Public enforcement against restrictive agreements: the practice of the Spanish Competition Authority (2009-2025)

Authors:

Daniel García-Zarza Martínez, Comisión Nacional de los Mercados y la Competencia

Pablo Ibáñez Colomo, London School of Economics and College of Europe

Abstract:

This article analyses the evolution of the activity and the priorities of the Spanish Competition Authority when enforcing Articles 1 of Law 15/2007 and 101 of the TFEU. It considers the period between that followed the entry into force of Law 15/2007 until the end of 2025. It provides both a quantitative and a qualitative perspective of the Authority's practice. The article offers a comparative angle, with a particular emphasis on the European Commission's activity over the past two decades.

Keywords:

Horizontal agreement, cartel, vertical agreement, collusion, commitments.

JEL codes:

K21, L41

1. Introducción

The entry into force of Regulation 1/2003[1] was a watershed moment in European competition law, and this for several reasons. Commentators tend to place an emphasis on the decentralisation of the interpretation and application of Article 101(3) of the Treaty on the Functioning of the European Union (hereinafter, TFEU) – what came to be known as the 'Big Bang'.[2] A perspective of two decades suggests that this factor, however revolutionary at the time, may not have been the most consequential in practice. In hindsight, it looks like the most significant and lasting impact of the regime has probably been the change it triggered on the public enforcement of competition law at the national level. Because Regulation 1/2003 gave the European Commission much greater leeway to decide on its enforcement priorities, it also placed more demands on national competition authorities. This institutional choice favoured – if not forced – the coming of age of national systems.

An emblematic milestone marking the transition to a new model in Spain was the creation of a new competition authority – the *Comisión Nacional de la Competencia* – by virtue of Law 15/2007.[3] This body, which would be subsequently replaced by the *Comisión Nacional de los Mercados y de la Competencia*,[4] replaced the *Tribunal de Defensa de la Competencia*, laid down the foundations for a competition law regime that would be comparable to that enforced by the European Commission. In this vein, the investigation and decision-making functions, which were divided under the previous regime, were amalgamated into a single body. Beyond the integration of functions, Law 15/2007 strengthened the existing mechanisms to make enforcement more effective and bring it in line with Regulation 1/2003. For instance, the new regime enabled the new authority to adopt commitment decisions and therefore close investigations without the need to adopt an infringement decision.[5]

This paper considers how, following the entry into force of Law 15/2007, the *Comisión Nacional de la Competencia* and the *Comisión Nacional de los Mercados y de la Competencia* (hereinafter collectively referred to as the 'Spanish Competition Authority') have made use of their powers in relation to agreements, concerted practices and decisions by associations of undertakings that may restrict competition. The analysis is both quantitative and qualitative. It is quantitative in the sense that it is based on a systematic review of all decisions adopted pursuant to Article 1 of Law 15/2007[6] and/or Article 101 TFEU. It considers all of the activity of the Spanish Competition Authority from 2009 until the end of 2025. The analysis covers both decisions establishing an infringement[7] – functionally equivalent to those adopted by

[1] 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 [2003] OJ L1/1.

[2] VAN BAEL, I. 'A "Big Bang" in EC Antitrust Enforcement Procedure' in *30 Years of European Legal Studies at the College of Europe / 30 ans d'études juridiques européennes au Collège d'Europe*, P.I.E. – Peter Lang, Bruxelles, Bruxelles, Bern, Berlin, Frankfurt am Main, New York, Oxford, Wien, 2005.

[3] Law 15/2007 of 3 July on the Defence of Competition, Official State Gazette (*Boletín Oficial del Estado*, BOE) No. 159 of 4 July 2007.

[4] Law 3/2013 of 4 June establishing the National Commission on Markets and Competition (CNMC), BOE No. 134 of 5 June 2013.

[5] Article 52 Law 15/2007.

[6] Article 1 of Law 15/2007 is virtually identical in its content and structure to Article 101 TFEU.

[7] Ibid, Article 53.

the European Commission pursuant to Article 7 of Regulation 1/2003[8] – and decisions accepting commitments – and thus analogous to so-called Article 9 decisions under Regulation 1/2003.[9]

The analysis is qualitative, in turn, in that it looks beyond the aggregate figures and seeks to build a narrative shedding light on the evolution of the enforcement priorities of the Spanish Competition Authority. This qualitative perspective tells a story that is consistent with the ambitions underpinning the adoption of Law 15/2007, namely the introduction of a regime that would lead over time to the coming of age of competition law enforcement in Spain. The early administrative practice under the regime is of the sort that one would expect in a jurisdiction where a competition law culture has not yet been fully developed. Accordingly, the focus was placed on blatant cartel and cartel-like behaviour, often in tightly regulated sectors and professions. Over time, enforcement converged with the EU one. It is now confronted with the same dilemmas and challenges.

Both perspectives on the enforcement activity of the Spanish Competition Authority are presented and organised as follows. Section 2 focuses on the quantitative aspects. It considers enforcement from a variety of angles, including the overall levels of activity, the mechanisms by which the policy objectives are attained and the areas of activity that have been prioritised. The single most salient factor that stems from this analysis is the progressive decline in enforcement. Section 3, in turn, focuses on the qualitative dimension. In this sense, it seeks to provide potential explanations for the trends observed in the preceding one – including the decline in enforcement, mentioned above – and to anticipate future trends in the evolution of the regime. Wider trends manifested across Europe – including the fall of cartel enforcement and of leniency applications – are part of the discussion.

