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Portugal's competition bar

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Tom Webb

An uptick in domestic M&A activity and a competition authority keen to increase its behavioural enforcement has given plenty of work to Portuguese lawyers in recent years. **Tom Webb** profiles the lawyers and firms that lead the market.

Last time GCR surveyed Portugal's competition bar, in 2012, the country's economy was going through one of its worst phases. Competition law mandates became fewer and further between, as mergers and acquisitions dropped and behavioural enforcement activity at the Portuguese Competition Authority (PCA) dropped off almost entirely.

Times are better now. The PCA has upped its enforcement efforts – whether this will lead to much in the way of infringement decisions and settlements remains to be seen – and Portuguese companies have started buying and selling once again.

Most of the Portuguese competition bar handles PCA-focused work, as the country's economy builds itself back up from the dark years of the financial crisis. All the firms in this survey have experienced an increase in demand across all areas – though private enforcement has yet to truly take off.

And while all agree that behavioural work is on the rise, many cases remain confidential, as the PCA works its way through its pipeline of investigations.

The bar remains small and tight-knit, and almost entirely made up of Portuguese and Spanish firms. Linklaters, the only global shop in town, is the exception. Regardless, the bar appears to be busy and getting busier.

Elite

The Portuguese competition bar saw one of its biggest shake-ups in some time in 2015, as Spanish firm *Gómez-Acebo & Pombo* poached the competition team of leading boutique *Marques Mendes & Associados*. The *Gómez-Acebo & Pombo* Portuguese competition practice is headed by charismatic figure Mário Marques Mendes, a *Who's Who Legal: Competition* nominee and GCR editorial board member who has over 30 years' experience in competition law; the Spanish firm has taken on a team with considerable pedigree. Mendes says he made the move after he became convinced that he needed to find a firm that could make his practice more international than it already was, to keep up with the demands of clients.

Before moving off to *Gómez-Acebo & Pombo*, the team was already handling a flow of complex international work, including a sizeable amount of litigation work for both private parties and DG Comp. It advised DG Comp as it fought three General Court appeals against the enforcer's decision in the Pre-Stressing Steel cases, and also acted for the agency as it faced a Portugal Telecom challenge to one of its decisions. It also advised a US multinational on restrictive practices, which included representing the company before the PCA. The team provided merger control advice to Portuguese group ETE during a public bid for the provision

of services in the port of Lisbon, which included helping the company as a rival bidder filed claims in Portugal's courts.

Many of the Gómez-Acebo & Pombo competition mandates are currently confidential. Marques Mendes took his work for DG Comp to Gómez-Acebo & Pombo. He also represents the enforcer as it defends itself from appeals against the animal feed phosphates decision by a pair of Portuguese companies. On the state aid side, the firm advises Rádio e Televisão de Portugal, the country's public broadcaster, on issues linked to restructuring, and Canada aviation training multinational CAE Global Academy. Mendes, assisted by senior associate Alexandra Dias Henriques, also represented Algeco, the leniency applicant in the PCA's recent pre-fabricated classroom bid-rigging cartel.

The competition practice at *Morais Leitão Galvão Teles Soares da Silva & Associados (MLGTS)* has gone from strength to strength over the years, with a noticeable increase in behavioural work complementing its traditional strengths in merger control and state aid. Carlos Botelho Moniz leads the practice, alongside partner Joaquim Vieira Peres; both are Who's Who Legal: Competition nominees. Five senior lawyers, one associate and a pair of junior associates complete the practice, and German lawyer Philipp Melcher, a consultant on MLGTS' German desk, also assists the firm's EU and competition law department. The firm's deep expertise has bagged it an enviable roster of clients, including the Energias de Portugal Group (EDP), Galp Energia Group, Apple Distribution International, pharmaceutical company Abbott, Millennium BCP and Caixa Geral de Depósitos.

As has been the case for many competition practices in Portugal, banking sector state aid work has been a priority for MLGTS over the past few years, with both Caixa Geral de Depósitos and Banco Comercial Português turning to the firm for assistance on the implementation of a restructuring plan approved by DG Comp in 2013. Outside of the banking arena, the firm helped the EDP Group during a complex DG Comp state aid investigation linked to the extension of the company's right to use public water resources to generate electricity.

The firm also represented Abbott in a challenge against a PCA price-fixing fine. MLGTS acted for Vasp Premium, a newspaper and magazine distributor, as it submitted an abuse of dominance complaint against postal operator CTT, which triggered a PCA abuse of dominance investigation. Telecommunications group NOS Comunicações also turned to the firm as it acted as an interested third party during the Altice/PT Portugal DG Comp merger; partner Peres and senior lawyer Gonçalo Machado Borges replied to several detailed questionnaires on the foreseeable effects of the transaction, which was ultimately conditionally cleared in 2015. Moniz and senior lawyer Pedro de Gouveia e Melo assisted Galp Energia, Portugal's main oil and gas company, and REN Armazenagem, as a Galp subsidiary transferred underground natural gas storage facilities to REN. After a mandatory PCA merger control filing, the enforcer cleared the transaction in early 2015.

