

ANTITRUST DAMAGES' CLAIMS IN SPAIN

Working Paper IE Law School

AJ8-256-I

15-10-2020

Prof. Dr. Francisco Marcos
Profesor IE Law School
francisco.marcos@ie.edu

Abstract: *After briefly describing the institutional and legal framework for antitrust damages claims in Spain, this article surveys the courts' experience in deciding these actions and shows the rise in cartel follow-on claims in the last five years. Damages claims for antitrust infringements declared or known after the 27 May 2017 will be governed by national legal provisions implementing Directive 2014/104/UE.*

Although there had been in the past some antitrust damages cases for abuse of dominance and vertical restraints (both follow-on and stand-alone), nowadays follow-on cartel actions are the most numerous. Therein, private plaintiffs tread on the heels of competition authorities. Competition authorities' unearthing of major cartels in several industries has paved the way for damages suits by their victims. After the Supreme Court decided the leading case of damages' claims in the sugar cartel, follow-on on damages claims have germinated from the paper envelopes cartel, the decennial real estate insurance cartel and, most notably, the truck manufacturers' cartel.

Keywords: Competition Law, Antitrust Law, Damages, Private Enforcement, Spain

RECLAMACIONES DE DAÑOS POR INFRACCIONES DEL DERECHO DE LA COMPETENCIA EN ESPAÑA

Resumen: Tras describir brevemente el marco institucional y legal de las reclamaciones de daños y perjuicios por infracciones del Derecho de la competencia en España, este trabajo analiza la experiencia de nuestros tribunales en la decisión de estas acciones y muestra el aumento de las demandas follow-on en casos de cárteles en los últimos cinco años. Adicionalmente, las reclamaciones por daños y perjuicios por infracciones de la competencia declaradas o conocidas con posterioridad al 27 de mayo de 2017 se regirán por las disposiciones legales nacionales que trasponen la Directiva 2014/104/UE.

Aunque en el pasado ha habido algunos pronunciamientos sobre daños por abuso de posición dominante y restricciones verticales (tanto *follow-on* como *stand-alone*), ahora las acciones *follow-on* en caso de cárteles son las más numerosas. En ellas, los demandantes privados “pisan los talones” a las autoridades de competencia. El descubrimiento por parte de las autoridades de competencia de algunos carteles en varias industrias ha allanado el camino para las demandas por daños de sus víctimas. Después de que el Tribunal Supremo dictara dos sentencias pioneras sobre la indemnización de los daños y perjuicios causados por el cártel del azúcar, se han planteado sucesivas reclamaciones de daños por los afectados por el cártel de los sobres de papel, el cártel de los seguros inmobiliarios decenales y, sobre todo, el cártel de los fabricantes de camiones.

Palabras Clave: *Derecho de la competencia, Daños, Aplicación privada, España*

Copyright © 2020 by Francisco Marcos, Profesor de Derecho en IE Law School.
Este working paper se distribuye con fines divulgativos y de discusión.
Prohibida su reproducción sin permiso del autor, a quien debe contactar en caso de solicitar copias.
Editado por el IE Law School, Madrid, España

*Copyright ©2020 by Francisco Marcos, Professor of Law at IE Law School.
This working paper is distributed for purposes of comment and discussion only.
It may not be reproduced without permission of the copyright holder.
Edited by IE Law School*

1. Introduction

Administrative competition authorities (national and regional) have historically been the main enforcers of competition law in Spain¹, but more recently private claims before judges have emerged and slowly grown as an alternative and complementary enforcement tool. This is shown by the upsurge in private litigation in the last five years in several cartel follow-on claims (paper envelopes, decennial insurance, car distribution and trucks' manufacturers). On the side, the adoption of specific provisions on antitrust damages claims will further clarify the legal settings for this actions in the future (Spanish law lacked any specific provision in this regard², until Directive 2014/104/UE was implemented³).

As is well known, public enforcement of competition law advances the public interest and it is aimed at declaring infringements of the competition rules, punishing the unlawful behaviour, and eventually, at designing remedies to restore competition. Private enforcement of competition law pursues private interests and seeks that courts declare the infringement, order its cessation, void anticompetitive clauses in contracts or award compensatory damages.

Until now, Spanish courts have accommodated damages actions within the existing legal framework for tort claims and they have managed to build a relatively coherent legal doctrine on the specific issues raised by antitrust damages claims. After briefly describing the legal framework for deciding these suits, this article reviews the most relevant cases and extracts the lessons that can be learned from them.

2. Legal Framework for Antitrust Damages Actions

Conceptually, antitrust damages actions are tort claims⁴. Compensation is sought for harm resulting from anticompetitive unlawful behaviour. The basic rules and requirements regarding tort claims apply in antitrust damages claims as well. Plaintiffs need to show that any form of illicit conduct has caused them some harm and also quantify the harm suffered. These three elements (illicit action, harm and causality) are common to all tort claims (article 1902 of Civil

¹ Spanish domestic competition rules were modernized by the Defence Competition Act of 2007 (hereinafter DCA) Act 15/7 of 3/7 ([Official Gazette 159 of 4/7](#), only available in Spanish). The DCA prohibitions closely mirror Articles 101 and 102 TFEU.

² The situation was different under DCA1989 (Defence Competition Act 16/1989 of 17/7, [Official Gazette 170 of 18/7/89](#), only available in Spanish) and DCA1963 ([Official Gazette 173 of 23/7/63](#), only available in Spanish), under which only follow-on actions were possible and only once there was a final decision by the Defence Competition Tribunal (articles 13.2 of DCA1989 and 6 of DCA1963).

³ Decree-Law 9/17 of 26/5 ([Official Gazette 126 of 27/5/17](#)), which introduced Article 71.1 DCA affirming the general liability of infringers of EU or domestic competition law for harm caused by their actions (this includes the right to compensation for actual losses and lost profits, plus the payment of interest, article 72 DCA).

⁴ This was, apparently, settled by the Supreme Court in its first decision on the follow-on claims in the sugar cartel, see judgment of 8/6/1 *Galletas Guyón SA et al v. ACOR, Sociedad cooperativa agropecuaria*, [ES:TS:2012:5462](#) (legal ground 12), but theoretically there are solid arguments to consider it to be covered by contractual liability (in the event the claimant is party to the contract embodying the anticompetitive restraint).

Code: “any person who by action or omission causes harm to another by fault or negligence is obliged to repair the damage caused”).

Antitrust damages actions are facilitated where a prior infringement decision has been adopted by one of the competition authorities in charge of public enforcement of competition law (“follow-on”). The claim for compensation will be further facilitated where the infringement decision discloses detailed evidence on the particular conditions of the infringement and, eventually, on its effects. In many of these *follow-on claims*, the decision of the competition authority finding and punishing anticompetitive behaviour assists the victims to prove not only the unlawful conduct but also brings valuable information and data regarding the causation and quantification of the harm.