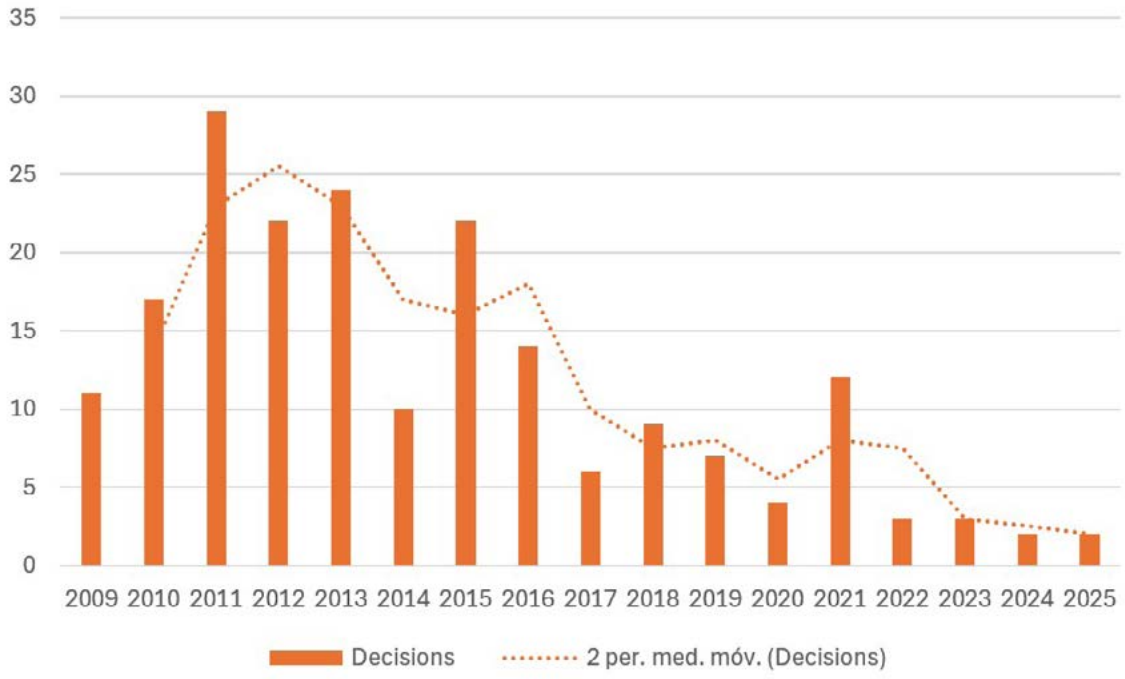
2. Quantitative perspective

Levels of activity

The overall levels of activity of the Spanish Competition Authority are captured in Figure 1. One can identify three clear trends. First, the early days of enforcement are marked by a steady increase in activity, up from a total of 11 decisions in 2009 to a peak of 29 decisions in 2011. This first period is followed by one of moderate decline up until the Covid-19 pandemic. This period of steady fall – from 24 and 22 decisions observed in, respectively, 2013 and 2015, to 7 and 4 decisions in 2019 and 2020 – gave way to the current post-pandemic era, which sees the adoption of 2 or 3 decisions in any given year. The potential explanations behind the progressive decline in enforcement are discussed in Section 3. It makes sense to mention at this stage, however, that the data does not appear to suggest an abrupt change following the creation of the *Comisión Nacional de los Mercados y de la Competencia* to replace the *Comisión Nacional de la Competencia*.

[8] Article 7 Regulation 1/2003.
[9] Article 9 Regulation 1/2003.

Figure 1.
Total article 1 Law 15/2007 and 101 TFEU decisions (2009–2025)



Source: own elaboration based on publicly available data (www.cnmc.es)

Enforcement instruments

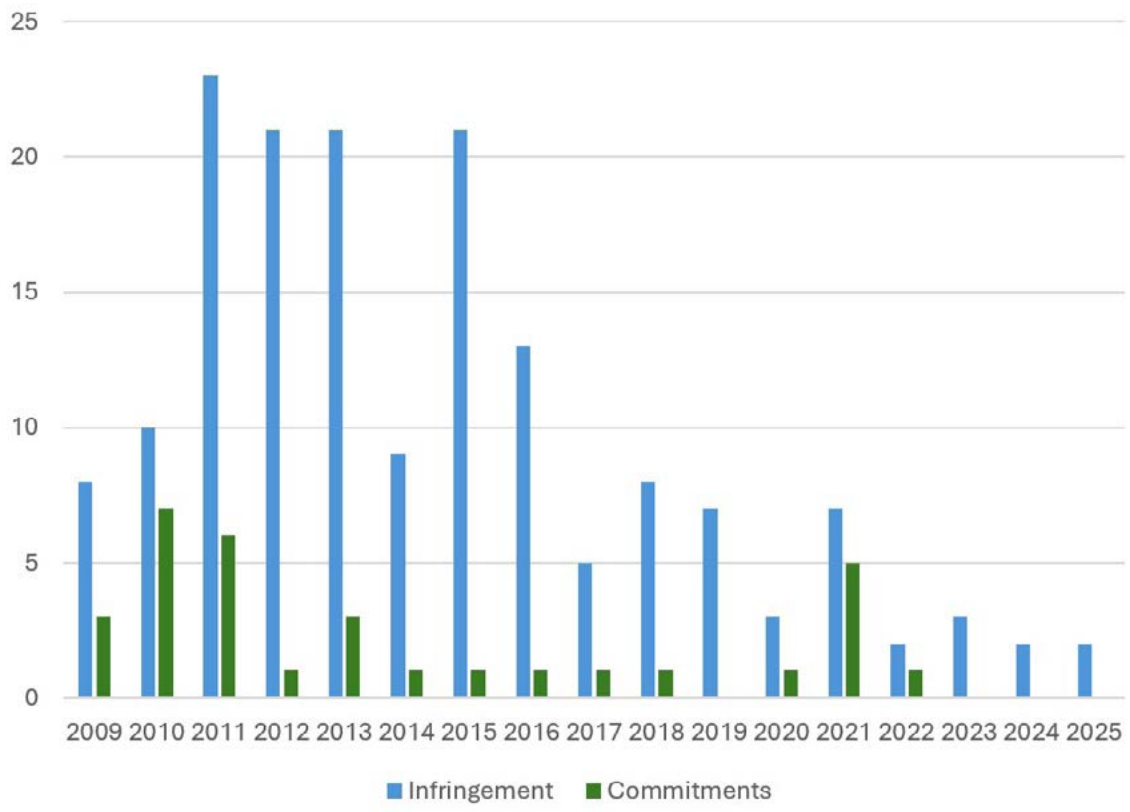
As mentioned in the introduction, proceedings before the Spanish Competition Authority are brought to an end in two main ways. First, by means of an infringement decision; and second, by making the commitments offered by the parties binding upon them. There is no difference in this sense between the EU and the Spanish regimes. The difference is one of focus of enforcement, rather than one of principle. One of the most salient trends in EU competition law over the past decade, in fact, has been the prominent role of commitment decisions in the makeup of the European Commission's administrative practice over the past three decades[10], particularly during the first decade under the regime introduced by virtue of Regulation 1/2003.[11]

[10] DUNNE, N. *Commitment Decisions in EU Competition Law*. Journal of Competition Law and Economics, 2014, 10(2), 399–444,

[11] See in this regard EUROPEAN COMMISSION *EX post evaluation of the implementation and effectiveness of EU antitrust remedies*, 2025, available at https://competition-policy.ec.europa.eu/document/download/53e9348d-4f11-46ef-9098-526e24313ee8_en, p. 64. (accessed 30 January 2026).

The figure is markedly lower at the Spanish level. Figure 2 captures the pre-eminence of infringement decisions in the enforcement landscape, at least when one considers the activity of the Spanish Competition Authority. It is not necessary to engage in detailed calculations to see that commitment decisions have occupied a considerably less important place in the Spanish system. In spite of an auspicious start, visible in 2010 and 2011, subsequent years revealed minimal enforcement by means of this instrument. From 2014 onwards, the Spanish Competition Authority adopted, at most, one commitment decision in a given year; what is more, it has not issued a single one since 2022. The observed discrepancy between the EU and Spanish levels of enforcement may be partly explained by the priorities set by each of the authorities. This point is addressed in the next section.

