FIRMS' EU & COMPETITION PRACTICES GROWING AS REGULATORS STEP UP ACTIVITY

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An increase in M&A activity, coupled with more active regulators, means law firms in Spain and Portugal are expecting to increase their EU and competition-related revenue in 2015

Lawyers in Spain and Portugal are predicting a year of growth for their EU and competition practices as a reborn M&A market as well as a new EU competition commissioner promises to keep teams busy during 2015.

Deals involving Iberian-led companies have bounced back in the past year, lawyers say, with figures from Thomson Reuters showing that there were 1,054 Spanish M&A deals in 2014, valued at $101.5 billion. This is an 11 per cent increase in volume – and a 50 per cent increase in value – compared to 2015. Portugal too has enjoyed a strong year, with the €7.4 billion purchase of Portugal Telecom's local assets by Altice among the headline deals.

"There has been an uptake in M&A activity, which we expect to increase in 2015, meaning that

merger control matters have become a more regular source of work," explains Cani Fernández, partner and coordinator of competition and EU law at Cuatrecasas, Gonçalves Pereira. She adds that the rise in transactional work has been combined with an increased focus on a number of other competition matters, both at a national and European level: "Cartel work and State Aid issues are very high on the agenda at the moment."

Around 30 per cent of law firms in Spain expect their EU and competition practices to grow in 2015. The situation is similar in Portugal, according to Ricardo Oliveira, head of EU and competition law at PLMJ. "We expect a balanced blend of contentious and transactional work, although the former should be the main growth driver," he claims. "We are aiming for an increase [in revenue for the practice] in the region of three per cent."

Both lawyers say that contentious work is being driven by more active competition authorities, which is increasing the need for more detailed compliance monitoring. Recent high profile deals – such as Telefonica's bid for a controlling stake in TV company Canal Plus – have caught the attention of regulators while changes at the European level, specifically the appointment of Margrethe Vestager as EU competition commissioner, who succeeded Joaquín Almunia, has given enforcement new impetus. Indeed, recent research from Allen & Overy said global fines imposed by regulators for cartel violations total $5.3 billion in 2014.

It is expected that consolidation in the telecoms and pharmaceutical industries will result in a EU-level review, while there have also been EU enquiries relating to state aid issues concerning governmental agreements with organisations such as Amazon, Apple and Cyprus Airways.

Clients want preventative advice

Fernández says the current climate is having an effect on law firm practices in that clients want their legal advisers to provide more preventative advice on issues such as cartels and state aid rather than only turning to external lawyers when things go wrong. Clients also want to ensure they have suitable internal processes in place to avoid breaching competition laws.

Fernández adds that one particular issue clients are worried about is Article 102 of EU Competition Law, especially after the Intel ruling in 2014. In the judgment, the General Court found that exclusivity rebates provided by a dominant company are anti-competitive. Yet, it is far from clear as to how the ruling may be applied in future. "There is some confusion over what a dominant company – which may be any business with more than a 40 per cent share of the market – can do in terms of their pricing policy."