Rivals say *Pereira Sáragga Leal Oliveira Martins Júdice & Associados (PLMJ)* took a hit when it lost competition head José da Cruz Vilaça to the bench of the EU General Court in 2012. But the skills of competition head Ricardo Oliveira, who is nominated to the Who's Who Legal: Competition, are widely respected by his peers and competitors, and the loss of da Cruz Vilaça hasn't stopped Oliveira's team from carrying out impressive work.

Oliveira, supported by senior associates Luís Pinto Monteiro and Miguel Marques de Carvalho, assisted Ford Portugal as the PCA investigated the general conditions of the company's warranties; the PCA closed its case by offering commitments. Oliveira and Monteiro also represent Fomento de Construcciones y Contratas as a third-party submitter of

observations to the PCA as it reviews the SUMA consortium's proposed acquisition of Empresa Geral de Foment, which would give SUMA the rights to manage the waste of 60 per cent of Portugal's population. PLMJ has also assisted clients including Eurest, Farminveste, Lactogal and Formato in Portugal's competition court.

On the merger control side, PLMJ assisted Fidelidade – Companhia de Seguros in PCA merger control proceedings as it acquired Espírito Santo Saúde, a company that operated a series of hospitals and clinics throughout Portugal (the target is now known as Luz Saúde). The firm also advised clients involved in Portugal's recent major privatisation projects – including in the energy, banking, airports, postal services and railway services sectors. The team has also retained a series of household names, including Nestlé, Unilever, Barclays, Ford and Tabaqueira – a subsidiary of Philip Morris International. Major Portuguese clients include the Espírito Santo Financial Group, Fidelidade, Refrige – Coca Cola's Portuguese bottler – and the ANF, Portugal's national pharmacies association.

It's been a busy time for the team at Vieira de Almeida (VdA), which is lead by Nuno Ruiz and boosted by partner Miguel Mendes Pereira. Both are ranked in Who's Who Legal: Competition. The team is active across a wide range of sectors – including banking and financial services, energy, food and drink, health care, media, pharmaceuticals and retail.

State aid has been a focus over the past few years, especially in the banking field. Such is the practice's pedigree that it has become one of the first ports of call for Portugal's government as it navigates complex issues: Pereira, alongside VdA banking and finance colleagues, represented Portugal's state as it recapitalised four banks and as it sought to apply a resolution measure to Banco Espírito Santo. Both cases ended positively for Portugal's state, as Pereira guided it through interactions with DG Comp's state aid department. Ruiz and Pereira also advised three banks during a PCA investigation of an allegedly anti-competitive information exchange across Portugal's banking market – an exceptionally complex investigation.

Portugal Telecom is a frequent client – VdA has represented the company in all transactions requiring merger control, and competition litigation, for the past 15 years. Ruiz helped the company as it agreed to deploy fibre-optic networks to 900,000 Portuguese homes with Vodafone Portugal, and in a General Court challenge linked to an alleged non-competition agreement across the Iberian market. Ruiz also assisted GENERG through PCA merger control proceedings as the company acquired ENEOPS assets in the wind electricity generation sector.

Highly recommended

Two partners, one counsel and two associates make up the Portuguese competition team of Spanish firm Cuatrecasas Gonçalves Pereira. Over the past few years, the competition practice has restructured: where it was previously closely linked to Cuatrecasas' M&A team, it has become a stand-alone competition practice in its own right. While their corporate colleagues remain a source of work, the Cuatrecasas competition lawyers regularly win independent mandates, frequently working on European matters.

Counsel Ricardo Bordalo Junqueiro has represented infrastructure investment fund AXA Infrastructure Fund III during DG Comp proceedings as it acquired a majority stake in Ascendi, one of Portugal's largest motorway operators. He also represented regular clients Cabovisão – Televisão and Oni – Infocomunicações as interested third parties during the European merger of Altice and PT Portugal, which was conditionally cleared by DG Comp in 2015. Other major clients include Portuguese arm of car maker BMW, Electrolux's Portugal subsidiary, Italian

chocolate multinational Ferrero and Spanish oil group CEPSA's Portuguese operations. Senior associate Rita Leandro Vasconcelos, who frequently works autonomously, advises Banco Privado Português during its appeal against a General Court ruling that upheld a DG Comp decision declaring a €450 million Portuguese state guarantee to the bank illegal state aid.

Garrigues' Portuguese practice, which is closely integrated with its counterpart practice in Madrid, has traditionally focused on merger control work, says Who's Who Legal: Competition nominated competition leader João Paulo Teixeira de Matos. But in the past few years, faced with an increasingly aggressive PCA, behavioural work is on the up, and the firm's clients have upped their demand for compliance work to cope with the re-energised enforcer.

One such client is the Nabeiro Group, owner of the trademarks "Delta" and "Delta Q", respectively popular coffee and coffee machine brands in Portugal. Teixeira de Matos advises the company on dominance issues and distribution agreements, as well as general compliance matters. The team also represented LimaCorporate during merger control proceedings at the PCA, as the company acquired the knee and elbow implant businesses of Zimmer Holdings; the deal closed in 2015. Garrigues acts for Banco Bilbao Vizcaya Argentina in the PCA's banking cartel investigation.