Figure 2.
Infringement and commitment decisions, by year (2009–2025)



Source: own elaboration based on publicly available data (www.cnmc.es)

Focus of enforcement

The enforcement priorities become apparent when one pays attention to Figure 3. The activity of the Spanish Competition Authority has focused on two categories of conduct, which

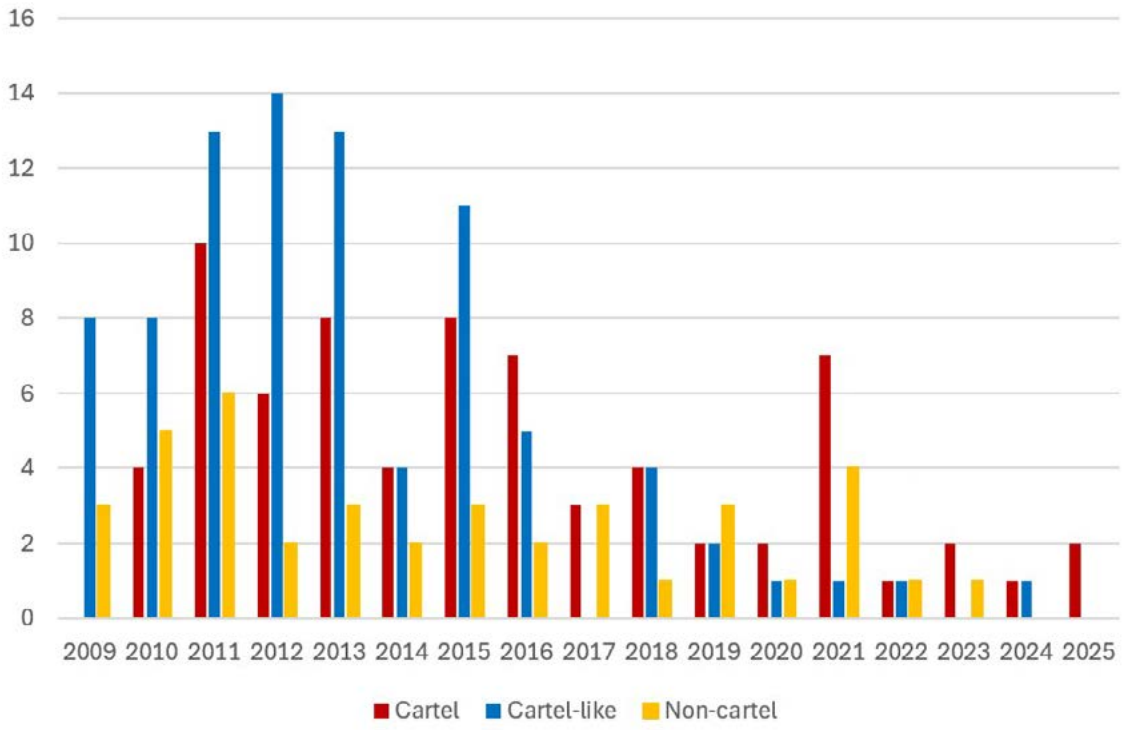
are labelled, respectively, cartel and cartel-like. Several reasons justify the use of these categories. To begin with, the Spanish Competition Authority was initially inconsistent in the formal categorisation of conduct as a cartel. Its approach differed, in this sense, from the treatment of these practices by the European Commission following the adoption of Regulation 1/2003. Second, conduct categorised as 'cartel-like' often differs from the typical cartel in a number of respects. Unlike the latter, it is not uncovered by means of a leniency application or a request of information aimed at putting together fragmentary evidence. Typically, cartel-like conduct is not concealed from public authorities. The category comprises, instead, regulatory or quasi-regulatory obligations imposed by a professional or trade association. More than anything, this category betrays the absence of a 'competition law culture' in some sectors of the economy.

It makes sense to provide some examples so as to capture the essence of what is meant by 'cartel-like' conduct. In *Asociación de Editores de Diarios Españoles*,[12] for instance, the Spanish Competition Authority expressed concerns with a number of restraints issued by an association of press publishers. The said restraints were found to have, as their object, the coordination of the copyright licensing activities by its members and were as such found to be restrictive of competition by their very nature. A similar scenario was considered in *Asociación Española de Radiodifusión Comercial*.[13] Other cases dealing with cartel-like conduct concern the setting of tariffs by professional associations. Among others, this behaviour was considered in *Autores Literarios de Medios Audiovisuales*.[14]

Figure 3 usefully illustrates how the ratio between cartel and cartel-like conduct evolved over time. The latter dominated enforcement in the early years. Their peak coincided with the highest levels of activity overall. For instance, more than 50% of decisions were cartel-like ones in 2012 and 2013, just to mention the most salient examples. The priorities evolved, and cartel conduct progressively became the focus of the Spanish Competition Authority. These cases overtook cartel-like conduct for the first time in 2016 and, in a context of overall decline of enforcement, have become the core priority – it is, in fact, the only category that is represented in every given year since 2017. The status of cartels in the enforcement landscape is very much in line with the way in which the European Commission chose to make use of its resources in the years that followed the adoption of Regulation 1/2003 – that is, before the decline of cartel enforcement observed in recent years.[15]

[12] Decision of 10 May 2011, case 2761/07 *Asociación de Editores de Diarios Españoles*.
[13] Decision of 7 April 2016, case S/0518/14 *Asociación Española de Radiodifusión Comercial*.
[14] Decision of 3 October 2012, case S/0371/11 *Autores Literarios de Medios Audiovisuales*.
[15] See European Commission statistics on cartel decisions at European Commission cartel cases and statistics (accessed 30 january 2026).

Figure 3.
Cartel, cartel-like and non-cartel decisions, by year (2009-2025)



Source: own elaboration based on publicly available data (www.cnmc.es)

As far as non-cartel cases are concerned, Figure 4 adds some insights regarding the enforcement priorities of the Spanish Competition Authority. What stands out immediately – in particular when compared with administrative action at the EU level[16] – is that around half of non-cartel cases concern vertical restraints.[17] Other cases feature vertical licensing[18] and horizontal cooperation (with a particular emphasis on the acquisition and exploitation of television content[19]). It is worth mentioning, finally, that a significant fraction of non-cartel practice concerns collective bargaining agreements. The focus on these practices, which may be unusual in a pan-European context, is not so surprising when put in perspective. These cases

[16] See in particular Commission Decision of 9 July 2019 case AT.40432 *Character merchandise*.