In the absence of a prior decision from the public enforcer, the victims of anticompetitive conduct must prove all the elements on which the damage action is grounded (*stand-alone claims*).

Extended knowledge and experience of Spanish courts on tort litigation sets the basis for the recent advent of antitrust damages claims. Case-law on other economic torts provides useful lessons to antitrust victims on both the proof and assessment of harm and causality.

Broadly speaking, harm caused by anticompetitive conduct can be conceived as a harm caused by any other economic offence; and Member States’ national rules on causation and attribution of liability are useful for liability arising from anticompetitive behaviour. However, in the context of liability private damages for competition law infringements, case law of the EU Court of Justice has further developed some principles on causation⁵ and attribution of liability⁶ that inform the courts of the Member States when ruling on private damages actions⁷.

Furthermore, as it also occurs in other types of unlawful conduct that generate liability, in case of cartels it can be deemed that some level of harm have automatically occurred (*ex re ipsa loquitur*); this presumption that, of course, is subject to rebuttal.

Although the existing caselaw on economic torts is useful, the courts’ experience with antitrust damages claims has been, until recently, rather limited⁸. Since the 80’s there has been a high number of claims regarding anticompetitive restraints in fuel distribution, but from the judgments issued on those cases it has been difficult to extract any principles or findings that could be extended to other cases. Apart from the “fuel retail antitrust” saga (*infra* §3.1.1), there has been only one leading case in which the Supreme Court confirmed a follow-on claim in relation to the sugar cartel (*infra* §3.3.1). Although it is a single case -embodied in two judgments- some of the Supreme Court’s legal grounds therein have proved to be of value for Spanish lower courts in deciding antitrust damages claims filed after 2014.

⁵ See ¶¶22 to 27 of Judgment of the Court (5th Chamber) of 12/12/19, *Otis GmbH v. Land Oberösterreich et al.* C-435/18, [EU:C:2019:1069](#).

⁶ See ¶¶ 38 to 40, 46 and 51 Judgment of the Court (2nd Chamber) of 14/3/19, *Vantaan kaupunki v. Skanska Industrial Solutions Oy et al.* C-724/17, [EU:C:2019:204](#).

⁷ See EUCJ judgments of 20/9/01, C-453/01 *Courage v. Crehan*, [EU:C:2001:465](#) (¶¶29 and 31) of 13/7/06, C-295-298/04 *Manfredi et al.*, [EU:C:2006:461](#) (¶¶60-63); of 14/6/11, C-360/09 *Pfleiderer* [EU:C:2011:389](#) (¶¶28-29); of 6/11/12, C-199/11 *Europese Gemeenschap v. Otis et al.*, [EU:C:2012:684](#) (¶¶41-43); of 6/6/13, C-536/11 *Bundeswettbewerbshörde v. Donau Chemie et al.*, [EU:C:2013:366](#) (¶23) of 5/6/14, C-557/12 *Kone et al.*, [EU:C:2014:1317](#) (¶¶22-24) and of 14/3/19, C-724/17 *Skanska* [EU:C:2019:204](#) (¶¶25-27).

⁸ See F. Marcos “Competition Law Private Litigation in the Spanish Courts (1999-2012)” *Global Competition Litigation Review* 182 (2013)167-208.

The development of the nascent antitrust damages caselaw in Spain should be credited to the circa sixty specialized commercial judges and specialized sections in the high provincial courts (with also several specialist magistrates seating in the Supreme Court)⁹. Territorial jurisdiction among the several commercial judges is allocated following the criteria set by the Spanish Civil Procedure Act¹⁰.

In addition, in terms of funding, the general rule for civil proceedings in Spain is that legal fees and litigation costs are paid by the losing party, unless the court finds that a case presents serious legal or factual complexities¹¹. Conditional fee arrangements and contingency fees are allowed¹² and several litigation funds operate in Spain and have increasingly shown their interest in acquiring and funding antitrust damages claims¹³.

Antitrust damages claims arising after May 2017 are governed by the substantive rules adopted in implementation of Directive EU/2014/104¹⁴. Doubts exist concerning either their application to claims risen during the transposition period or that were pending when the Directive was implemented or, alternatively, the interpretation of traditional tort rules in conformity with the Directive to cases filed after the Directive entered into force but before it was implemented (with delay) by the Spanish legislator¹⁵.

3. Cases

In the past, most private actions for infringements of competition law have been “stand-alone” claims in commercial disputes concerning vertical restraints or abuses of dominance. These have generally been cases in which the infringement of competition law was used to seek the nullity of contracts or obligations and, occasionally, to claim compensation¹⁶.

⁹ Commercial judges and commercial courts are competent to decide damages claims based on infringements of EU competition rules (TFEU articles 101 and 102) or domestic competition rules (articles 1 or 2 of the DCA). See article 86 ter.2.f) of Basic Act of Judicial Power as amended by ([Official State Gazette 157 of 2/7/85](#)) and Additional provision 1 of DCA2007.

¹⁰ Civil Procedure Act 1/2000 of 7/1 (CPA, [Official Gazette 7 of 8/1/2000](#)). But see preliminary ruling lodged by Madrid commercial court 2 of 23/12/19 (PO550/18, [C-30/20](#)) on the interpretation of article 7(2) of Regulation EU/1215/2012 ([OJUE L351 of 20/12/12](#)) on this regard.

¹¹ See Article 394 of CPA (with a cap of one-third of the total value of the action). If there is a partial rejection/award of the claim, each party will bear its own costs and the common costs will be divided equally.

¹² See Supreme Court Judgment (Civil Ch.) of 4/11/8, [ES:TS:2008:6610](#), overriding the bar association’s prohibition of contingency fees for violating 101 TFEU.

¹³ See S. Saiz “Los fondos de litigios se hacen fuertes en España” [Expansión 21/1/20](#).

¹⁴ See F. Marcos “[Spain](#)” in B. J. Rodger, M. S. Ferro & F. Marcos (dirs) *The EU Antitrust Damages Directive. Transposition across the Member States*, 2019, 331 and P. Callol & J. Manzarbeitia “Antitrust damages litigation- key aspects of cartel damages in Spain” [ECLR 38 \(2017\) 374](#).

¹⁵ See EU CJ judgment of 28/3/19, C-637/17 *Cogeco Communications v. Sport TV Portugal, Controlinveste-SGPS & NOS-SGPS SA*, [EU:C:2019:263](#) and the preliminary ruling ([C-267/20](#)) lodged by Provincial Court of Leon (sect. 1) on 12/6/20, [ES:APLE:2020:291A](#). On the later, see F. Marcos “De nuevo sobre la prescripción de las acciones de daños causados por el cártel de los camiones” [Almacén de Derecho 27/8/20](#).

¹⁶ See Marcos *Global Competition Litigation Review* 182 (2013) 170 (94%).

