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Private Enforcement of Competition Law – Note by Spain

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Spain

1. Introduction

1. Since the transposition of the Damages Directive in 2017[1], private enforcement has substantially evolved in Spain, both in terms of legislation and of the volume and sophistication of litigation.

2. The Spanish institutional and judicial framework is relevant to understand the role of the CNMC. Actions for damages are brought by injured parties before the civil courts (at first instance, the Commercial Courts), which have exclusive jurisdiction to award compensation. In these proceedings, the CNMC is not a party, however, it contributes through its sanctioning decisions, which provide the basis for follow-on actions. The CNMC also cooperates with the courts as *amicus curiae* and is active in promoting damage claims.

3. This contribution is structured as follows. Section 2 describes the development of private enforcement in Spain in recent years and its main drivers. Section 3 addresses the relationship between public and private enforcement, including follow-on and stand-alone actions and the effect of infringement decisions. Section 4 describes other design features. The role of the CNMC in private enforcement is described in Section 5. Finally, Section 6 brings together the main conclusions regarding the current state of private enforcement in Spain and the challenges that lie ahead.

2. The development of private enforcement in Spain

2.1. Damage litigation before the transposition of the Damages Directive

4. In Spain, before the transposition of the Damages Directive in 2017, actions for damages arising from infringements of competition law were based on the general rules governing non-contractual liability[2]. Private enforcement was therefore limited and relatively uncommon, although important precedents were established. The most significant one was the ruling of the Spanish Supreme Court in 2013 on the Sugar cartel case[3], which awarded damages to industrial purchasers following an infringement decision adopted by the former Spanish competition authority (CNC). The judgment addressed the passing-on defense and held that the amount of harm could be established through expert evidence based on a reasonable and technically sound hypothesis supported by verifiable data.

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1 Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union Text with EEA relevance.

2 Article 1902 of the Civil Code, published by Royal Decree of 24 July 1889.

3 Judgment of the Supreme Court (Civil Chamber) of 7 November 2013, sugar cartel (STS 651/2013).

5. The transposition of Directive 2014/104/EU (the Damages Directive) through Royal Decree-law 9/2017[4] was a turning point, as it established a new framework that facilitated actions for damages significantly.

2.2. Development of follow-on damages litigation: the trucks cartel and subsequent cases

6. The transposition of the Damages Directive broadly coincided with the European Commission's decision in the trucks cartel case[5]. Spain, with its large truck fleet, much of it operated by small road-haulage companies and self-employed drivers, subsequently became one of the EU jurisdictions with the highest number of damage claims arising from the cartel[6].

7. This wave of litigation raised a number of legal issues concerning the application of the Spanish Competition Act, which have been afterwards clarified by the higher courts. In June 2023, the Supreme Court ruled on fifteen cassation appeals concerning the trucks cartel[7]. It confirmed that the conduct had consisted in price-fixing agreements, that the existence of the harm could be presumed in light of the characteristics of the cartel, and that where the expert evidence submitted by the parties does not provide a sufficient basis for quantifying the harm, courts may resort to judicial estimation, set at a minimum of 5% of the purchase price. These precedents have subsequently been followed by courts at different levels.

8. Spanish courts have also referred several prejudicial questions to the CJEU which have become leading judgments on private enforcement in the EU[8]. These have addressed issues related to the liability of subsidiaries, the temporal application of the Damages Directive and limitation periods, disclosure of evidence, judicial estimation of harm and the effects of decisions adopted by national competition authorities.

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4 Royal Decree-law 9/2017, of 26 May, transposing European Union directives in the financial, commercial and healthcare sectors and on the posting of workers. It introduced a new title VI (articles 71 to 81) in the Law 15/2007, of 3 July, on the Defence of Competition and a new section on access to sources of evidence in the Law 1/2000, of 7 January, on the Civil Procedure.

5 European Commission Decision of 19 July 2016, Case AT.39824 – Trucks.

6 According to academic estimates, by March 2025 Provincial Courts had issued more than 5,000 appeal judgments in these cases, and more than 30,000 vehicles had been the subject of litigation.