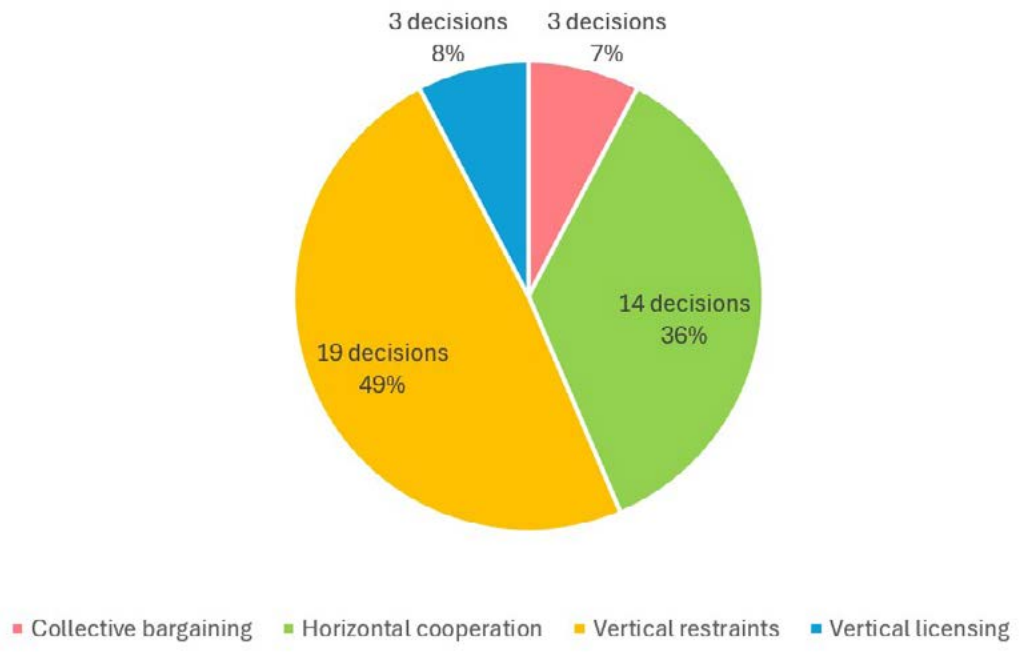
[17] See in particular decision of 29 July 2019 case 2697/06 CEPSA ESTACIONES DE SERVICIO, S.A., which has been a recurrent issue in Spanish competition law; decision of 13 September 2010 case S/0162/09 SEMILLAS DE GIRASOL, on the distribution of seeds; and decision of 6 February 2020 case S/0631/18 ADIDAS ESPAÑA, on online distribution.

[18] See in particular the two instalments of the Mediapro saga – decisions of 17 March 2011 case S/0153/09 MEDIAPRO and 7 February 2018 case S/DC/0604/17 MEDIAPRO FÚTBOL; and decision of 4 July 2013 case S/0312/10 CARPA DORADA Y CLUB DE VARIEDADES VEGETALES PROTEGIDAS, on the licensing of plant varieties.

[19] Decisions of 30 June 2010, case S/0245/10 ANTENA 3/VEO TELEVISION; 28 January 2010 case S/0020/07 TRIO PLUS; 7 February 2018 case S/DC/0604/17 MEDIAPRO FÚTBOL; 14 April 2010 case S/0006/07 AVS, MEDIAPRO, SOGECABLE, Y CLUBS DE FUTBOL DE 1ª Y 2ª DIVISION.

appear to be aimed at tackling potentially restrictive practices in some sectors where a 'culture of competition' had yet to develop or remained weak. From this perspective, they appear to complement cartel-like cases which address the same reality.

Figure 4.
Non-cartel decisions, by type (2009-2025)



Source: own elaboration based on publicly available data (www.cnmc.es)

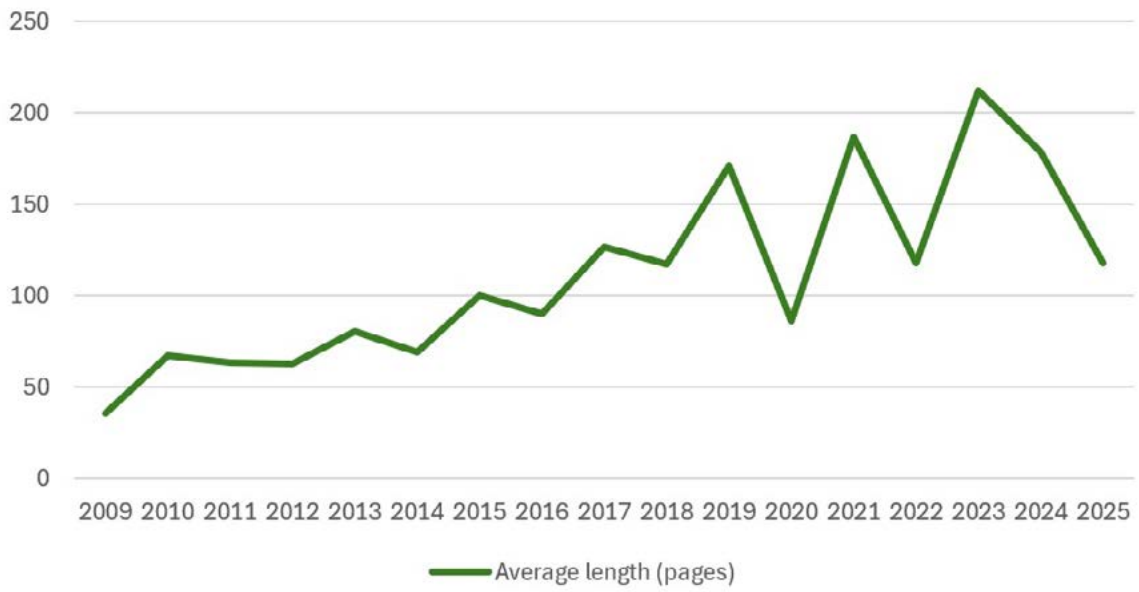
Style of enforcement

Some aspects about the Spanish Competition Authority's style of enforcement have already become apparent in the discussion above. It has been mentioned, for instance, that the analysis became more formal over time. As years went by, practices were explicitly and systematically characterised as a cartel where relevant. One can rely on other proxies to get a sense of the extent to which the style of enforcement evolved. A proxy that comes to mind in this sense is the length of the decisions. It would be reasonable to expect that relatively more rigorous decisions – both from a legal and an economic perspective – will tend to be, other things being equal, longer and more detailed.

