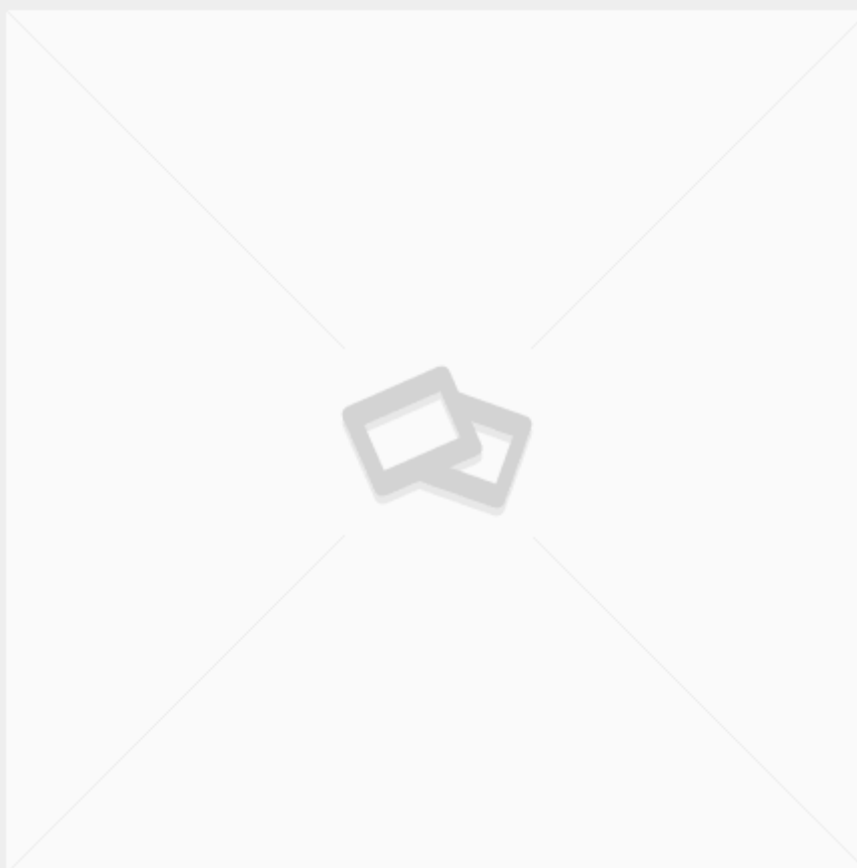


THE NEW RULES AFFECTING PUBLIC OFFERS IN PORTUGAL

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The new concurrent public offers regime was enacted at the end of 2006 by Decree-law no. 219/2006 of 2nd November and came into force in 2007.

El nuevo régimen de ofertas públicas concurrentes en Portugal entró en vigor en 2007, con el objetivo de crear un mercado más dinámico y competitivo. Favorece la existencia de pujas competitivas, permitiendo por ejemplo que el ofertante pueda cambiar las condiciones de su oferta respaldado por el principio de igualdad de tratamiento tanto para el primer ofertante como para los siguientes postores.

Nelson Raposo Bernado, socio fundador del bufete luso Raposo Bernardo Associados, estudia los mecanismos de la nueva legislación, puntualizando la dificultad de extraer conclusiones sobre la eficacia del régimen hasta que este haya sido probado en situaciones reales.

It has therefore not been in operation long enough to have been sufficiently tested. However, one can predict that it will turn out to be of limited application.

The regime has introduced mechanisms which facilitate the existence of competing bids by, for

example, allowing the offeror to revise the conditions of his offer. There has also been a reduction in the limit on variation of the offer, which has changed from 5% to 2% of the previous offer. However, these changes did not prevent the legislator from laying down one important limitation: the competing bids cannot contain conditions that make them less favourable than the previous bid.

The clear objective of the legislation is to create a more dynamic and competitive regulated market and the new rules reflect a principle of equal treatment of the initial offer and the subsequent competing bids.

In general, the competing bids are submitted to the normal rules applying to a public takeover offer. They cannot be presented against a quantity of securities lower than that of the initial offer.

Still, in general terms, as a consequence of the principle of equal treatment, the approach to competing bids cannot be dependent on a superior percentage of shareholder acceptances. The target company is subject to duties as regards its relations with the offerors and should ensure that information is provided to all competitors on an equal basis.

This does not just apply to new information. It also requires the target company to provide to the new offerors information previously provided to the initial offeror.

These principles of equal treatment aim to protect the position of the competing bidders. However, by themselves, they would not be enough to create the necessary competition for these types of regulated acquisitions.

Thus, we consider that the "liberty rule", allowing any offeror to revise its offer, is the main element of the new regime.

The legislator did not hesitate to take a broad approach: in general terms, it is possible to revise the nature and amount of an offer, independently of any counteroffers.

It is precisely as a consequence of this approach to the competition between initial and subsequent offers that the law allows a voluntary offer made prior to competing bids to be revised. With this regime, the lawmaker has highlighted the parties' freedom of choice in the context of public takeover offers. Obviously, obligatory public offers fall outside this regime, which confirms the significance of this conclusion.

The decision to revoke prior voluntary offers should be made within four days of the launch of the competing bids. This is an acceptable period of time, as it is long enough to enable a decision to be made, but not so long as to damage the position of the competing bidder or other parties potentially interested in making offers.

It is clear that one will not be able to make any significant conclusions about the efficiency of the regime until it has been applied to real cases.

Nevertheless, the way in which similar systems have worked, as well as the difficulties of the previous regime, allow us to conclude that the application of the new regime to competing bids seems to combine the need for increased competition with the required amount of regulation.

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