7 Judgments of the Supreme Court (Civil Chamber) of June 2023 resolving fifteen cassation appeals on the trucks cartel (STS 2492/2023). See the press release of the General Council of the Judiciary.

8 CJEU judgments of 6 October 2021, Sumal, C-882/19; 22 June 2022, Volvo and DAF Trucks, C-267/20; 10 November 2022, PACCAR and Others, C-163/21; 16 February 2023, Tráficos Manuel Ferrer, C-312/21; and 20 April 2023, Repsol Comercial de Productos Petrolíferos, C-25/21. All of them originated in preliminary references from Spanish courts.

9. Cartels sanctioned by the CNMC have also given rise to follow-on actions, including cases concerning car manufacturers[9] and car dealers[10], dairy products[11], paper envelopes[12] and adult incontinence products[13]. Some of these claims have been brought by public entities, which remain an important but still under-represented category of claimants.

2.3. Factors that have driven or limited this development

10. According to this evolution, it seems that damage claims arising from infringements of competition law have increased due to the legal certainty provided by the Damages Directive regime and the existence of large infringement decisions affecting a high number of purchasers, mainly individuals. Other factors that may have also contributed are the emergence of specialized law firms, economic experts, claims aggregators and litigation funds, as well as the growing awareness of undertakings and consumers about their right to compensation, to which competition authorities have contributed through advocacy actions.

11. At the same time, several constraints remain to be addressed: i) the complexity and cost of quantifying harm, which may be disproportionate to the value of smaller claims; ii) the absence, so far, of an effective collective redress mechanism for competition damages, given the structure of the Spanish legal system; iii) the length of the proceedings, which may be compounded by the duration of the judicial review of the underlying infringement decision); iv) the burden that mass litigation places on commercial courts, particularly in view of their limited material and human resources; and v) the limited propensity of certain categories of victims to bring claims, notably final consumers and public entities.

3. The relationship between public and private enforcement

3.1. Follow-on and stand-alone actions

Private enforcement in Spain relies predominantly on follow-on actions. Stand-alone actions are also possible but remain considerably less common and tend to be more complex and costly, as claimants must establish the existence of the infringement themselves, often without access to the investigative powers and tools available to competition authorities.

Stand-alone actions are more common in the context of vertical relationships, for instance, in disputes concerning the validity of distribution or supply agreements, where competition law may be invoked as a defense or as grounds for seeking the nullity of contractual provisions, as well as in abuse of dominance cases.

Beyond competition law in the strict sense, private litigation in digital markets has also relied on unfair competition law. In November 2025, a commercial court in Madrid ordered a major large digital platform

9 CNMC Decision (Case S/0482/13, Automobile Manufacturers).

10 CNMC Decisions (Case S/0471/13, Audi/SEAT/VW Dealers; Case S/0486/13, Toyota Dealers; Case S/0487/13, Land Rover Dealers; Case S/0489/13, Opel Dealers; Case S/DC/0505/14, Chevrolet Dealers; Case S/DC/0506/14, Volvo Dealers: Case SAMAD/09/14, Nissan Dealers).

11 CNMC Decision (Case S/0425/12, Dairy Industry 2).

12 CNMC Decision (Case S/0316/10, Paper envelopes).

13 CNMC Decision (Case S/DC/0504/14, AIO).

to pay approximately EUR 479 million in damages to Spanish digital press publishers on the grounds that it had obtained a competitive advantage through the infringement of data protection rules[14]. Although this case was not based on competition law as such, it illustrates the growing role of private litigation in addressing anticompetitive harm in digital markets.

3.2. Legal effect of infringement decisions in subsequent private actions

Under Title VI of the Spanish Competition Act, an infringement established by a final decision of a Spanish competition authority (the CNMC or a regional authority) or by a final judgment of a Spanish court is deemed irrefutable for the purposes of a damages action before Spanish courts. Final decisions of competition authorities or courts of other Member States may be submitted before Spanish courts as, at least, as qualified evidence of the infringement. European Commission decisions are binding on national courts under Article 16 of Regulation 1/2003[15].