The evolution of decision-making by the Spanish Competition Authority reveals a steady increase in the length of (both infringement and non-infringement) decisions. As shown in Figure 5, there is more than a four-fold difference between the average length of infringement decisions in 2009 (below 50 pages) and 2023, which represents the peak at over 200 pages. The conclusion does not change when one considers periods longer than a year. Between

2009 and 2013, there was not a single year when the average number of pages exceeded 100 pages. By contrast, the average exceeds 150 pages in the five-year period between 2021 and 2025. If there was any doubt, this trend is not specific to enforcement at the Spanish level. Similar empirical studies reveal a comparable rise in the length of decisions adopted by the European Commission.[20] The growing demands in terms of evidence, which are inevitably reflected in the length of decisions, are in fact a common theme in the literature.[21]

Figure 5.
Average length of sanctioning decisions (pages)



Source: own elaboration based on publicly available data (www.cnmc.es)

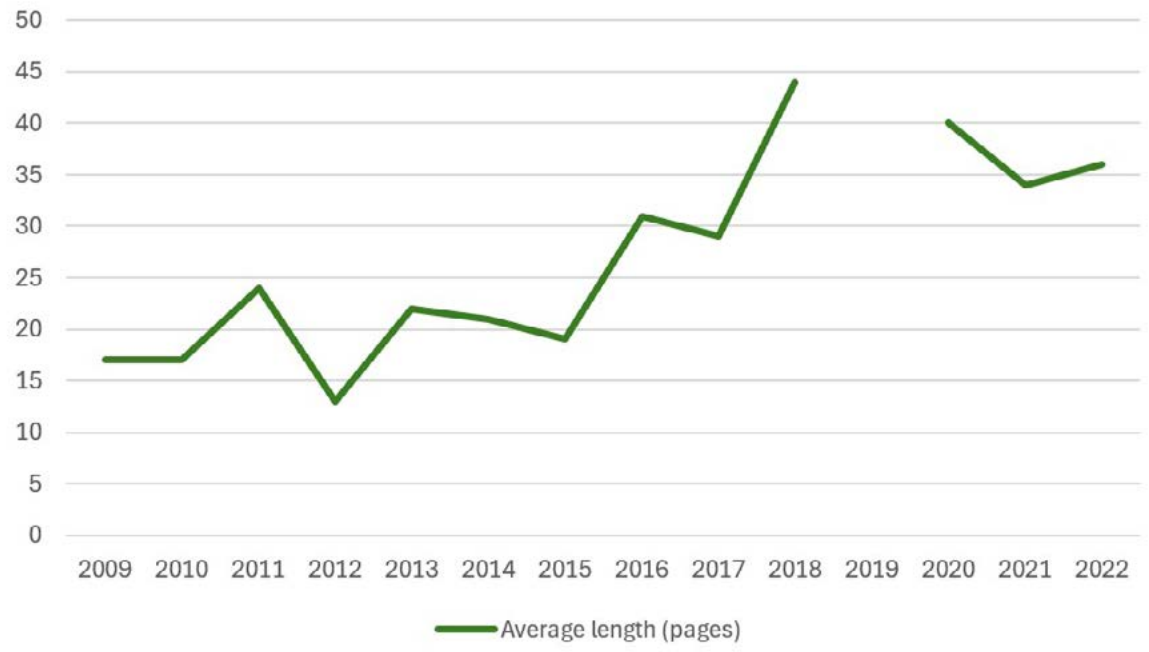
Figure 6, in turn, captures how the length of commitment decisions has evolved over time. The trend is similar in every way. One can observe an equally significant increase: the average extent of a decision stayed at 17 pages in 2009 but had climbed to 44 pages (in a single decision) by 2018. If anything, the pattern towards substantially longer decisions is all the more remarkable as far as these instruments are concerned. After all, a competition authority is not required to establish an infringement in this context; the point of the decision is instead

[20] IBÁÑEZ COLOMO, P.; KALINTIRI, A. The Evolution of EU Antitrust Policy: 1966–2017, *Modern Law Review*, 2020, vol. 83 (2), pp. 321-372.

[21] See, for example, SCHWEITZER, H.; DE RIDDER, S. How to Fix a Failing Art. 102 TFEU: Substantive Interpretation, Evidentiary Requirements, and the Commission's Future Guidelines on Exclusionary Abuses, *Journal of European Competition Law & Practice*, Volume 15, Issue 4, June 2024, pp. 222–243.

to make the commitments binding upon the undertaking or undertakings concerned.[22] What is more, and to the extent that the said commitments are voluntarily offered by the parties themselves, these decisions are typically less likely to be challenged before a review court.

Figure 6.
Average length of commitment decisions (pages)



Source: own elaboration based on publicly available data (www.cnmc.es)

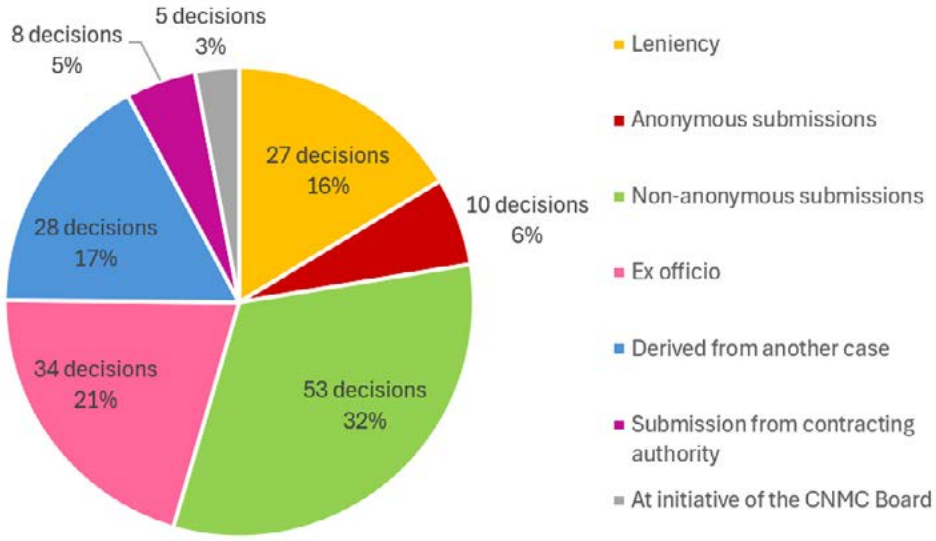
Sources of the investigations

One can identify, in the Spanish context, seven different ways in which a case can reach, or be initiated by, the Spanish Competition Authority, namely: non-anonymous submissions[23] (including, but not limited to, complaints); anonymous submissions; leniency applications (which, under the Spanish regime, are submitted pursuant to Article 65 of Law 15/2007); intelligence derived from another competition law investigation; referral by a public authority conducting, or having conducted, a public procurement procedure; ex officio investigations (that is, investigations that do not involve any third-party input); and, in a similar vein, investigations triggered at the initiative of the board of the authority (a possibility for which Article 49(1) of Law 15/2007 expressly provides).