More recently there has been an increase in “follow-on” claims subsequent to the Spanish competition authorities’ efforts uncovering and sanctioning a number of cartels. Most of these follow-on actions are still pending in court, at different stages of the procedure.

3.1. Vertical restraints

Quite a few private competition disputes before the courts have concerned distribution of basic consumables (bread, beer), automobiles, journals/press, pharmaceuticals, farming equipment, and also franchising contracts; still, the largest number of actions have concerned disputes in the fuel industry. Most of the claims involve issues related to pricing or other terms in the distribution contract which could be deemed anticompetitive (f.e., exclusivity). Today, a substantial number of claims continue to be filed in connection with competition infringements in the fuel retail industry.

3.1.1. Fuel retail

These actions have been mostly brought by fuel stations (retailers) against the large oligopolistic suppliers (*REPSOL*, *CEPSA*, *BP* and *GALP*); in some cases, as a response to lawsuits brought by suppliers against retailers for breach of contract. Thus, retailers argue that their contractual relationships are null and unenforceable on competition grounds (because of the extended duration of the exclusivity contract or because there was indirect RPM).

The “fuel retail” claims are best considered as hybrid or mixed follow-on and stand-alone cases “because they do not technically qualify as follow-on cases because the facts at issue are essentially different, but where the parties heavily rely upon previous decisions of the Spanish Competition Authority (NCA) –or less frequently, the European Commission (EC) which seemingly have played a decisive role in triggering the action”¹⁷.

Given numerous complex legal issues raised in these procedures, Spanish Courts requested the EUCJ seven preliminary rulings concerning the scope of application of art.101.1 TFEU to agency contracts¹⁸, the requirements of the Vertical restraints Block Exemption Regulation (EU regulations 1984/83 and 2790/1999)¹⁹, the application in that context of the *de minimis* rule²⁰ and, lately, on the effects in private litigation of commitment decisions of the EU Commission²¹.

¹⁷ See E. Ameye “Spain” in *The Private Enforcement Competition Review*, 9 ed. 2016, 350-351.

¹⁸ On the coverage of agency contracts by art.101 there was also a preliminary ruling requested by the Supreme Court (deciding on appeal against a resolution by the DCT of 1/4/98), [r280/97 CEPSA](#), see EUCJ judgment of 14/12/06 (*CEES C-217/05*, [EU:C:2006:784](#)).

¹⁹ See EUCJ judgments of 11/9/08 (*CEPSA v Tobar C-279/06*, [EU:C:2008:485](#)) and of 2/4/09 (*Pedro IV Servicios C-260/07*, [EU:C:2009:215](#)) and EUCJ Order (10th Ch.) of 27/3/14 (*Brigh Service SA v. REPSOL C-142/13*, [EU:C:2014:204](#)).

²⁰ Connected to the two judgments cited in the prior note, see EUCJ Order (7th Ch) of 3/9/08 (*Lubricarga SL v. GALP*, C-506/07 [EU:C:2009:504](#)), and EUCJ Order (10th Ch.) of 4/12/14 (*E.s.Pozuelo 4 v GALP*, C-384/13 [EU:C:2014:2425](#)). See F. Wijckmans “Pozuelo4: de minimis treatment of exclusive purchase (single branding) obligations” *JECLAP* 6/6 /2015) 413-415.

²¹ Regarding Commission Decision 2006/446/EC of 12/4/06 (COMP/B-1/38.348- *Repsol CPP*, [OJEU L178 of 30/06/06](#)), confirmed by Order of EUGC (4th Ch.) of 14/11/18, *Transportes Evaristo Molina SA v Commission T-45/08*, [EU:T:2008:499](#), upheld by EUCJ judgment (7th Ch) of 11/11/10 C-36/09 P, [EU:C:2010:670](#), see EUCJ

Most of these claims have been dismissed (80% of suits were rejected); and in the few cases in which the courts have accepted them, no compensatory damages were awarded²². However, the retail fuel saga has been lately reignited following some 2015 Supreme Court judgments that changed the doctrine held before in the caselaw on the effects of infringements of article 101.1 TFEU in certain clauses in the contract (considering it void as a whole if the anti-competitive clauses were an essential part of it)²³. Additionally, a new stream of follow-on actions -with the intervention of the litigation fund *Therium*²⁴- has started in the wake of the National Competition Commission (NCC) 2009 decision declaring the infringement by the petrol suppliers REPSOL, CEPSA and BP of article 101.1 TFEU through RPM²⁵. These new cases have prompted the request for a new preliminary ruling by the EUCJ on the binding effects of national competition authorities' decisions before Directive 2014/104/UE²⁶.

3.2. Abuses of dominance

Until recently, a few of the follow-on actions have related to damages caused by abuses of dominance in the telecommunications and energy sectors and in the commercialization of broadcasting football rights.

3.2.1. Telecommunications

Two of the successful damages claims to date involved claims against the former State Owned Enterprise (SOE) *Telefónica* for the harm it caused by unilateral abusive conduct in certain telecommunications-related markets.

The first was a follow-on damages claim by *3C Communication Services* for an abuse in the payphone services market that had been sanctioned by the Defence Competition Tribunal (DCT)²⁷. The Madrid Provincial Court (sect. 25) confirmed the compensation for the harm caused by Telefónica's denial/delay in the supply of leased phone lines²⁸.

judgment (3rd Ch.) of 23/11/17, *Gasorba SL et al v. REPSOL*, C-547/16 [EU:C:2017:891](#). On this case See C. Fratea "Commitment decisions and private actions for damages in EU competition law in light of the Gasorba judgement: a new opening from the Court of Justice of the European Union?" *ECLR* 39/12 (2018) 501-504 and S. Makris & A. Ruiz "Commitments and network governance in EU antitrust: Gasorba" *CMLR* 55 (2018) 1-29. The Spanish Supreme Court decided the case by its judgment of 7/2/18, [ES:TS:2018:297](#).

²² See Marcos *Global Competition Litigation Review* 182 (2013) 171.

²³ Judgments of 12/1/15, *Ribeira Baixa & Ribeira Alta v. REPSOL*, [ES:TS:2015:277](#); 31/3/15, *E.S. Pineda del Mar & Olma v. REPSOL*, [ES:TS:2015:1553](#) and 13/5/15, *Promotores Internacional & Pablo Rada Combustibles v. REPSOL*, [ES:TS:2015:2216](#).

²⁴ See R. Esteller "El fondo Therium exigirá a Repsol, Cepsa y BP daños por fijar los precios" [El Economista 19/07/16](#).

²⁵ NCC resolution of 30/7/09 ([652/07 Repsol/CEPSA/BP](#)).

²⁶ See request for a preliminary ruling from commercial court 2 of Madrid (Spain) lodged on 26/08/19, *ZA et al v. Repsol Comercial de Productos Petrolíferos SA* ([C-716/19](#)), the order of the court is of 29/7/19 ([ES:JMM:2019:88A](#)).