Linklaters is the only global firm to have an office in Portugal, and its international network has bagged the team a raft of international clients with tricky work to be done. Led by Who's Who Legal: Competition nominee Carlos Pinto Correia, the firm's competition talent was boosted by the hire of managing associate João Pateira Ferreira in 2014, who previously led antitrust investigations at the PCA. Both Correia and Ferreira are well-respected by rivals.

The team acted for the Portuguese Professional Football League in its moves to dismantle media company Controlinveste's monopoly on TV broadcasting rights for sporting events. The league, assisted by Linklaters, opposed a proposed merger between Controlinveste and a pair of TV and telecoms operators – the PCA ultimately blocked the deal after 17 months. Linklaters, on behalf of the league, also filed an abuse of dominance complaint against Controlinveste, leading to the PCA imposing commitments on the monopoly. Linklaters also has strong expertise in pharmaceuticals; Pfizer turned to the firm to review its medicine distribution agreements across the Portuguese market. Payment systems is another focus: the firm represents Visa Europe; credit card payments company Unicre; and SIBS, Portugal's leading payments processor, on various competition issues.

SRS Advogados has rapidly grown in size and experience, says competition leader and sole competition partner Gonçalo Anástacio, a nominee to Who's Who Legal: Competition. The competition practice has long been a key part of the broader SRS practice, and the stand-alone team has won it a raft of interesting work – especially on the contentious side.

Regular client ENI turned to the firm as it requested a European Commission exemption from the EU's 2004 procurement directive, which forces companies to undertake oil exploration activities to comply with a slew of regulations. As part of that drive, SRS has approached the PCA, seeking an opinion on competition concerns attached to such an exemption. SRS assisted Pfizer on PCA merger control as part of the global deal that saw the company acquire several vaccines from Baxter. The firm is representing Banco Popular in the PCA bank cartel probe.

Counsel Joaquim Caimoto Duarte heads the Portuguese competition practice at *Uria Menéndez – Proença de Carvalho*. Supported by a managing associate, the firm has a number of large clients, for whom it regularly takes on tough and large-value work. These clients include Otis,

Altice, CaixaBank, Camargo Corrêa, credit institution Cofidis and UNIARME, Portugal's largest central grocery purchasing entity.

The team assisted Companhia Previdente and subsidiary Socitrel in their General Court appeal against DG Comp's pre-stressing steel cartel decision – a rare European case concerning a Portuguese company to be taken to the EU courts. Uría Menéndez also handled CaixaBank's acquisition of Banco BPI, one of Portugal's largest banks, which involved a merger filing to DG Comp. Perhaps most significantly of all, Altice tapped the firm during its merger with Portugal Telecom. The €7.4 billion deal closed in 2015.

FIRM	HEAD(S) OF COMPETITION	SIZE	WHO'S WHO LEGAL: COMPETITION NOMINEES	CLIENT
ELITE				
Gómez-Acebo & Pombo	Mário Marques Mendes	1 partner, 1 of counsel, 1 senior associate	Mário Marques Mendes	Europea Commis: Legal Se Procter & ENDES/ Barraque Rádio e de Portu
Morais Leitão Galvão Teles Soares da Silva & Associados	Carlos Botelho Moniz	2 partners, 5 senior lawyers, 1 consultant, 1 associate	Carlos Botelho Moniz	Energias Portugal (EDP), C Energia Apple Di Internati Abbott, M BCP, Ca de Depó
Pereira Sáragga Leal Oliveira Martins Júdice & Associados	<u>Ricardo Oliveira</u>	1 partner, 5 senior associates, 1 associate	<u>Ricardo Oliveira</u>	Barclays Philip Mc Internati Unilever, Cola, Alli Healthca Baxter, F
Vieira de Almeida	Nuno Ruiz	2 partners, 4 associates	Miguel Mendes Pereira, Nuno Ruiz	Portugal GENER(Bombarc Pathena Mello Sa Intermar Group, L the state Portugal
HIGHLY RECOMMENDED				
Cuatrecasas Gonçalves Pereira	António Vitorino	2 partners, 1 counsel, 2 associates	N/A	AXA, Ca Televisã Infocomt BMW, El Ferrero, Banco P Portugal
Linklaters	Carlos Pinto Correia		Carlos Pinto Correia	

FIRM	HEAD(S) OF COMPETITION	SIZE	WHO'S WHO LEGAL: COMPETITION NOMINEES	CLIENT
		1 partner, 1 managing associate, 1 junior associate		Banco B BANIF, E Portugal Morgan, Auchan, Banco, J Johnson Co, AXA Masterc Europe
SRS Advogados	Gonçalo Anastácio	2 partners, 2 of counsel, 1 managing associate, 1 senior associate	Gonçalo Anastácio	Air Liqui Centrom Galp En Grupo S Health, ti of Portug Store, Ci ENI
Uria Menéndez - Proença de Carvalho	Joaquim Caimoto Duarte	1 counsel, 1 managing associate	Joaquim Caimoto Duarte	CaixaBa Johnson UNIARM Cofidis, / Socitrel, Multiopti Compan Previder