

PORTUGUESE INSIGHTS

WHEN WILL PORTUGUESE POWER SYSTEMS MANUFACTURER,
EFACEC, BE SOLD?

27.04.2021

The deadline for the sale of the Portuguese Power equipment manufacturer, EFACEC, is approaching amidst pressure from the extreme left parties for the nationalization of the company and difficulties in finding the right partner.

EFACEC is a mid-sized company operating in the development of products and systems for infrastructural sectors such as energy, environment & industry and mobility & transport, which include, among other things, the operation of nuclear power plants, city power distribution systems, operation of city transport systems. EFACEC is present in 65 countries, with over 75% of its 2019 sales coming from developed international markets.

In 2019, EFACEC was caught in the turmoil of the Luanda Leaks papersⁱ, regarding an alleged misappropriation of Angolan government funds by Isabel dos Santos, daughter of the country's former president, which caused it to lose an important contract with the government of Norway for the construction of a biogas plantⁱⁱ.

To avoid the risk of EFACEC being involved in the disputes between the Angolan Government and Isabel dos Santos, EFACEC's main shareholder, with 71.73%, the Portuguese government nationalized Isabel dos Santos' shares, in July 2020, pledging to privatise the company.

Under government control, EFACEC's revenues in 2020 declined 39% to 216 million due to several factors (source: [EFACEC's 2020 Financial Report](#)). Despite the significant reduction of its operating results in 2020, the company's equity amounted to 180.2 million euros, which corresponds to a 28.7% financial autonomy ratio. In Q42020, EFACEC's revenues were 91 million euros, more than double the average of previous quarters, and recurring EBITDA for the quarter was positive by 10 million euros.

In January 2021, following the approval of the privatisation procedure by the Portuguese Governmentⁱⁱⁱ, an information memorandum was disclosed with provisional data for 2020, prospects for the following years and a business plan, which included the reduction of labour costs from around €65 million in 2020 to €50 million in 2021.

The privatisation of EFACEC will be made through a "direct negotiation" under 1990 Portuguese Privatization Law, which establishes the legal framework for the privatisation of nationalized companies (**Privatisation Law**). According to the Privatisation Law, direct negotiation is an exceptional privatisation method which operates under the same conditions of the limited public tender by governmental decision. This method allows the Government to keep more control over the final ownership of the company and setting the technical and financial criteria of the sale, which may include the preservation of the company's employment levels, investment in certain areas etc.^{iv}

The privatisation procedure includes the following phases: delivery of non-binding proposals, delivery of binding proposals and, in some cases, the delivery of best and final offers (BAFO), followed by a negotiation of the binding proposals.

The legality of the direct negotiation procedure may be questioned under European competition rules because it does not follow the strict public tender rules and the process has the risk of being discretionary. The negotiations with several different bidders may end up in significantly different contract conditions that will not be comparable.

This poses challenges to the Government when setting the negotiation terms and its ability to accept fundamental changes to the deal conditions in the course of the negotiations, but also to the private bidders, who need to be mindful that adherence to the Government's goals set out in the request for proposals process documents may be as important, if not more, as the price offered.

This point is underpinned in the Secretary of State's statements when announcing the tender. João Nuno Mendes noted that the "choice will depend on both technical and financial criteria". The "technical criteria" include "the strengthening of the company's economic and financial capacity". The Secretary of State also stated that it would be "absolutely critical" that the winning bidder is capable of improving the company's "export capacity".

In our view, to meet the Government's objectives, bidders must understand the markets where EFACEC operates and be prepared to keep production in Portugal and not to make significant work force reductions for a defined period of time.

The successive delays in the selection of the final bidders seem to show that it has been difficult to find a bidder capable of meeting the Portuguese government's requirements.

Misunderstanding the way deals with Portuguese public authorities are done is one of the main reasons for protracted negotiations and last-minute changes of mind and heart.

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ⁱ For further information about the Luanda Leaks disclosures see: [Luanda Leaks ICJ Investigation](#)

ⁱⁱ Sources: [Efacec sees €21M winning tender for biogas plant in Norway cancelled and Efacec: Norwegian competitor challenges contest due to connection to Isabel dos Santos](#)

ⁱⁱⁱ Cf. [Resolution of the Council of Ministers 113/2020, of 21 December 2020](#)

^{iv} For further reading regarding the Portuguese Privatisation Law, see MACEDO VITORINO's briefing: [The Portuguese Privatisation Programme](#)