²⁷ DCT resolution of 1/2/95 ([350/94 Teléfonos aeropuertos](#)).

²⁸ Judgment of Provincial court of Madrid (sec. 25) of 8/5/7, *3C Telecommunications v. Telefónica*, [ES:APM:2007:6002](#). The final amount of the award was settled by the parties.

The second was a claim by *Conduit Europe* seeking compensation for harm caused by *Telefónica*'s abuse in the telephone directory enquiry services market. This market had been open to competition in 2003 but *Telefónica* had not complied with the liberalization measures and it did not provide *Conduit* -a new entrant in the market- with the subscriber data necessary to enter the market²⁹. The Madrid Provincial Court endorsed the calculation of the direct losses claimed by *Conduit* (€639.000) but dismissed compensation for lost profits³⁰.

There had been other set of damages claims against *Telefónica*, also to seek compensation for harm caused by abuse of dominance, mainly in follow-on claims.

Vodafone (Airtel) sought €670 million as compensation for the exclusionary practices of *Telefónica* as the incumbent in the mobile phone market to hinder Airtel's entry (a conduct that had been sanctioned before by the DCT³¹). The claim was apparently settled out of court.

Also, a €458 million collective damages claim was filed by the consumers association *Ausbanc* to compensate for harm suffered by consumers in the retail broadband services market because of price squeezing by *Telefónica* for which it had been fined by the European Commission³². The action was rejected at an early stage on procedural grounds (lack of standing of *Ausbanc*)³³.

3.2.2. ENERGY

There have been several successful damages claims in the energy industry; in particular in energy commercialization markets. Indeed, some of the very first antitrust private actions decided by the Spanish courts were claims following DCT's infringing decisions for abuse of dominance in the electricity markets³⁴. Also, in a stand-alone case, *Endesa* was ordered to pay €1 million in damages for the harm caused by an anticompetitive refusal to deal³⁵.

Moreover, several follow-on claims were pursued by a new entrant in the electricity retail market (*Céntrica*) against the incumbent operators for an abuse of dominance by electricity

²⁹ The duty to do so had been priorly declared by the National Telecommunications Commission.

³⁰ Judgment of Provincial Court of Madrid (sec. 28) of 25/5/6, *Conduit Europe v. Telefónica*, [ES:APM:2006:6773](#). See the account of the case by *Conduit*'s lawyer P. Hitchings "The *Conduit* case" en *Derecho de la competencia europeo y español. Curso de iniciación*, vol. VII, 2009, 157-176.

³¹ DCT resolution of 26/2/99 ([413/97 Airtel/Telefónica](#)). See R. Muñoz "Vodafone exige a Telefónica 670 millones por trabas a la competencia" *El País* 15/9/8.

³² Decision of 4/7/8 ([COMP/38.784 Wanadoo España v. Telefónica](#)) declaring *Telefónica* infringed article 102 TFEU through price squeezing in the retail broadband services market, Confirmed by EUGC judgment (Eighth Chamber) of 29/3/12 *Telefónica v Commission*, T-336/07 ([EU:T:2012:172](#)) and EU CJ (Fifth Chamber) of 10/7/14, C-295/12P ([EU:C:2014:2062](#))

³³ See Order of Provincial Court of Madrid (Sect. 28) of 30/9/14, *Ausbanc v. Telefónica* [ES:APM:2013:2461A](#). *Ausbanc* lost its legal standing as a "widely representative" association was excluded from the Consumers and Users Council because it performed activities that the law banned to consumer associations (commercial advertising), see judgment of National Court (Sect. 4) of 6/10/10, *Ausbanc*, [ES:AN:2010:4765](#).

³⁴ In the market for retail electricity in San Pau (Girona), see DCT resolution of 5/5/99 ([431/98 Eléctrica Curós](#)), and judgment of provincial court of Girona of 16/4/2 ([ES:APGI:2002:633](#), €66.000), and in the market for supply electricity in Caldas de Mont Bui (See DCT resolution of 19/2/99 ([473/98 Eléctrica Caldense](#)) and judgment of provincial court of Barcelona (sec. 15) of 1/12/1 ([ES:APB:2011:14053](#), €3.136.326,99).

³⁵ See Supreme Court Judgment of 12/11/12 ([ES:TS:2012:7944](#)).

wholesalers and producers, in respect of which they had already been fined by the NCC³⁶. Centrica claimed compensation for the harm suffered in its entrance to the electricity retail market caused by the incumbents' refusal to provide access to some information needed to operate in the market (information system on the supply points). Some of these claims have been dismissed on various grounds³⁷, but some of them have been accepted³⁸.

3.2.3. Football Broadcasting Rights

Other court rulings have been pronounced in damages claims relating to abuses of dominance (exclusivities or excessive pricing) in the sale of broadcasting football rights. After the DCT fined the Spanish National Football League in 1993, *Antena 3 TV* claimed damages that were initially awarded by the court of instance (€25,5 million on profits lost in advertising income) but that were ultimately rejected by the appeals court (deeming them “profit dreams”)³⁹. More recently, there has been a successful stand-alone claim by cable TV channel, *Cableuropa*, where the court has awarded €30 million plus interest in compensation for the excessive prices charged by the owner of broadcasting rights (*Audiovisual Sport SL/Sogecable SA*)⁴⁰.

3.3. Cartels

The Spanish experience regarding damages claims in cartel cases is rather limited. Whereas stand-alone actions are feasible (in some other types of infringement: vertical restraints and abuse of dominance), these are hardly viable in cartel cases, where for practical reasons the prior declaration of an infringement by the competition authorities is needed (i.e., they're always follow-on). Indeed, until the adoption of the Defence Competition Act in 2007, follow-on private claims could only be filed once that decision was confirmed by courts, and this could delay their initiation for around ten years.

³⁶ See NCC resolutions of 2/4/9 ([641/08 Céntrica/ENDESA](#)); of 2/4/9 ([642/08 Céntrica/Unión Fenosa](#)); of 2/4/9 ([644/8 Céntrica/Iberdrola](#)) and of 29/4/9 ([645/8 Céntrica/Hidrocantábrico](#)).

³⁷ See Supreme Court judgments of 6/7/17 *Centrica v. Iberdrola* ([ES:TS:2017:2792](#), statute of limitations) and before 4/9/13 ([ES:TS:2013:4739](#), lack of causation).

³⁸ See Supreme Court Judgment of 4/6/14, *Céntrica v. ENDESA* ([ES:TS:2014:294](#), even profit loss awarded) and Provincial Court of Madrid (Sec. 11) judgment of 29/7/15, *Céntrica v. Unión Fenosa* ([ES:APM:2015:13792](#))

³⁹ See judgment of commercial court 4 of Madrid of 7/6/05, *Antena 3 de TV SA v. LNFP*, [ES:JPI:2005:9](#) and judgment of provincial court of Madrid (sec. 25bis) of 18/12/06 ([ES:APM:2006:18320](#)).

