

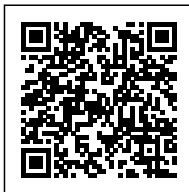
GAS NATURAL : TAKING A LIBERAL APPROACH

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Working in such a changing world, Manuel Garcia Cobaleda, General Counsel of Gas Natural requires in-house lawyers to be flexible in their approach.

En poco más de 15 años, Gas Natural ha superado la fusión de dos empresas gasistas nacionales para convertirse en la operadora de gas líder en España, una de las más importantes en Europa y el número uno en Latinoamérica. La empresa se ha extendido además más allá del mercado del gas, una tendencia que parece continuará en vista de su intención de comprar la tercera compañía eléctrica de España, Unión Fenosa.

Iberia's energy market, like elsewhere in Europe, is a market in transition. The combined pressures of security of supply, sustainability, liberalisation and convergence are taking their toll on operators and

prompting consolidation on an evergrander scale. The level of investment required to develop and commercialise new energy technologies, and the purchasing power required to negotiate with the dominant global suppliers – an issue recently highlighted when Russia's Gazprom shut off much of Europe's gas supply – means that it is no longer enough for energy companies to be merely national leaders.

In a little over 15 years, Gas Natural has grown out of the merger of two regional Spanish gas companies to become Spain's leading national gas operator, a European major and the leading gas operator in Latin America.

Despite the name, it has also extended significantly into the electricity business, including renewables, and is at the forefront of new technologies – combined cycle generating plants (CCG) – intended to increase the efficiency of energy production.

The company has also now embarked upon a significant capital investment programme, and last July in line with the increasing liberalisation of Spain's energy markets, launched a €16.75bn takeover bid for its third-largest electricity generator, Unión Fenosa.

Compact

The demands of business on such a scale, and the need to manage the changing regulatory demands of cross-sector and cross-border operations, means that the General Counsel of Gas Natural, Manuel Garcia Cobaleda, inevitably plays a major role in both the development of the company's strategic plan and its implementation. But despite such operational reach and responsibility the legal team is intentionally compact, he explains.

He leads a team of around 25 lawyers split between the company's headquarters in Madrid and Barcelona, with a further 15 outside of the country as it has significant operations, in Bogota, Mexico City, Buenos Aires and Sao Paulo. "Lawyers are organised in the same way as the businesses, so that only a very few lawyers – approximately 10% – are servicing the corporate function," he says.

Gas Natural's revenues in 2007-08 were around €10bn, with around half of its customer base in Latin America where it is the biggest distributor of natural gas.

Garcia Cobaleda reports to the CEO of Gas Natural, Rafael Villaseca, and also sits on the Steering Committee. He was appointed as General Counsel in 2005, having spent the previous six years as Legal Director of liberalised markets within Gas Natural. An Abogado del Estado, he joined Gas Natural from the Ministry of Environment.

The main areas of work managed internally by the legal department reflect primarily Gas Natural's core areas of business, he says. "The main focus is towards regulatory issues, those that surround the construction of combined cycle gas turbine plants, and the negotiation of gas supply contracts. All are areas in which confidentiality is a main concern," he says.

The work that tends therefore to be outsourced to external legal advisers includes smaller litigation, major international arbitrations, certain due diligence processes, and major transactional issues.

Expansion

Behind the success of Gas Natural was its capacity to capitalise on the early reorganisation and restructuring of the gas sector in Spain, says Garcia Cobaleda, but which has continued to develop as the energy sector has further liberalised.

The current company structure is a product of the 1991 merger of Catalana de Gas and Gas Madrid, to which was also added the gas distribution pipeline assets of Repsol Butano. Within Spain it now operates through 10 distribution companies across 13 autonomous communities, and two sales

companies.

Gas Natural is now one of the biggest LNG traders by volume and one of the biggest operators of CCG plants in the world, with a significant presence in Mexico – where it is also the second largest private electricity generating operator.

New markets, new challenges

As Gas Natural has expanded so inevitably has the work and profile of the legal department, says Garcia Cobaleda. The company's activities encompass the supply, distribution and sale of natural gas, but it is also now looking to expand its operations in the liquid natural gas (LNG) and electricity markets.

Despite its failed attempt to acquire Endesa in 2006, it is already the fourth biggest operator in the Spanish electricity sector.

July 2007 saw it agree to purchase Spanish construction company ACS's 45.3% holding in Unión Fenosa, Spain's third largest electricity operator, which in line with Spanish takeover rules obliged Gas Natural to launch a €16.75bn bid for control of the entire company. A deal that is currently in the process of overcoming competition concerns highlighted by the Spanish regulator – Comisión Nacional de la Competencia.