[22] Letter of article 9 of regulation 1.
[23] Article 49(1) of Law 15/2007.

Figure 7 breaks down the infringement decisions adopted during the relevant period by reference to the source of the investigation. As can be seen, the three leading sources are: non-anonymous submissions (including complaints), which are at the origin of 32% of investigations; ex officio probes (21%) and investigations derived from another case, at 17%. These three sources are followed closely by leniency applications, which account for 16% of all investigations. All other sources are relatively marginal, with submissions by a public authority in the context of a tender and anonymous submissions both at 5% and investigations at the initiative of the Spanish Competition Authority at a mere 3%. These figures are to some extent counterintuitive. Given the weight of cartel and cartel-like enforcement in the activity of the Spanish Competition Authority, one could have expected leniency applications to feature more prominently.

Figure 7.
Sources of detection of infringements (2009-2025)



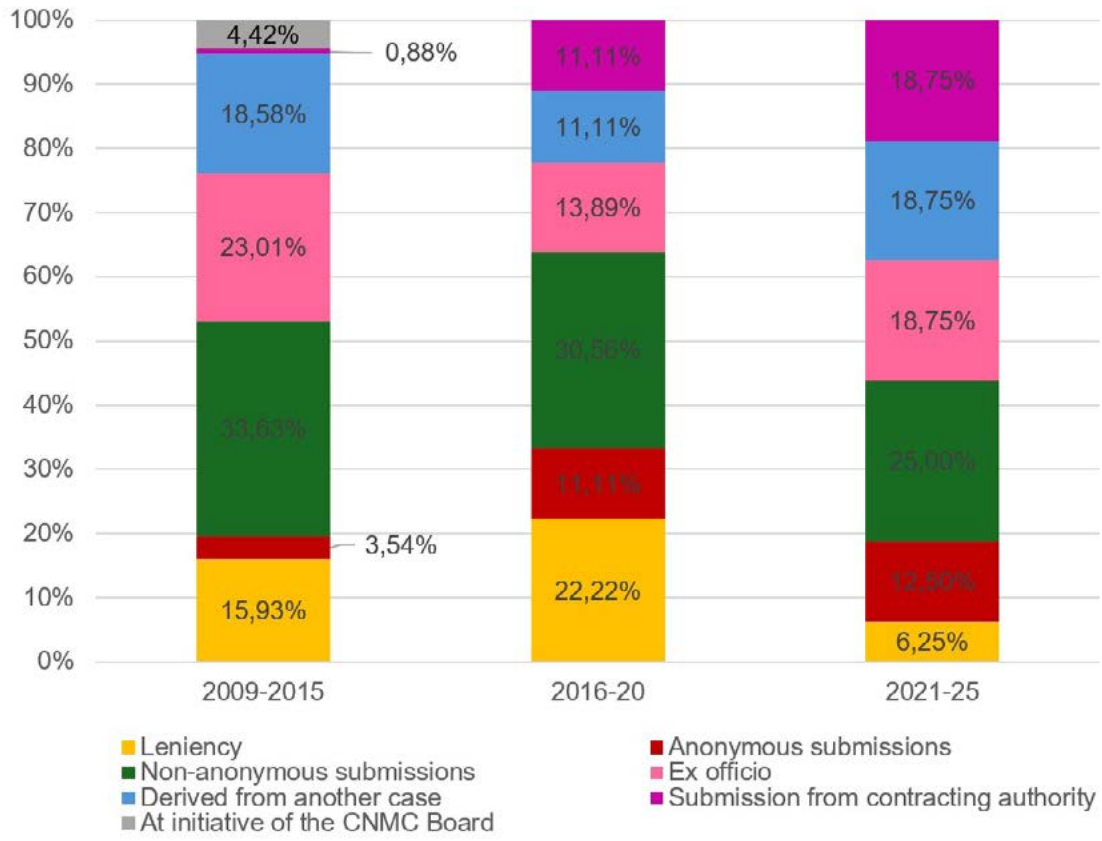
Source: own elaboration based on publicly available data (www.cnmc.es)

Figure 8 considers how the relative weight of each of the sources of investigation has evolved over the years. It does so by considering three periods, namely 2009-2015, 2016-2020 and 2021-2025. This exercise reveals the progressive decline of leniency applications in the enforcement landscape. Leniency applications were at the origin of over 20% of all decisions adopted within the second period (2016-2020) but amounted to just over 6% in the final period (2021-2025). Such a trend is not exclusive to the Spanish regime. The marked drop in leniency applications and the concomitant decline of cartel decisions are frequent themes in

the competition law literature.[24] This literature suggests that other developments in European competition law at large – and, more precisely, the measures introduced to actively promote private enforcement[25] – may have had the unintended consequence of deterring firms from seeking leniency from the authority.[26]

Figure 8.

Share of each source of detection in total sanctioning decisions, by period (2009-2025)



Source: own elaboration based on publicly available data (www.cnmc.es)

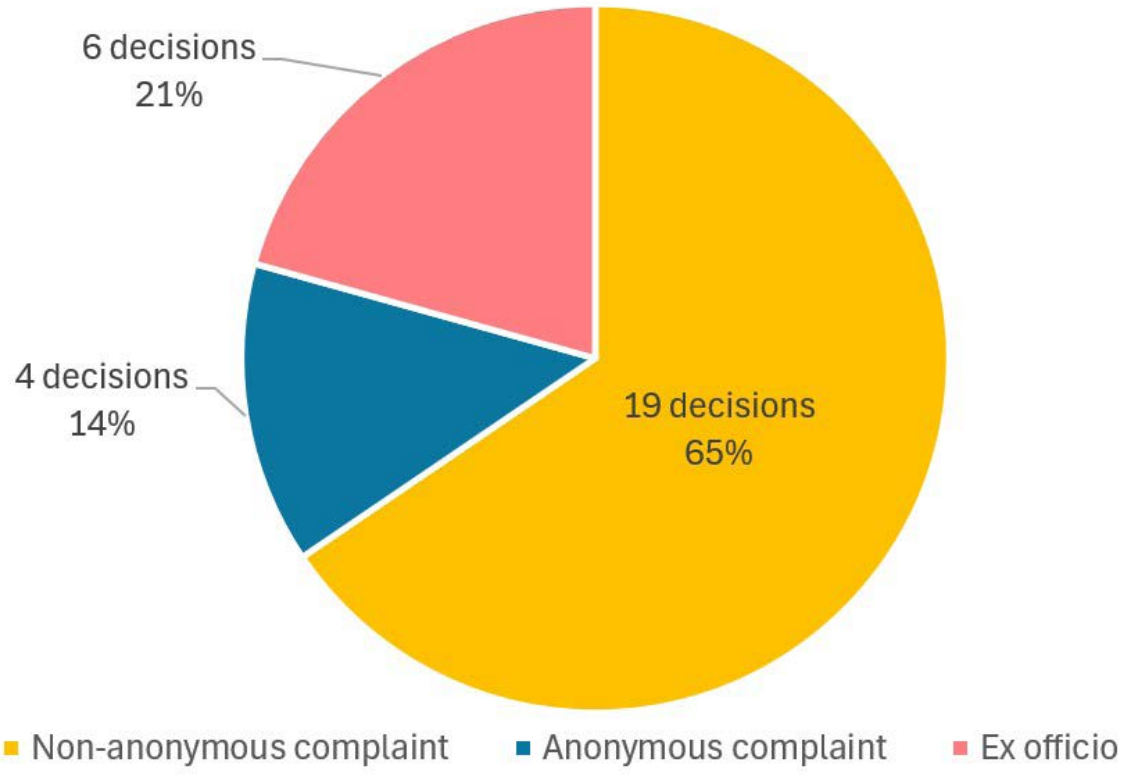
[24] YSEWYN, J., KAHMANN, S. The Decline and Fall of the Leniency Programme in Europe, *Concurrences Review*, Nº 1-2018, pp. 44-59.