⁴⁰ Judgment of first instance court 4 of Madrid of 4/3/10, *Cableuropa SAU v. Sogecable SA & Audiovisual Sport SL* [ES:JMM:2010:158](#). On a related matter *Mediaproducción SLU, Audiovisual Sport and Sogecable SA* were released from the anticompetitive agreement not to compete among themselves in the market for acquisition of broadcasting rights it had with *Audiovisual Sport SL*, which had already been declared null and void by NCC resolution of 14/4/10 (S/6/7, *AVS, Mediapro, Sogecable y Clubs de Fútbol de 1ª y 2ª División*), see Judgment of Supreme court 9/1/15 *AVS & Sogecable v. Mediapro* ([ES:TS:2015:191](#)) (¶¶13 and 16).

3.3.1. The leading case: industrial sugar cartel

The 1995 sugar cartel prompted the first follow-on cartel damages' claim to reach the Supreme Court⁴¹. The Supreme Court rulings in this case clarified some aspects regarding private damages' claims, for instance in relation to the binding effects of decisions by public enforcers, legal grounds for liability, harm quantification, passing-on defence and interests⁴². Damages awards were based on the estimated costs of the cartelized firms, by calculating the share of the price increase which was not caused by any increase in costs⁴³.

3.3.2. Follow-on claims in cartel cases

The institutional structure for the enforcement of competition law in Spain was modernized in 2007, with the creation of the National Competition Commission (NCC)⁴⁴. A leniency program was introduced and the powers of inspection of the NCC were strengthened⁴⁵. These are important factors in explaining the increase in the number of cartels found and sanctioned by the NCC thereafter. Not only did the number of cartels uncovered grow significantly after 2007, nearly trebling in comparison with the prior experience of the DCT, but the cartels that were uncovered had a broader scope and were of longer duration⁴⁶.

In addition, NCC decisions further eased follow-on claims by providing ample evidence and data on the effects that the declared infringements had in the market, furnishing valuable supportive information to facilitate claims by alleged victims (particularly to identify and quantify the harm).

Nevertheless, lack of public records on damages actions registered with the competent commercial courts makes it difficult to know about their existence, as eventually they are made public only once a judgment is issued⁴⁷. For example, following the complaint by a basketball

⁴¹ See judgments of 8/6/12, *Galletas Guyón v. ACOR*, [ES:TS:2012:5462](#) and of 7/11/13, *Nestlé v. Ebro*, [ES:TS:2013:5819](#). It was a follow-on claim to a decision by the Defence Competition Tribunal (DCT) in 1999 that fined sugar producers for a cartel that lasted one year (see DCT resolution of 15/4/99 [Sugar 426/98](#)).

⁴² See F. Marcos "Damages' claims in the Spanish Sugar cartel case" [Journal of Antitrust Enforcement 3/1 \(2015\) 1-21](#).

⁴³ See J. Delgado & E. Pérez-Asenjo "Economic evidence in Private-enforcement competition law in Spain" *ECLR* 32/10 (2011) 509.

⁴⁴ Later transformed into the National Markets & Competition Commission (NMCC) by Act 3/13 of 4/6/13 creating the NMCC ([Official State Gazette 154 of 5/6/13](#)).

⁴⁵ On the relative success of the Spanish leniency program see J. Maillo "Evaluación y retos del programa de clemencia español" in J. Guillén (dir) *Estudios sobre la potestad sancionadora en el Derecho de la Competencia*, 2015, 219-245. 221-222. Surprisingly, there is wide divergence with the situation in Portugal, see M. S. Ferro & E. Ameye "Leniency in the Iberian Peninsula: Two Worlds Apart" [Competition L. Rev. 12/1 \(2016\) 95-114](#).

⁴⁶ See J.R. Borrell, J.L. Jiménez & J.M. Ordóñez-de-Haro "The leniency programme: obstacles on the way to collude" [Journal of Antitrust Enforcement 3/1 \(2015\) 149-172](#) and "Análisis forense de los cárteles descubiertos en España" [Papeles de Economía Española 145 \(2015\) 82-103](#).

⁴⁷ See, for example, F. Marcos & A. Robles "¿Habrán reclamaciones de daños por el cartel de las desmotadoras de algodón?" [Osservatorio Antitrust 20/3/14](#) (speculating on potential follow on damages claims to NCC resolution 19/12/13 [S/0378/11 Desmotadoras de Algodón](#), although see judgment of Provincial Court of Sevilla (sec. 8) of 25/7/12 [ES:APSE:2012:2542](#)). Likewise there is information by several law firms regarding potential claims in the electric cables' cartel that the NMCC sanctioned in 2017 (NMCC resolution of 21/11/17 [Cables BT/MT S/DC/562/15](#)).

team (*Club Baloncesto Tizona SAD*), the Spanish Association of Basketball Clubs (ACB) was found to have infringed competition law through the imposition of disproportionate, inequitable and discriminatory economic and administrative conditions upon those teams that had earned promotion to League ACB on sporting merit⁴⁸. The complainant announced it would file damages claims against the ACB⁴⁹, and apparently other teams that might have been harmed have followed suit⁵⁰.

3.3.2.1. Paper envelopes

A paper envelopes' cartel that operated in the Spanish market was fined €44 million by the NCC⁵¹. The infringement occurred in the envelopes' cartel, which had simultaneously been uncovered by the European Commission and the Portuguese Competition Authority⁵². It was a market allocation and bid-rigging cartel from 1977 to 2010, though occasionally the cartelists also fixed prices. Accordingly, damages quantification was not as clear-cut an exercise as when it occurs in pure price fixing conspiracies⁵³.

To date, at least eleven follow-on actions have been filed in court of which ten have been successful on appeal⁵⁴. The provincial courts of Madrid and Barcelona vary in their estimation of the overcharge: both appeal courts agreed that the cartel caused harm to the claimants, but came to different conclusions regarding the amount of the overcharge (20% in Barcelona, 9,4% in Madrid)⁵⁵. It is expected that the Supreme Court will finally settle the matter in these cases, but until that happens one could anticipate that the success of victims in the claims filed so far may incentivise new claims being brought to court.

Judgment (section), date, ECLI	Overcharge	Claimant
Provincial court of Barcelona sec. 15, 10/1/20 ES:APB:2020:59	20%	Cortefiel
Provincial Court of Barcelona sec. 15, 10/1/20 ES:APB:2020:58	20%	Misiones Salesianas
Provincial Court of Barcelona sec. 15, 10/1/20 ES:APB:2020:201	20%	Grupo Planeta

⁴⁸ NMCC of 11/4/17, [S/DC/558/15 ACB](#).