The result for the legal department is a much greater involvement in the strategic direction of the Group, and inevitably a much expanded workload, says Garcia Cobaleda.

"The Unión Fenosa takeover will increase enormously the legal work not only for the acquisition, but also for the eventual required divestments and the need of both legal teams to act in a coordinated way once the takeover is finalised."

Conflicts

Despite the increasing sophistication of the legal team's workload and international footprint, Gas Natural does not use a formal panel of law firm advisers, explains Garcia Cobaleda, but instead prefers to choose the firm that the legal department considers to be the best for each project on an ad hoc basis.

"The choice of law firm will depend on a number of factors including our previous experience of it, the financial proposal on offer, and the relevant expertise required in the area of operation."

But besides such tangible factors there is also the question of what "added value" the firm can bring to a matter, he says. "In big arbitrations, for example, we look to the ability of firms to provide logistics and organisation in dealing with enormous amounts of documents."

Recent years have seen Gas Natural engaged in a number of high profile disputes, including that surrounding the €5bn construction of a gas liquification plant and ultimate ejection from the Gassi Touil oilfields in eastern Algeria by Sonatrach, for which it turned to Uría Menéndez for advice.

Another significant factor is assessing the potential for conflict of interest situations, particularly in a consolidating energy market. The dramatic upturn in mergers and acquisition activity across Iberia in recent years, and the spider's web of ownership stakes in Spanish companies, has put growing pressure on heads of legal to have external advisers prepared and onside in the event that a major transaction emerges, he believes.

"We regularly use almost all of the major law firms, except those that aren't allowed to work with us because another utility has conflicted them. We don't use this kind of practice ourselves but we certainly suffer it from time to time."

He sees growing pressure on law firms to make clear their commitment to clients in key business sectors. Companies have in the recent past readily used conflict of interest issues as a tactical legal weapon, he says.

"Conflicts are clearly much more relevant than they were, and part of the objective of our legal department is to ensure that we have advisers secured and lined up to achieve our strategic goals."

Such a desire clearly brings a need to incentivise law firms to enter into longterm agreements. "If there is a major tactical transaction, or major arbitration, cost is much less of an issue than having the right people on board," he says.

In its ongoing takeover bid for Unión Fenosa, Gas Natural has retained Freshfields for corporate advice, and Cleary Gottlieb Steen & Hamilton in Brussels for competition issues, the same firms it used in its ultimately unsuccessful 2006 bid for Endesa.

But an understanding of conflict concerns are only one demonstration of a law firm's need to understand the strategic objectives of their clients and to demonstrate a willingness to stay with them for the long-term, he suggests.

"Among the issues that may prompt us to question the continued use of a law firm would be any compromise with the goals of Gas Natural, not really understanding the business and therefore not knowing precisely what interests to protect."

Future growth

Alongside managing external issues better the legal department has also been looking to develop its capabilities internally, explains Garcia Cobaleda. The legal department is staffed by committed and capable lawyers, but work can always be done on developing skills and fostering a better understanding of the value they may bring to a matter.

"A good in-house lawyer must understand the business in which we operate, to know where the money is and therefore what is the interest to be protected – an important area of our emphasis is therefore towards understanding the economic performance of our internal clients," he says.

The legal department's pool of lawyers is encouraged to take a wider view of the business, and to be able to operate across a number of business areas, and in order to better develop the institutional know how, work on a document management system for use across the Group has begun.

Garcia Cobaleda sees the role of the legal department as becoming more strategic and more complicated, as the company continues to expand geographically and along product and service lines.

"The past two years have seen us attempt the takeover of Endesa, as well as a number of other major M&A activities, including the \$1.5bn purchase of CCGTs in Mexico, a number of major arbitration processes, and manage the implications of the final deregulation of the Spanish gas markets in July 2008," he says.

"A world with sharply changing oil prices will likely cause an increase in litigation in the big gas supply contracts, while the increased presence of our main gas suppliers in the downstream business in Spain will also increase the legal work."

Company President Salvador Gabarró Serra, has nonetheless stated an intention to take advantage of the continuing liberalisation of international energy markets and to expand Gas Natural into a multiutility company, with new business lines and a stronger customer-focus. A successful merger with Unión Fenosa, will go some way towards his goal of establishing Gas Natural as one of Spain's and Europe's leading utility companies.

In the interim, Garcia Cobaleda is content to ensure that his team keeps on top of the Group's changing legal needs, remains focused on the strategic emphasis and understands the basic assets and interests that continue to power Gas Natural's success, wherever that may take them.

Curriculum Vitae	
Name	Antonio García Martínez
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