

"STILL IN BUSINESS" THE IMPACT OF THE OPAS ON INVESTOR CONFIDENCE

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Iberian Lawyer's (overlib linktext="Group of Experts " text="Iberian Lawyer's Group of Experts are 100 of the leading partners in law firms in Spain and Portugal. For every issue of Iberian Lawyer, we ask them a question relating to the practice of law or the management and development of their practice areas." title="Who are the Group of Experts?") have strong views on the impact that E.ON/Endesa and Sonaecom/Portugal Telecom (PT) may have on the continued attractiveness of Iberia to international investors.

While there is acknowledgement of the success of the differing approaches taken to the mergers by the authorities in Spain and Portugal, there is nonetheless a consensus that both merger bids have done little more than highlight the barely concealed protectionism of many EU governments – which is now just one more issue companies must consider in their merger strategies.

“Every investor acknowledges that the energy sector is key to any economy, and will become more

so in the future, and that national governments including the Spanish wish to have a say in fixing the rules of the game," says José María Balañá, partner at Lovells in Madrid.

What is important believes Manuel Rodríguez De Bethencourt of Davies Arnold Cooper, is that throughout the E.ON/Endesa merger, national and foreign groups have continued to invest in Spain and while there has been a degree of national restlessness, market rules have prevailed and the matter has been settled.

What impact do you think the events surrounding E.ON's bid for Endesa are having on both domestic and international confidence to make new investments in Iberia?

"The events shall not have a relevant impact in the international confidence to invest in Spain. Our country has consistently demonstrated itself as a market as reliable as any other major EU country, if not more." Raimundo Segura, Cuatrecasas

"The events call the attention of investors in general to a certain degree of protection still maintained in the Iberian electricity markets, which has not yet been totally phased out notably the restricted number of operators regime." Carlos de Sousa e Brito, Carlos de Sousa e Brito & Associados

"This has been positive for law firms in Spain as cases like this underline the relevance and need for good legal counsel." Hugo Écija, Écija

"National interests surrounding the energy industry are not strange nor unique to Spain." Juan Jiménez-Laiglesia, DLA Piper

"The new regulation of public offers, which will be enacted shortly, may again change the rules of the game." Lupicinio Rodríguez, Lupicinio Eversheds

In Portugal, is Sonaecom's failed bid for Portugal Telecom (PT) likely to encourage or deter future deals that by their nature are going to attract competition, sector and stock market regulator interest?

✖ "The fact that Sonaecom made a hostile bid on PT (in the same manner as BCP on BPI) will encourage future similar deals in Portugal, which to date were unheard of. In principle, we do not believe that a failed bid should have such an overreaching impact on future stock market dealings." Gonçalo da Cunha, F. Castelo Branco & Associados

"Not only did the Portuguese government not try to interfere in the regulatory process, but also, as a shareholder, it abstained from voting, in order to allow the market to function independently, including the state owned company, Caixa Geral de Depósitos, which decided to oppose the takeover." Bernardo Diniz de Ayala, Sérvulo Correia & Associados

"In my view the lessons learned from such deals are more likely to encourage than to deter future deals that by their nature are going to attract competition, sector and stock market regulator involvement." Charles Coward, Uriá Menéndez

"The failure of this bid is an example of the mechanisms that are still in place among EU members to defend the principle of control of some strategic business against the principles of a free market. The voting rights limitation in PT shows a sort of restriction which should disappear within the EU." Francisco Guijarro, Hammonds

Others agree that the events will have little impact. "I think that investors in countries where there are opportunities for profitable business have a very short memory," agrees Francisco G. Prol, Prol & Associados, "and they will forget about the difficulties of the E.ON/Endesa affair as soon as they have other deal opportunities."

If there is a lack of confidence, some suggest that it will extend only to those businesses perceived

to be 'strategic', which will continue to be guarded closely by the government or regulators.

"It is proof that the single market extends only to small countries or unimportant sectors. The behaviour of the Spanish authorities has been appalling, but probably no different from what the French have done in the Suez/Enel deal," says one managing partner.

But some do believe that investor confidence has been more widely affected. "We think that large corporates will definitely think twice before planning M&A activity in Spain," says Hugo Ecija, of Ecija. "The fact that political decisions have such a decisive influence on the outcome of a transaction such as this, has become a large obstacle."

When considering the specific impact of the Sonaecom/PT merger bid, there is a consensus that the transaction has increased confidence – prompted by the relative transparency of the competition regulator and the government's decision not to get involved, despite its "golden shares" in PT. The deal only failed, many emphasise, because of a lack of confidence among PT's shareholders in Sonaecom's proposals.

"The main lesson is that price will be a key element in investors' decisions. The market now has a perfect understanding of how regulators and the government will approach another attempt to takeover PT," says António de Macedo Vitorino, of Macedo Vitorino & Associados.

As the first significant hostile bid to undergo public scrutiny it has paved the way for future deals, believes Carlos de Sousa e Brito, of Carlos de Sousa e Brito & Associados. "It was a landmark example of the complex procedures of large public bids and in this light clarified the pros and cons that the investor should consider when targeting a similar deal."

Sonaecom's failure will discourage takeovers only among conservative companies, or where the board of directors will likely discourage shareholders from selling, as with PT, says Gonçalo da Cunha, of F. Castelo Branco & Associados.

António de Macedo Vitorino queries however the stance the Portuguese government might take in a situation similar to Endesa. "EDP and Galp are the obvious targets for foreign, especially Spanish players, and will have to take defensive measures if they wish to remain independent."