⁴⁹ See F. Marcos "Baloncesto y libre competencia: la multa y la penitencia de la Liga ACB" [Almacén de Derecho 10/5/17](#) (with a list of the teams that could allegedly claim damages).

⁵⁰ See, for example, "El MoraBanc Andorra demanda a la ACB por el canon de ascenso" [As 2/8/19](#).

⁵¹ NCC of 25/3/13, [S/0316/10 Sobres de Papel](#). The NCC decision was upheld by the Supreme Court on the merits, only modifying the amount of the fine. The cartel was uncovered by a leniency application of ADVEO, and it even involved a separate export cartel (NCC of 15/10/12, [S/0318/10 Exportación de sobres](#)).

⁵² See Decision of the European Commission of 10/12/14([AT.39780 Envelopes](#)) and Decisions of the Portuguese Competition Authority of 29/3/16 ([PRC/2011/10, transaction with Antalis](#)) and of 16/11/16 ([PRC/2011/10](#)).

⁵³ See J. M. Connor & D. P. Werner "New Research on the effectiveness of bidding rings: implications for competition policies" [CPI April 2019, 6](#).

⁵⁴ Commenting the Madrid and Barcelona first instance judgments, see J.N. Otegui "Spain—Recent developments in competition damages claims: What once was just a possibility, is now a reality" [ECLR 40/1 \(2019\) 41-43](#) and "Developments in competition damages claims in Spain, take II: now we know Barcelona is the place to go..." [ECLR 40/5 \(2019\)](#).

⁵⁵ The last judgment on damages' claims on the paper envelopes' cartel was decided by commercial court 9 of Madrid on 13/3/20, *IFEMA v. ADVEO* [ES:JMM:2020:1552](#), following the criteria established by the Madrid Provincial Court in its two judgments on the case, setting the overcharge at 9,4% (€246.000).

Provincial Court of Barcelona sec. 15, 13/1/20 ES:APB:2020:60	20%	CIFDSA
Provincial Court of Barcelona sec. 15, 13/1/20 ES:APB:2020:186	20%	Mutua Madrileña
Provincial Court of Barcelona sec. 15, 13/1/20 ES:APB:2020:185	20%	Manos Unidas
Provincial Court of Barcelona sec. 15, 13/1/20 ES:APB:2020:184	20%	Caixa Ontiyent
Provincial Court of Barcelona sec. 15, 13/1/20 ES:APB:2020:698	20%	Bankoa
Provincial court of Madrid sec. 28, 3/2/20 ES:APM:2020:1	9,4%	Obras Misionales Pontificias
Provincial court of Madrid sec. 28, 3/2/20 ES:APM:2020:2	9,4%	Cámara de Comercio

3.3.2.2. Decennial insurance

In 2011 the NCC hit on a cartel in the real estate insurance market (decennial insurance) . Decennial insurance was made mandatory by law in 2000. The cartel involved three insurers and three reinsurers. The decision of the NCC even made a rough estimation of the harm that the cartel had caused during the six years it lasted (€282 million)⁵⁶. Upon judicial review, the amount of the total fine was reduced in half (from €120,7 million to €61,47 million) and the decision was annulled in relation to two of the companies (MAPFRE and Münchener)⁵⁷. Initially, building construction companies were those assumed to be directly harmed by the cartel, which allegedly caused an increase in the price of insurance⁵⁸, but the first successful damages action was filed by a rival insurer, obtaining €3 million, for the boycott and its exclusion from the market⁵⁹. However, there seem to be more pending claims in court⁶⁰.

3.3.3.2. Car manufacturers and Car distribution

Two leniency applications by *Seat SA* exposed a seam of anticompetitive practices in the Spanish auto distribution industry. Firstly, a global exchange of information involving twenty one manufacturers and two consulting firms that operated from 2003 to 2014 was sanctioned by the National Markets and Competition Commission (NMCC) with fines totalling €131 million⁶¹. Secondly, a hub-spoke cartel in the distribution of cars *Audi/Seat/VW* was uncovered

⁵⁶ See F. Marcos “The Spanish Property Insurance Cartel” [Connecticut Insurance Law Journal 18/2 \(2012\) 79-101](#).

⁵⁷ See F. Marcos “Lecciones de la revisión judicial del cártel del seguro decenal” [Actas de Derecho Industrial 36 \(2016\) 173-196](#) .

⁵⁸ F. Marcos “Why there might be not many damage claims arising from the Spanish Property Insurance Cartel?” in [L. A. Velasco et al \(dir.\) Private enforcement of Competition Law, 2011, 303-335](#).

⁵⁹ See judgment of commercial court 12 of Madrid of 9/5/14 ([ES:JMM:2014:3797](#)), confirmed on appeal by judgment of the provincial court of Madrid (sec. 28) of 3/7/17 ([ES:APM:2017:9034](#)). Recently, the Supreme Court has rejected the final appeal on this case, see M. Moreno “El Supremo condena a Caser, Scor y Asefa por limitar la competencia” [Cinco días 20/5/20](#). I commented the case in “Indemnización de daños y perjuicios por boicot a raíz cártel del seguro de daños decenal (SDD): Notas a propósito de la sentencia del juzgado mercantil nº 12 de Madrid de 9 de mayo de 2014 (*MUSAAT v. ASEFA, CASER y SCOR*)” [Revista de Derecho de la Competencia y Distribución 16/1\(2015\)](#).

⁶⁰ Indeed the first favorable judgment has been published recently, see judgment of 9/6/20 (*Realia v. ASEFA & SCOR*, PO537/17), awarding €2.651.579,82 on damages plus interest, and my comment on the case “Un ‘paraguas roto’ y el espejismo de los daños causados por el cártel del seguro decenal” [Almacén de Derecho 19/6/20](#) (critically assessing the grounds of the court’s decision).

⁶¹ NMCC resolution of 23/07/15 ([S/482/13 Fabricantes de Automóviles](#)). This resolution was confirmed by the National court (with the exception of Mazda’s involvement in the infringement), see “La justicia rechaza 17 recursos de los fabricantes de coches y confirma las multas por cartel” [Cinco Días 13/1/20](#).

and circa one hundred distributors were sanctioned by the NMCC⁶². Thirdly, Information found in the inspections conducted at the premises of a consulting firm who operated as “mystery” shopping in charge of controlling compliance with the coordination of discounts and commercial campaigns (*ANT Servicalidad SL*) set by the cartel led to the discovery of six additional cartels in the distribution of cars involving Chevrolet⁶³, Hyundai⁶⁴, Land Rover⁶⁵, Opel⁶⁶, Toyota⁶⁷ and Volvo⁶⁸.

After those decisions were published, follow-on damages claims against the infringers were initiated by many of those who bought cars of those brands during the infringement period. Initially there was a major collective claim organized by OCU (*Organización de consumidores y Usuarios*), which allegedly gathered the interest of 160.000 victims⁶⁹. Then, several individual claims were brought before different courts. Almost all of them have been dismissed, mainly due to lack of proof of harm⁷⁰, but also because of lack of standing of the claimant⁷¹, or because the relevant NMCC decision had been appealed in court⁷².