[25] 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 [2014] OJ L 349 (Damages Directive).

[26] ALIMONTI, R., KÜMMEL, S. and NAU, T. The interplay between leniency programmes and private enforcement: the economist perspective on recent policy proposals, *Competition Law Journal*, 2023, volume 21, issue 4, pp. 170-179.

Figures 9 and 10 replicate the exercise in relation to commitment decisions. The first of these figures shows that investigations closed with commitments originate from three sources, namely anonymous submissions, non-anonymous submissions and ex officio probes. It appears that the percentage of ex officio investigations in this context is virtually identical (20%) to that observed in relation to investigations leading to a finding of infringement. This outcome is not necessarily one that was easy to anticipate. After all, cases leading to a commitment decision are typically less likely to lead to a finding of infringement and, indeed, to sanctioning by means of a fine. For the same reasons, these cases concern practices which, unlike cartels and cartel-like conduct, are not concealed from public scrutiny and thus can be uncovered by a competition authority by monitoring market practices in the ordinary way.

Figure 9.
Source of detection of practices leading to commitment decisions (2009-2025)

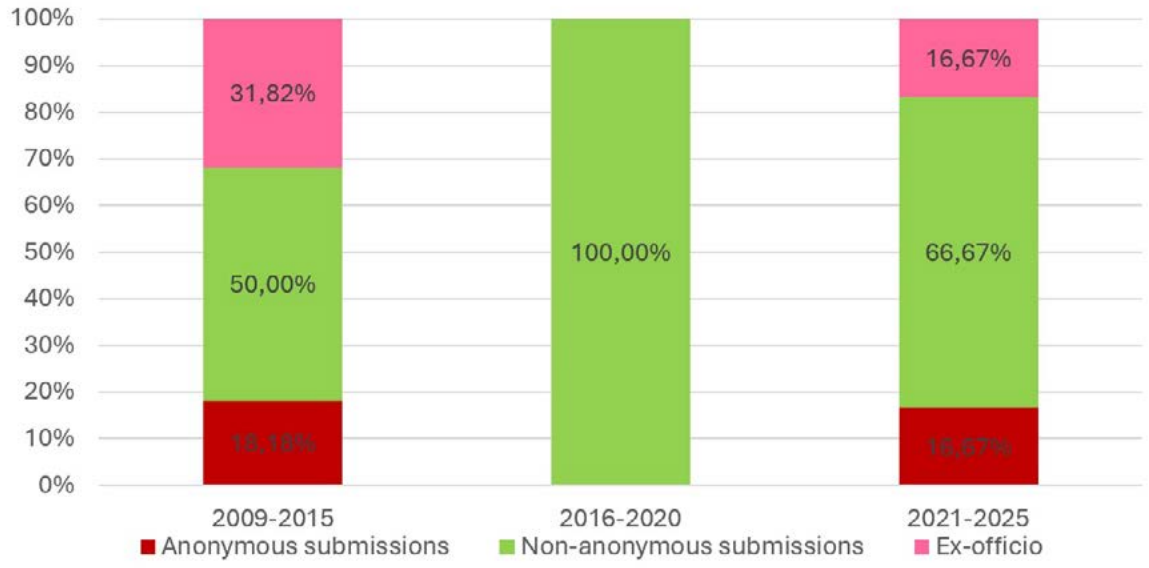


Source: own elaboration based on publicly available data (www.cnmc.es)

Figure 10, in turn, shows that the relative weight of non-anonymous submissions (including complaints) has progressively gained in importance. During the 2016-2020 period, in fact,

every single one of the investigations eventually leading to a commitment decision traced its origin back to a non-anonymous submission. In the course of the subsequent period (2021-2025), an ex officio investigation was at the origin of just one of the commitment decisions adopted by the Spanish Competition Authority. The source of most other decisions, again, was a non-anonymous submission. This insight is valuable when one considers the broader trends examined in this paper. A significant decline in the overall level of activity, discussed in light of Figure 1 above, is not surprising where the number of ex officio investigations opened by the Spanish Competition Authority significantly decreases over time.

Figure 10.
Share of each source of detections in commitment decisions, by period (2009-2025)



Source: own elaboration based on publicly available data (www.cnmc.es)

Economic sectors

The empirical overview would not be complete without a reference to the economic sectors that feature in the administrative practice of the Spanish Competition Authority, in particular when compared with enforcement by the European Commission. If there is something that stands out from the activity of the former, this is the prominence of cases involving professional associations, an aspect that has been identified above. For all of their importance in the Spanish context, these cases are little more than anecdotal at the EU level. They have failed to attract any significant attention in the years that followed the adoption of Regulation

1/2003.[27] Very much can be said about trade associations, which have featured frequently in the Spanish context, but which have been virtually absent, as such, from the contemporary activity of the European Commission.

One struggles to find other sectors or areas of activity featuring consistently across the period considered. The most notable and visible exception is arguably the audiovisual sector, which has been at the origin of a steady stream of decisions over the period considered in the analysis. These cases raise both horizontal and vertical issues, and reflect not just the economic importance of the sector in question but the degree of market concentration, which has become a recurrent source of competition concerns. Indeed, this subset of cases cannot be fully understood without considering the process of consolidation in the years preceding and coinciding with the timeframe of the analysis. In the early 2000s, the two pay television operators in Spain merged, thereby giving rise to the emergence of a monopoly.[28] The operator resulting from the transaction was subsequently acquired by the incumbent telecommunications provider.[29] What is more, a process of acquisitions led to a substantial concentration in the free-to-air segment.[30] In such an economic landscape, any cooperation agreement or any licensing arrangement providing for the acquisition of content – in particular premium content such as top football competitions – becomes a potential source of concerns justifying the opening of an investigation.

