

## Telecommunications Q&A - Portugal

**Telecom is a highly regulated economic sector and both national and international legislation applies. Portuguese rules are in line with the European Union (“EU”) framework which, in turn, is consistent with rules of international organizations such as ITU (International Telecommunications Union). To find out more about the Telecoms sector in Portugal Lawyer monthly talks to Octávio Castelo Paulo from SRS Advogados.**

**Q How has legislation kept up with the telecoms sector in 2010, given its fast paced nature?**

The fast paced nature of the telecoms sector requires special attention from the legislator and an effort to adopt rules in line with innovation, with an emphasis on technology and service neutrality. The national implementation of the EU Telecoms Reform approved in 2009 is currently in course.

In addition, the adoption by the European Commission of the Recommendation on regulated access to Next Generation Access Networks (NGA) illustrates that the European legislator is very active in promoting rules that allow operators to develop their businesses in a clear legal framework.

Even before the adoption of the above referred to Recommendation, the Portuguese legislator had already made a serious effort to implement adequate rules concerning some key areas, namely regarding access to ducts, masts and other infra-structures and deployment and roll out of NGA networks.

**Q Telefónica is fast becoming a world telecoms leader, how do you feel its potential monopolisation has affected and will continue to affect other local telecommunications businesses?**

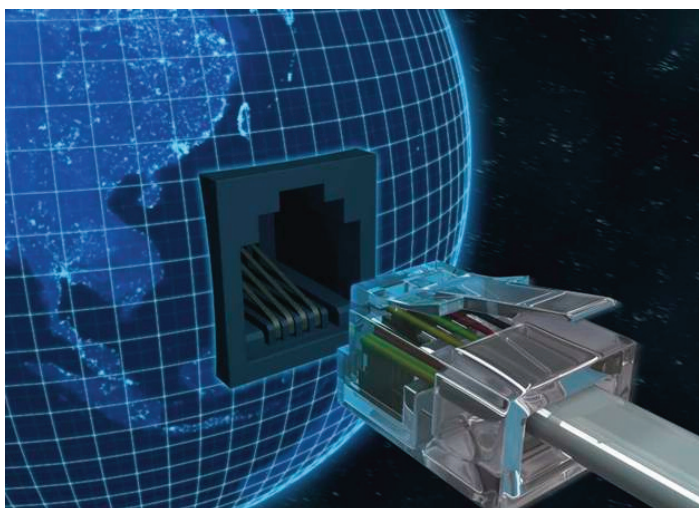
Although Telefonica is one of the largest telecoms operators in the world, in Portugal we do not feel

that its influence is affecting the local telecommunication business.

For a number of years, Telefonica had a 10% stake in Portugal Telecom and both groups had joint investments in Brazil (Vivo).

Even after Telefonica acquired Portugal Telecom's stake in the Brazilian telecom operator Vivo, we consider that it has not affected, at least directly, the competition in the national telecoms sector.

**Q How has the recession impacted investments and acquisitions in the telecoms industry?**



We consider that the current economic climate has not strongly affected investment in the telecoms sector.

Further to the adoption in 2008 of European Commission's anti recession measures, the government approved specific rules to promote investments on NGA networks, namely in rural areas,

unattractive for most operators.

More recently, the European Commission's Digital Agenda elected investment in broadband, as a key factor towards promoting the EU economy.

It is also important to remind that the telecom sector is a capital intensive sector and even in times of crisis, private operators are willing to invest as long as adequate regulation is put in place and the opportunities exist.

Currently, there are some key investments in the deployment and roll out of broadband (fiber-optic), the roll-out of Wimax networks and further will be expected on LTE (Long Term Evolution) in the

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coming years, crucial for the development of wireless broadband.

Therefore, although there is some uncertainty towards the future of the national economy, we believe that in spite of the difficult economic climate, there has not been a decrease in investment in the telecoms sector in Portugal.

### **Q** How did Portugal's loss of Golden shares impact the domestic economy?

The recent ECJ rulings against Portugal regarding golden share cases (EDP/PT) were not yet implemented by the Portuguese Government and therefore the golden shares are still in force.

Although the recent use of the golden share by the Portuguese Government in Portugal Telecom was not expected (as it had never been used before), we consider that it had no significant impact on our economy considering it related to the sale of a stake in a telecoms company in Brazil.

### **Q** What do you feel were the top telecommunications stories for 2010?

The Government adopted a legal framework favourable to promoting investment in NGNs and the national regulatory authority (ICP-ANACOM) reviewed its policy on ducts and masts in order to facilitate such investment.

As regards national telecoms market in 2010, we consider that the deployment of fibre-optic broadband throughout the country is one of most relevant issues to be mentioned.

The competition between networks was also one of the most important aspects, namely with investments in optical-fibre and the upgrade of cable with DocSis 3.0 international standard, thus ensuring broadband with very high speeds of nearly 300 MB (on the cable network) and sophisticated pay-TV offers.

Also, the number portability was a key issue for telecoms regulation in 2010. The ICP-ANACOM was (and still is) very active in promoting end-users right to portability and has imposed to telecoms operators specific rules on this matter ("Regulamento da Portabilidade"). Non compliance with such rules by the telecoms operators gave rise to administrative penalty procedures started by ICP-ANACOM which are currently in course.

Finally, in 2009/2010 there was a great deal of



litigation involving operators and ICP-ANACOM. In particular, operators challenged ICP-ANACOM's decision concerning the definition of broadband markets (in accordance with the European Commission Recommendation), especially in what concerns the geographical relevant market and the identification of competitive and non-competitive areas.

In addition, a number of operators challenged in Court ANACOM's new regulatory charges system adopted by the Government in 2008 and the relating Court cases are pending a decision. **LM**

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