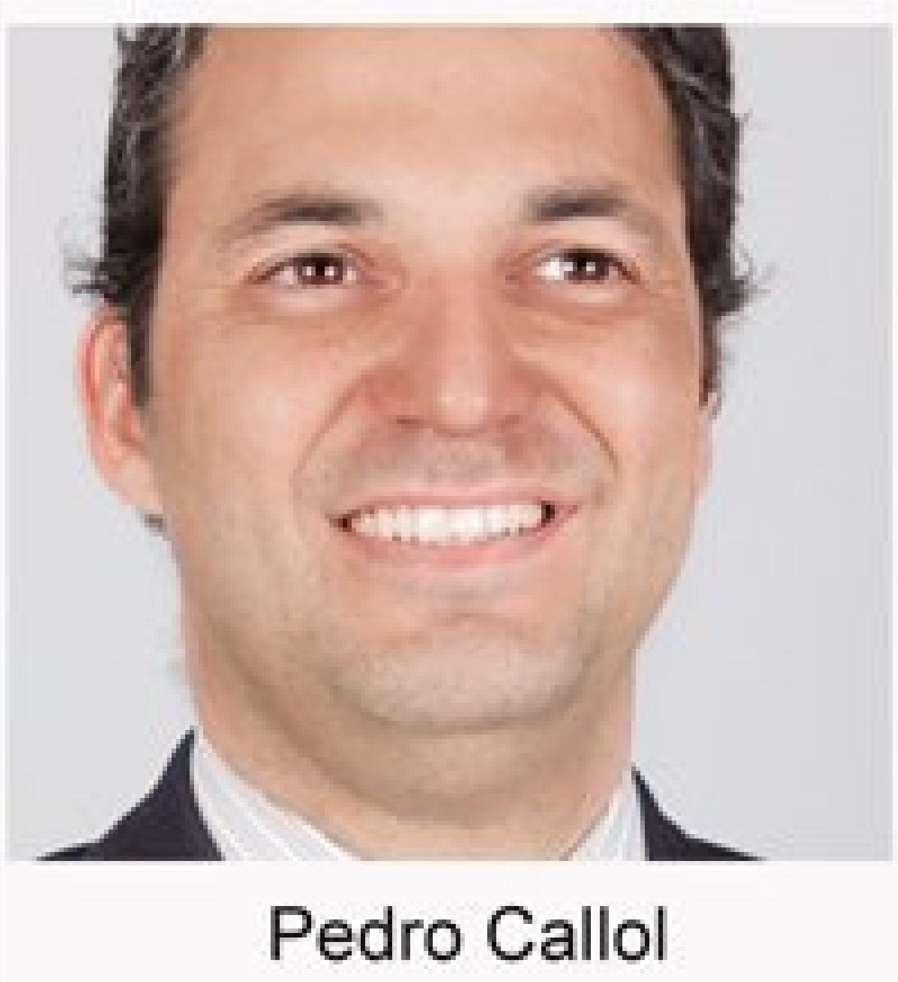

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Competition issues affecting mergers have been placed in the spotlight by the European Commission's (EC) decision to block Deutsche Börse's takeover of NYSE Euronext, with the ruling highlighting some of the sensitivities now involved in merger control, says Pedro Callol, Head of Competition at Roca Junyent in Madrid.

"Companies looking to invest in Europe must be aware of the competition concerns with a growing issue being the role of State Aid in transactions," he says.

Press reports have stated, for example, that Qatar Airways' decision to pull out of the bidding for Spanish airline Spanair was due to the amount of State Aid received by the company – the rejection ultimately helping to push Spanair into insolvency.

It can be hard to find a balance, says Callol, as European State Aid rules includes exceptions to the general principle of illegality where the company provides a service of general economic interest.

“In a sector such as banking, for example, there is a tension between the principle that banks should be accountable for their business decisions and left to fail if they make the wrong ones, with awareness that they are also vital for the healthy functioning of the economy. Allowing an institution to collapse may cause the entire financial system to fall.”

Spain’s own banking sector has undergone vast State-sanctioned restructuring, he explains. Much of this has been as facilitated by a multi-billion euro Government fund (FROB) to assist distressed banks.

“The EU and Competition angle has become crucial in M&A due diligence,” says Callol. “Acquirers need to ensure all the issues are covered. If not the danger is that the EC may step in.”