In the Repsol judgment[16], following a preliminary reference from a Spanish court, the CJEU clarified the evidentiary effect of final decisions of national competition authorities outside the scope of the Damages Directive, including in actions seeking the nullity of contracts. In such cases, the infringement must be presumed to have been established unless the defendant proves otherwise, provided that the nature and scope of the infringement at issue correspond to those established in the competition authority's decision.

This case law highlights the importance of infringement decisions for subsequent private enforcement. A precise definition of the conduct, the undertakings involved, its duration and its products and geographic scope of the infringement facilitate follow-on actions and reduce litigation over the scope of the decision. At the same time, where CNMC infringement decisions are subject to judicial review, the time required for them to become final may delay the resolution of follow-on damages actions.

4. Other design features of private enforcement in Spain

4.1. Collective redress

12. A fully-fledged collective redress mechanism adapted to competition damages is still to be developed in Spain. Currently, the Civil Procedure Act allows consumer associations and other qualified entities to bring actions to protect the collective interests of consumers. However, to the knowledge of the CNMC, these mechanisms have not been commonly used in damage claims related to competition infringements.

13. In practice, other means have been used to aggregate claims, such as the joinder of claims of several claimants in a single action, the assignment of claims to special purpose vehicles or claims aggregators, and the coordinated filing of claims by sectoral associations (for instance, road-haulage associations in the trucks cartel litigation). These have often been supported by litigation funds.

14. Additionally, the full transposition of Directive (EU) 2020/1828 on representative actions is still pending. A draft bill on collective actions[17] was approved by the Government

[14] Judgment of Commercial Court No. 15 of Madrid of 19 November 2025 (not final at the time of writing).

[15] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty

[16] CJEU judgment of 20 April 2023, Repsol Comercial de Productos Petrolíferos, C-25/21, EU:C:2023:298.

[17] Draft Law on collective actions for the protection and defence of the rights and interests of consumers and users.

in February 2025, providing for representative actions brought by qualified entities, with a predominantly opt-out model. Nonetheless, the scope of the bill was confined to the protection of consumers and users and did not cover collective actions in specific fields such as competition law. In any case, the bill will not enter into force since the legislative proposal lapsed following the calling of elections on 5 October 2026 and the consequent dissolution of Parliament.

4.2. Quantification of harm

15. As regards the quantification of harm, the claimant bears the burden of proving the existence and extent of the damage suffered. However, this burden is mitigated by two mechanisms introduced by the Damages Directive: (1) the rebuttable presumption that cartels cause harm and (2) the power granted to courts to estimate the amount of harm where its precise quantification is practically impossible or excessively difficult. In the case Tráficos Manuel Ferrer[18], following a request for a preliminary ruling from a Spanish court, the CJEU clarified the conditions under which national courts may exercise this power, including situations where difficulties in quantifying the harm persist even after the disclosure of evidence.

16. Expert evidence is central and parties usually submit economic reports based on comparative methods and econometric techniques. The trucks cartel litigation illustrated the challenges that courts face when assessing competing expert reports, often reaching very different results. The Supreme Court's case law has provided a reference point by endorsing a minimum estimation of 5% of the purchase price when the expert evidence is insufficient, while allowing the parties to prove a higher or lower overcharge [19]. Passing-on has also been discussed, in particular regarding intermediate purchasers. Finally, interest accrues from the date on which the harm occurred[20], in accordance with the principle of full compensation.

4.3. Arbitration and consensual dispute resolution

17. Under the Spanish Arbitration Act[21], disputes concerning matters over which the parties have freedom of disposition may be submitted to arbitration. Accordingly, damages claims arising from competition law infringements, as well as contractual disputes involving competition law issues, may be resolved through arbitration where a valid arbitration agreement exists.