3.3.3.3. School Books Publishers

A school book cartel organized by the main association of school textbook publishers (*Asociación Nacional de Editores de Libros y Materiales de Enseñanza-ANELE*) and 34

⁶² NMCC of 28/5/15 ([S/471/13 Concesionarios Audi/Seat/VW](#)).

⁶³ NMCC resolution of 28/4/15 ([S/DC/505/12 Concesionarios Chevrolet](#)).

⁶⁴ NMCC resolution of 05/03/15 ([S/DC/488/13 Concesionarios Hyundai](#)).

⁶⁵ NMCC resolution of 5/3/15 ([S/DC/487/13 Concesionarios Land Rover](#)).

⁶⁶ NMCC resolution of 5/3/15 ([S/DC/489/13 Concesionarios Opel](#)).

⁶⁷ NMCC resolution of 5/3/15 ([S/0486/13 Concesionarios Toyota](#)).

⁶⁸ NMCC resolution of 12/7/16 ([S/0506/14 Concesionarios Volvo](#)).

⁶⁹ See OCU [“Concesionarios de coches: Reclama contra los precios pactados”, 15/9/15](#) and E. Paniagua [“Demanda colectiva contra el cártel de los concesionarios” El Mundo 29/10/15](#).

⁷⁰ See “¿Cómo reclamar si fui víctima del cártel de los coches?” [Cinco Días 12/6/15](#) (identifying the harm in the inferior discounts applied in car acquisitions). Judgments of Commercial Court of Donostia 1 of 11/7/19, *Carlos Alberto & Verónica v. Menai SL* [ES:JMSS:2019:1014](#); *Ricardo et al v. Vascongada de Automóviles SL* [ES:JMSS:2019:1013](#); *Pilar & Mari Luz v. Autowag SL*, [ES:JMSS:2019:1012](#) and also of commercial court Gijón 3 of 9/3/20, *Pedro Enrique v. Tartiere Auto SL* [ES:JMO:2020:729](#), rejected the claim for lack of harm in the acquisition of a VW Polo 2.0 TDI 143 CV, as the alleged overcharge (€2.000) would have meant that no margin was made by the retailers (Legal Ground 3. Id. Judgments of commercial court Gijón 3 of 9/3/20. *Emiliano v. Tartiere Auto SL* [ES:JMO:2020:728](#) Audi A3 2.0 TDI 143CV (Legal Ground 3). Only successful follow-on claim to NMCC resolution of 28/5/15 ([S/DC/471/13 Concesionarios Audi/Seat/VW](#)) is Judgment of commercial Court of Oviedo 1 of 18/2/20, *Micaela v. Tartiere Auto SL* [ES:JMO:2020:569](#), in which harm is presumed and the overcharge estimated to be between 5-7.5% (Legal Ground 3): 1.398,24€ (on the acquisition of a VW Beetle Design 1,6 TDI 150 CV, net price 19.001.77€)

⁷¹ Following NMCC resolution of 5/3/15 ([S/489/13 concesionarios OPEL](#)), Judgment of commercial court of Madrid 12 of 24/9/19, *Baltasar v. Talleres Prizan SA* ([ES:JMM:2019:4227](#)).

⁷² Following NMCC of 23/07/15 ([S/0482/13 fabricantes de automóviles](#)), Judgment of commercial Court of Bilbao 1 of 9/7/19, *Jose Daniel v. Alzaga Motor SA* ([ES:JMBI:2019:1146](#)); *Erica v. Alluitz Motor SL* [ES:JMBI:2019:1047](#) and of 14/3/18, *Samuel v. VW Group España Distribución SA* [ES:JMBI:2018:1278](#)).

member publishers was sanctioned by the NMCC in 2019 with fines totalling €33,88 million⁷³. The infringement involved the fixing of prices and other commercial conditions (through the Code of Conduct of the association) and delaying and making more expensive the use of digital books (from 2012 to 2018).

News reports refer to a collective claim started by the Madrid Federation of Associations of student's parents *Francisco Giner de Los Rios*⁷⁴, and the information publicly available to join the claim says the cartel overcharge would be not less than 32%⁷⁵.

3.3.3.4. Railway Electrification and Electromechanics

A leniency application by Alstom lead to the uncovering of three bid-rigging cartels in the public procurement of the electrification and electromechanics infrastructure of conventional and high-speed railway managed by the State Owned ADIF (Administrator of Railway Infrastructures) in different time periods ranging from May 2002 to November 2016⁷⁶.

Fifteen companies and fourteen directors received fines of over €118 million. Not long after the NMCC decision was made public, ADIF announced the filing of claims to obtain compensation for the harm caused by these cartels⁷⁷. In the meantime, it has been reported that ADIF has decided to retain 10% of the price on the pending contracts with the cartelists⁷⁸, and it has introduced in future contracts penalty clauses with punitive damages up to 10% of the price of contract in case of fraud or anticompetitive behavior by its suppliers⁷⁹.

3.3.3.5. Milk procurement

Following a complaint by an individual farmer (*Sociedad Agraria de Transformación San Antón*), a milk procurement cartel involving eight dairy firms was discovered by the NMCC in 2015⁸⁰. Two dairy producers' associations also collaborated in the infringement which lasted for 13 years (2000-2013), and which resulted in a fine of €882 million. Although the NMCC decision was later annulled following some procedural shortcomings, the cartel was re-sanctioned in 2019⁸¹.

⁷³ NMCC resolution of 30/5/19 ([ANELE S/DC/594/16](#)).

⁷⁴ See "Las asociaciones de padres demandarán a los editores por pactar los precios de los libros de texto" [ABC 7/10/19](#) and O. R. Sanmartín "Las asociaciones de padres de alumnos demandarán a los editores por los precios de los libros de texto" [El Mundo 7/10/19](#) (overcharge of €214 million per year, overall €1.300 million).

⁷⁵ See FAPA Francisco Giner de los Ríos, [Demanda a las editoriales de libros de texto](#). See also <http://cartellibrosdetexto.es/>.

⁷⁶ NMCC resolution of 14/3/19 [S/DC/598/16 Electrificación y Electromecánicas Ferroviarias](#).

⁷⁷ See [PR 1/4/19](#) "Adif y Adif AV reclamarán daños u perjuicios a las empresas sancionadas" and "Adif pedirá daños y perjuicios a las empresas multadas por la CNMC por cartel" [Expansión 2/4/19](#).

⁷⁸ See E. G. Sevillano "Adif castiga a las empresas del cartel del AVE y les retiene un 10% en sus contratos" [El País 15/8/19](#).

⁷⁹ See "Adif multará a contratistas que cometan infracciones para blindarse ante nuevos cárteles" [Europapress 16/5/19](#).

