

they didn't learn from the lawyers – we raise problems, doubts and concerns and give them perspectives," says Nuno Ruiz, Head of EU & Competition at Vieira de Almeida & Associados. "Without these they failed before the courts."

The old Council concentrated on reorganisation and restructuring, and succeeded in keeping a good Merger Control Department, however it had a poor enforcement record, says Carlos Botelho Moniz, Head of EU & Competition at Morais Leitão, Galvão Teles, Soares da Silva & Associados (MLGTS). "The new Council is expected to take a proactive stance, especially in relation to enforcement."

It is also heavily focused on pursuing anti-cartel enforcement through leniency cases, but they will need to show a strong hand before there is a solid base for the multiplication of such cases, says Ricardo Oliveira, Head of EU & Competition at PLMJ. "There are many upsides to the new Competition Law and Board, but the best way to describe our feeling at the moment is cautious optimism."

"The Competition Law as it is now is a powerful instrument, and with the appointment of the new Chairman, we hopefully have someone on the Board whose knowledge and background anticipates a thorough understanding of the realities of the market and an effective application of the law," says Mário Marques Mendes, Founding Partner of Marques Mendes & Associados.

Help or hindrance

Regulatory activity within the EU continues to be of the utmost importance to facilitate the entry and expansion of companies into new global markets. The performance of the Commission and members of the International Competition Network (ICN) authorities, coordinated among themselves and with other competition authorities outside the EU, has improved progressively, says Luis Berenguer, Senior Adviser at Broseta Abogados, resulting in the strengthening of legal certainty and facilitating the

presence of companies in other markets.

"Of course, there are still many barriers remaining to global business," says Ainhoa Veiga, EU & Competition Partner at Araoz & Rueda, "but, generally, I would say EU regulation overwhelmingly helps more than hinders business to operate and compete in international markets"

This harmonisation of EU competition rules allows foreign investors to manage their expectations, for instance, as legal consequences of anti-competitive practices, says António de Macedo Vitorino, Competition Partner at Macedo Vitorino & Associados, and helps clients operating and competing in international markets.

Some practical aspects of EU regulation, while providing a guarantee of legal certainty to companies and to their investments, can still hinder. The money laundry regulations, for example, oblige all contracting or advising parties to identify in a very detailed way the individuals and companies involved in an operation and the property of the final shareholders when the parties involved are companies. Sometimes the information required is hard to get, says Ángel Valdés, Head of EU and Competition Law at Lupicinio Abogados International Attorneys, and dealing with it delays operations.

EU Merger Control Regulation also has some undesired effects in transactions carried out in non-EU countries. As thresholds are exclusively based on the turnover of the undertakings concerned, transactions carried out by two or more large EU companies in, for instance, Asia or America, usually also require EU clearance. This gives rise to hindering the capability of EU companies to invest abroad, says Antonio Martínez Sánchez, Competition and Antitrust Partner at Allen & Overy. "In most cases, such obstacle does not seem necessary to guarantee free competition."

In the end, one needs to look at the bigger picture, says Rui Souto, Senior Associate in Commercial and Competition at Pedro Raposo & Associados, and understand that EU Competition rules seek competition and economic efficiency and the avoidance of artificial barriers to the entry of new players in the market caused by other market players, monopolies and/or oligopolies.

In Portugal in particular, a big issue revolves around

Clients' concerns

Today's changing competition environment is a real opportunity for lawyers to call their clients' attention to competition and compliance, says Joaquim Carmo Duarte, Head of EU & Competition at Uria Menéndez - Proença de Carvalho. The intensification of EU and domestic Competition Authority investigations and sanctioning has led to a huge demand for advice in relation to compliance.

Clients want compliance programmes and self-assessment reports because the companies' managers are aware of the high fines that may be imposed for Competition Law infringements, says Alberto Escudero, Head of Competition at Baker & McKenzie, Madrid. And given that the total amount of fines imposed by the CNMC in the last year exceeded €400m, clients in all industries are increasingly requesting advice on competition compliance including how to deal with dawn raids, says Crisanto

Pérez-Abad, Head of EU & Competition at Eversheds Nicea, as well as to provide them with substantive competition guidelines and seminars.

In Portugal, clients need for advice ranges from the analysis of restrictive practices, to vertical agreements and their compliance with EU Law, says Patricia Fragoço Martins, Head of EU & Competition at Campos Ferreira Sá Carneiro & Associados, as well as the assessment of concentrations for purposes of notification to the PCA.

In Spain, the key concern continues to be the fight against cartels. But a noteworthy development is that some clients have sought advice over the last year in relation to the Competition Authority's advocacy function, says Pedro Suárez, a Competition and Distribution Partner at Ramón y Cajal Abogados. "Reports issued by the Authority in relation to sectors or proposed legislation are more and more influential, which explains why companies seek to influence the position of the Authority in relation to

issues that affect their business."

The current economic situation has also led to certain players to certain horizontal cooperation schemes in order to minimise the commercial risks to which they are exposed. These projects require self-assessment of their compatibility with the Competition regulations, says Joan Torrelles, Senior Associate at Deloitte Abogados thereby ensuring that the implementation of such cooperation conforms to the Law and avoids the serious consequences of non-compliance.

In recent years, many companies have been fined due to exchanges of sensitive information between competitors. This is a 'grey area' as there is a fine line between what could be authorised and what is forbidden by Competition Law, says Gerard Pérez Olmo, Head of Competition and Regulation at GOLD Abogados. "This motivates greater concern between clients and the need for specific advice, both with preventive reasons (compliance) and reactive reasons (defence in investigation cases)."