18. The Spanish Competition Act also contains provisions aimed at facilitating consensual settlements. These include the suspension of limitation periods and court proceedings during consensual dispute resolution, as well as rules governing the effects of settlements on the liability of co-infringers.

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[18] CJEU judgment of 16 February 2023, Tráficos Manuel Ferrer S.L. and Ignacio v Daimler AG, C-312/21, EU:C:2023:99.

[19] This estimate was initially awarded in truck cartel cases; however, courts are now also applying it in car dealer cartel cases.

[20] For example, regarding the truck cartel legal interest is awarded from the date the truck was purchased at the cartel-inflated price, rather than from the date the lawsuit was filed. This ensures the victim is fully restored to the financial position they would have been in had the infringement not occurred.

[21] Law 60/2003, of 23 December, on Arbitration.

19. More generally, the entry into force of the Organic Law 1/2025[22] has made prior recourse to dispute resolution, for example negotiation, mediation or conciliation, a prerequisite for the admissibility of most civil claims, including damages claims. It is still too early to assess the impact of this reform on competition damages litigation, but it may encourage out-of-court settlements.

20. A further development concerns the mass litigation arising from the trucks cartel. In January 2026, the Supreme Court adopted an agreement encouraging the use of mediation in the large number of pending cassation appeals arising from this litigation[23]. The Court noted that it had already developed extensive and settled case law on the main legal issues raised by these claims, including the existence of the cartel, the presumption and quantification of harm, limitation periods, standing and the calculation of interest. Against this background, the Supreme Court provided for the possibility of referring pending appeals to mediation. Participation remains voluntary, although an unjustified refusal to cooperate in reaching a consensual resolution may be considered in the allocation of legal costs.

5. The role of the CNMC in private enforcement

21. The CNMC does not award compensation to victims of infringements in its proceedings and does not act as a party to damages actions. However, it participates indirectly in the claims proceedings by granting access to the infringement file, under certain conditions, to facilitate the quantification of damages or as *amicus curiae*. The CNMC is also very active in promoting private enforcement through advocacy actions.

5.1. Access to the CNMC's file

22. The rules on disclosure introduced in the Civil Procedure Act in 2017[24] allow courts to order the disclosure of evidence contained in the file of a competition authority, subject to proportionality requirements and specific safeguards. However, leniency statements and settlement submissions are always protected from disclosure. By contrast, information specifically prepared for the proceedings of the authority and withdrawn settlement submissions may be disclosed only after the authority has closed its proceedings.

23. In practice, claimants rely primarily on the public, non-confidential versions of the CNMC's decisions, published on its website, as well as on the evidence held by the parties. When requested by courts to provide evidence, the CNMC cooperates while ensuring the protection of business secrets and other confidential information and the absolute protection afforded to leniency statements and settlement submissions. These safeguards are essential to preserve the incentives of undertakings to cooperate with the competition authority. CJEU case law has provided further guidance on the scope and application of the disclosure rules[25].

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22 Organic Law 1/2025 of 2 January on measures to improve the efficiency of the Public Justice Service.

23 Non-Jurisdictional Plenary Agreement of the First Chamber of the Spanish Supreme Court of 27 January 2026 on the referral to mediation of certain mass appeals concerning private enforcement of competition law (the "trucks cartel").

24 Articles 283 bis a) and i) of the Civil Procedure Act.

25 CJEU judgments of 6 October 2021, Sumal, C-882/19; 22 June 2022, Volvo and DAF Trucks, C-267/20; 10 November 2022, PACCAR and Others, C-163/21; 16

5.2. Cooperation with courts and amicus curiae

24. Spanish law provides for the CNMC, as well as the European Commission and the regional competition authorities, to intervene as *amicus curiae* in civil proceedings derived from infringements declared under the application of Articles 101 or 102 TFEU or Articles 1 or 2 of the Spanish Competition Act[26].

