

TAKING STOCK OF CAPITAL MARKETS DEVELOPMENTS - NYSE EURONEXT

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“ Unfortunately, increasingly busy arbitrators have led to greater delays in issuing awards. It is incumbent on arbitrators to do their work quickly and intensely once the parties have finished theirs. ”



A drive to develop a new role for Euronext coupled with the fall-out from one of the past year's largest takeover bids, mean that legal issues continue to emerge

Las ganas por intentar desarrollar el mercado de las infraestructuras, junto con una de las mayores fusiones frustradas del año, ha hecho que los retos jurídicos en los mercados de capitales sigan sucediéndose sin cesar, afirma Isabel Vidal, Directora Jurídica de regulación y cumplimiento normativo del NYSE Euronext en Portugal.

It has been a very busy few months for the in-house legal department at NYSE Euronext. The company, which owns and operates the New York Stock Exchange, Euronext and NYSE Arca, hit the headlines recently after its high-profile attempt to take over the German stock exchange Deutsche Boerse.

"All of the legal team was involved in the process," explains Isabel Vidal, Head of Legal, Regulation and Compliance Affairs at NYSE Euronext in Portugal. "Not only did the company have to work with the European Commission but also all the various local regulators. It was a big task; in fact the biggest job I think the legal team has undertaken."

The merger was cleared by the US regulatory authorities but blocked by the European Commission at the start of this year.

Vidal is in a good position to provide an overview on such matters. She has been with NYSE Euronext for five years, having previously worked at the Portuguese securities regulator (Comissão do Mercado de Valores Mobiliários-CMVM) and in private practice with leading Lisbon firm PLMJ. As such, she has seen all sides of the market from the point of view of a company, a law firm and a public body. Having a 360-degree view helps her to therefore understand both the commercial and regulatory issues affecting both the Exchange and its stakeholders.

External counsel

As regards the pressures currently being faced, Vidal is clear that the biggest issue facing the legal departments of many major companies and hence their law firms is costs.

"Most legal departments are attempting to cut costs by keeping more legal matters in-house, which means there is less work for external law firms," she observes. "This has also resulted in companies looking to hire general corporate lawyers with the scope and knowledge to work on a host of issues, from tax to employment to capital markets."

NYSE Euronext tries to manage as much legal work internally as is practically possible, but relies on external law firms for important matters that need to, according to Vidal, provide "a stamp" to ensure the matter is right and proper. NYSE Euronext does not, however, have a formal panel or preferred firms in Portugal. The in-house team is also relatively small – with only two full-time lawyers – so she has the freedom to choose her own external counsel, she says.

"I do not select a law firm based on its name or brand, I base it on the person I will be dealing with," she explains. "I also only request opinions that I need and when I want external counsel to bring a business perspective to things."

The battle that legal departments face with costs has inevitably impacted on in-house lawyers' choice of law firms too. Vidal says that external lawyers have become more aware of the cause of such pressures on companies and their lawyers, and as a result have become much more flexible on billing rates in recent years.

"It's helpful that I have experience both in a law firm and company legal department. I am able to leverage off my experience and I know how much it should cost to undertake certain legal jobs," she adds. "I always ask for a cap on a legal bill because it is very important to budget, which is something law firms have not always historically done, or done well."

Going forward

Following the Deutsche Boerse matter, over the coming months the NYSE Euronext legal team will deal with issues surrounding the post trading regime, namely on central securities depositories, clearing and settlement, systems, says Vidal. "Capital markets are changing every day and now the [Deutsche Boerse] merger is not going ahead we need to look for new opportunities."

Judging from NYSE Euronext's ambitions, including its decision to challenge the European Commission's block of the Deutsche Boerse, the legal team looks likely to be busy for the next year at least. Despite external market pressures, and the relative lack of activity on Europe's equity capital markets, the changes that are happening within the market continue to have a legal impact.

Isabel Vidal is Head of Legal, Regulation and Compliance Affairs at Portugal's NYSE Euronext.