⁸⁰ See NMCC resolution of 26/2/15 [S/425/12 Industrias Lácteas 2](#).

⁸¹ See NMCC resolution of 11/7/19 [S/425/12 Industrias Lácteas 2](#).

A damages action in this case was filed early on 2016⁸² following the first decision of the NMCC, but the impact the public enforcement fiasco may have on these claims remains, as yet, unclear.

This was a buyer cartel, which reduced the price farmers received for raw milk (estimations of the harm range from €0'01 to €0'03 per litre of milk). Interest by potential claimants was revived following the second decision adopted by the NMCC in 2019, with the press reporting that several claims are being organized, and litigation funds providing financial support to some of them⁸³.

3.3.3.6 Trucks' manufacturers

Although a relatively recent 'case', which is currently being litigated in the commercial courts across the country and elsewhere across the EU, the trucks' manufacturers cartel provides the best example of the *status quaestionis* of antitrust damages claims in Spain. As is widely known, it involves litigation against the six trucks manufacturers that were involved in a cartel that monopolized the medium and heavy trucks European market for fourteen years (1997-2011). The cartel was uncovered by a leniency application by MAN, and led to heavy fines imposed by the European Commission on DAF, Daimler, IVECO and Renault/Volvo, SCANIA (€3.810 million)⁸⁴.

Together with Germany, Spain is one of the jurisdictions in which most claims have been filed in the courts to date, and there have already been a considerable number of rulings by the Spanish courts. Indeed, the number of judgments in trucks-related litigation (including appeal judgments) is well above 300, making it probably the most widely litigated private antitrust damages case in Spain to date. Most of the judgments have ruled in favour of the claimants (81% of suits), although there is considerable divergence among the courts' rulings regarding the level of the overcharge and, consequently, of the amount of damages awarded⁸⁵.

4. Conclusion

Although private enforcement of competition law has long been possible in Spain, there has been a recent upsurge in the volume of antitrust damages claims in the courts' dockets. The uncovering of several cartels by both the European Commission and the Spanish competition authorities has prompted a series of follow-on damages claims.

Until now, the lawsuits have been decided within the framework of traditional tort law, which has been construed by the Spanish courts in a way to accommodate the particular issues characterising these claims. Supreme Court opinions on the damages claims in the sugar cartel have become influential for the lower courts at least until the the new rules implementing Directive 2014/104/EU are applicable. There is ongoing controversy regarding the transitory

⁸² See "Juzgan en Granada a cuatro lácteas por posible 'cártel' para pactar precios" [La Vanguardia 28/9/18](#) (€8,6 million claim by SAT San Antón).

⁸³ See "Hausfeld Pairs Up With Madrid Firm To Target Milk Cartel" [CPI 9/6/20](#).

⁸⁴ See Decisions of 19/7/16 ([AT.39824 -Trucks](#)) and 27/9/17 ([AT.39824 -Trucks](#)).

⁸⁵ See F. Marcos "Primeras sentencias de las Audiencias provinciales sobre los daños causados por el cártel de fabricantes de camiones" *RCDC* 26 (2020).

regime of the Directive which is a complicating factor for the cases pending in court; the substantive rules of the Directive will be fully applicable for future claims, facilitating the compensation of those harmed by anticompetitive behaviour.

References

- E. Ameye “Spain” in I.K. Gotts (ed.) *The Private Enforcement Competition Review*, 9th ed. 2016, 350-363.
- J.R. Borrell, J.L. Jiménez & J.M. Ordóñez-de-Haro “Análisis forense de los cárteles descubiertos en España” *Papeles Econ. Española* 145 (2015) 82-103.
- “The leniency programme: obstacles on the way to collude” *Journal of Antitrust Enforcement* 3/1 (2015) 149-172.
- P. Callol & J. Manzarbeitia “Antitrust damages litigation- key aspects of cartel damages in Spain” *ECLR* 38 (2017) 374-380.
- J. M. Connor & D. P. Werner “New Research on the effectiveness of bidding rings: implications for competition policies” *CPI April* 2019, 2-10.
- J. Delgado & E. Pérez-Asenjo “Economic evidence in Private-enforcement competition law in Spain” *ECLR* 32/10 (2011) 507-512.
- M. S. Ferro & E. Ameye “Leniency in the Iberian Peninsula: Two Worlds Apart” *Competition L. Rev.* 12/1 (2016) 95-114.
- C. Fratea “Commitment decisions and private actions for damages in EU competition law in light of the Gasorba judgement: a new opening from the Court of Justice of the European Union?” *ECLR* 39/12 (2018) 501-504.
- J. Maíllo “Evaluación y retos del programa de clemencia español” in J. Guillén (dir) *Estudios sobre la potestad sancionadora en el Derecho de la Competencia*, 2015, 219-245.
- S. Makris & A. Ruiz “Commitments and network governance in EU antitrust: Gasorba” *CMLR* 55 (2018) 1-29.
- F. Marcos “Primeras sentencias de las Audiencias provinciales sobre los daños causados por el cártel de fabricantes de camiones” *RCDC* 26 (2020).
- “De nuevo sobre la prescripción de las acciones de daños causados por el cártel de los camiones” *Almacén de Derecho* 27/8/20.
- “Un ‘paraguas roto’ y el espejismo de los daños causados por el cártel del seguro decenal” *Almacén de Derecho* 19/6/20.
- “Why there might be not many damage claims arising from the Spanish Property Insurance Cartel?” in *L. A. Velasco et al (dir.) Private enforcement of Competition Law*, 2011, 303-335.
- “The Spanish Property Insurance Cartel” *Connecticut Insurance Law Journal* 18/2 (2012) 79-101.
- “Competition Law Private Litigation in the Spanish Courts (1999-2012)” *Global Competition Litigation Rev.* 182 (2013) 167-208.
- “Damages’ claims in the Spanish Sugar cartel case” *J. Antitrust Enforcement* 3/1 (2015) 1-21.
- “Lecciones de la revisión judicial del cártel del seguro decenal” *Actas de Derecho Industrial* 36 (2016) 173-196.
- “Spain” in B.J. Rodger, M.S. Ferro & F. Marcos (dirs) *The EU Antitrust Damages Directive. Transposition across the Member States*, 2019, 326-357.
- F. Marcos & A. Robles “¿Habrá reclamaciones de daños por el cartel de las desmotadoras de algodón?” *Osservatorio Antitrust* 20/3/14
- J.N. Otegui “Spain—Recent developments in competition damages claims: What once was just a possibility, is now a reality” *ECLR* 40/1 (2019) 41-43.
- “Developments in competition damages claims in Spain, take II: now we know Barcelona is the place to go...” *ECLR* 40/5 (2019).
- F. Wijckmans “Pozuelo4: de minimis treatment of exclusive purchase (single branding) obligations” *JECLAP* 6/6 (2015) 413-415.