25. In addition, according to the Spanish Competition Act, competition authorities shall assist the courts, upon request, on the quantification of damages[27]. This assistance is purely consultative as the CNMC provides information, experience or technical knowledge, but the court remains responsible for determining the compensation[28].

5.3. Guide on the quantification of damages and promoting damage claims by the public sector

26. Beyond its role during the damage claim proceedings before the courts, the CNMC has an active advocacy role in promoting damage claims. In July 2023 the Guide on the quantification of damages for infringements of competition law[29] was published. Addressed to judges, lawyers, economic experts and potential claimants, including consumers and public entities, the guide explains in an accessible language the economic, statistical and econometric concepts used to quantify harm, with practical examples and includes checklists to facilitate the elaboration of the expert report.

27. After this important milestone, the activity of the CNMC in this area has focused on promoting damages claims by public sector entities. The number of damages claims brought by public entities remains limited although they are frequently harmed by competition infringements, especially bid rigging in public procurement, which in Spain represents a substantial share of GDP.

28. Consequently, several initiatives to promote damages claims by the public sector were launched in 2025, which included:

- A public consultation on the challenges and opportunities of the public sector in damages claims[30].
- A workshop held at the CNMC in June 2025 with representatives of public administrations and of the private sector, where successful claims by public entities

February 2023, Tráficos Manuel Ferrer, C-312/21; and 20 April 2023, Repsol Comercial de Productos Petrolíferos, C-25/21. All of them originated in preliminary references from Spanish courts.

26 Article 15 bis Civil Procedure Act and Article 16 Spanish Competition Act, which implement Article 15(3) of Council Regulation (EC) No 1/2003.

27 Article 76(4) Spanish Competition Act.

28 The courts have rarely used this prerogative, more specifically a commercial court in Oviedo requested the intervention of the CNMC in a trucks cartel case in relation to the econometric analysis submitted by the parties, and in 2021 a commercial court in Cádiz requested the CNMC's assistance in the quantification of the damages caused by a cartel of car dealers.

29 Guide on the quantification of damages for infringements of competition law (G-2020-03), July 2023.

30 CNMC public consultation "Challenges and opportunities for the public sector in damages claims for competition law infringements" (26 May – 1 August 2025).

were discussed; for instance, the claim of a Chamber of Commerce in the paper envelopes cartel case and the claim of a regional government in the adult incontinence products cartel case)[31].

- Informative letters sent by the CNMC to public entities that may have been affected by infringements sanctioned by the authority, informing them of their right to claim compensation[32].
- Training activities for public officials on competition damages actions, including the legal basis for such claims, the quantification of the harm and the practical aspects of seeking compensation for losses.

6. Conclusions and future challenges

29. Private enforcement of competition law has become a well-established reality in Spain. This development has been driven partly by the transposition of the Damages Directive and by the significant volume of follow-on litigation arising from the trucks and car dealers' cartels. The case law developed by both the Spanish Supreme Court and the CJEU has also contributed to clarifying key issues, including the binding effect of infringement decisions, the presumption of harm and the judicial estimation of damages.

30. Public enforcement nevertheless remains the cornerstone of the system, as the vast majority of damages actions have followed infringement decisions adopted by the European Commission or the CNMC. Moreover, the CNMC has contributed to the development of private enforcement through its cooperation with national courts and, more recently, through initiatives aimed at raising awareness among public entities affected by anticompetitive conduct of their right to seek compensation.

31. Looking ahead, several challenges remain, including the development of an effective framework for collective redress, greater recourse to damages actions by public bodies, the efficient management of mass litigation and further strengthening the complementary nature of public and private enforcement.

32. Addressing these issues will be key to consolidating the overall effectiveness of competition law enforcement and ensuring full compensation for those harmed by anticompetitive practices.

[31] CNMC Blog: *"Reclamar daños por infracciones de competencia: una responsabilidad pública"*, 11 July 2025.

[32] CNMC Blog, "*Mensaje para el sector público: también podéis reclamar daños por prácticas anticompetitivas*", 2 July 2026.