3. Qualitative perspective

The three ages of enforcement

The 'catching-up' phase (2009-2015)

When considered closely, Figures 1 and 3 – as depicted above – paint a discernible picture about the phases in the evolution of the Spanish Competition Authority's activity. The first phase in the evolution process is best described as a 'catching-up' phase, the point of which is to sow the seeds of a 'competition culture' in the country. Just like jurisdictions that implement market-oriented reforms experience a period of rapid growth as they get closer to the technological frontier,[31] the reforms introduced by virtue of Law 15/2007 allowed the Spanish Competition Authority to address the remaining vestiges of a corporatist culture and place competition as the principle guiding the interaction between, and cooperation among, firms.

[27] Commission Decisions of 24 June 2004, case AT 38549 *Barême d'honoraires de l'Ordre des Architectes belges* and 8 December 2010, case AT. 39510 *Ordre National des Pharmaciens en France (ONP)*.

[28] Decision of 29th november 2002, case N/280 Bis SOGECABLE, S.A./DTS DISTRIBUIDORA DE TELEVISIÓN POR SATÉLITE, S.A. -VIA DIGITAL-.

[29] Decision of 22nd April 2015, case C/0612/14 TELEFÓNICA/DTS.

[30] Mediaset/Cuatro and Antena3/La Sexta.

[31] DABLA NORRIS, E., HO, G. and KYOBE, A.J. Structural Reforms and Productivity Growth in Emerging Market and Developing Economies, *IMF Working Papers*, 2016. doi: https://doi.org/10.5089/9781498306560.001

By doing so, it allowed the Spanish economy to catch up with the comparable jurisdictions which had undergone a similar process in the preceding decades.[32]

A close look at the sort of cases that the Spanish Competition Authority considered during this first period reveals the extent to which this catching-up process was necessary in the country. A substantial fraction of these decisions concern blatant breaches of competition law which were not necessarily concealed – and, if so, not particularly zealously – from competition agencies. Far from that, they were on occasion a prominent and visible feature of the statutes governing the behaviour of operators in a given sector. It is against this background that one must make sense of the investigations involving regulatory or quasi-regulatory bodies and trade associations and described above. These are the sort of cases that would have been addressed decades before in other systems and that the Spanish Competition Authority chose to prioritise as soon as it was created and structured around the integrated agency model – dominant in Europe and a key factor behind its success.

This very background is also helpful to understand some of the features of enforcement during this period. Because a number of the practices probed are best understood as remnants of corporatism in the Spanish economy, the relevant investigations were not particularly demanding in terms of evidence. The fact that they were often barely concealed means that, however egregious the infringement, they were rarely comparable to the standard cartel arrangement – which also goes to explain the use of the category of 'cartel-like' practice in the analysis above. The singular focus on building a 'competition culture' in Spain also helps explain why the Spanish Competition Authority was also less concerned with formal requirements. In a sense, meeting the formal standards of the European Commission can only be a priority once the system is brought up to speed with the EU one.

The 'convergence' phase (2016-2020)

It makes sense to mark the start of the second, 'convergence' phase in 2016. This is the first year in the series where the number of decisions in 'cartel' cases exceeded that of decisions in 'cartel-like' ones. With this shift, the enforcement activity of the Spanish Competition Authority started to converge with that of the European Commission, in terms of priorities, approach and standards. First, the 'policy mix' of the period is in many ways comparable to that of the latter. In line with the spirit of the 'modernisation' trend of EU competition law since the mid-1990s, the Spanish Competition Authority placed hardcore cartels at the heart of its efforts. The instruments to detect and enforce the law against these arrangements are also recognisable to a specialist following developments at the EU level. As Figure 8 above shows, nowhere is the leniency application more prominent than it is during this period.

Convergence is also apparent when one considers non-cartel decisions decided by means of commitments. Commitment decisions during the 'catching-up' phase focused, at least until the late years, on the same strategies that made up the bulk of infringement decisions during the period. As such, they were very specific to the Spanish context and reflected the concern

[32] An obvious example in this sense is that of the United Kingdom, which introduced a reform allowing for the coming of age of its competition law system with the adoption of the Competition Act 1998 c. 41.

with the development of a 'competition culture'. The 'convergence' stage, by contrast, paints a pattern of decision-making that resembles the one followed by the European Commission. More precisely, the Spanish Competition Authority moved away from investigations involving collective bargaining agreements and decisions by associations of undertakings to prioritise vertical restraints instead. The latter are the sort of practices that typically have ambivalent effects on competition and that lend themselves naturally towards the commitments route. Convergence in relation to non-cartel decisions is arguably best epitomised by the investigation in *Adidas España*.[33] This case revolved around a set of restraints imposed by a manufacturer on its online distributors. How the legacy analytical framework adjusts to such online restraints has been a frequent preoccupation of other competition authorities across Europe, as the judgments of the Court of Justice of the EU (hereinafter, the 'ECJ') in cases like *Pierre Fabre*,[34] *Coty*[35] or *Booking*[36] show.

Just like the substance of decision-making resembled more that observed at the EU level (and, indeed, other jurisdictions such as France or Germany, where the abovementioned cases originated), the form and approach to the decision-making process also came closer to that followed by the European Commission. The Spanish Competition Authority became more systematic in the use of concepts, which in turn helps explain why decisions became lengthier over time. In line with what has already been suggested above, establishing an infringement in relation to a pure, hardcore 'cartel' case tends to be more demanding, and this even when a leniency application paves the way for a probe. In addition, one should note that other factors pushed for greater rigour in the decision-making process by the Spanish Competition Authority. These are necessarily reflected in the administrative practice. In particular, the concept of 'cartel' has a precise and specific meaning in the so Damages Directive. Insofar as it does, the categorisation of a practice as such has concrete legal implications for firms.

The 'post-Covid-19' phase (2021-2025)

There are three factors that mark the post-Covid-19 phase in the activity of the Spanish Competition Authority. The first and the most noticeable one – already identified in the preceding section – is the marked decline in enforcement. Following a seeming surge during 2021, which hinted at a rise in the number of decisions adopted, the activity of the Spanish Competition Authority declined in the years that followed. This dramatic drop is best captured in the trend line included in Figure 1, which paints an unmistakeable pattern. It makes sense to point out, in this sense, that the drop in enforcement can also be observed at the EU level. The latest version of the European Commission's Report on competition policy shows that the number of decisions significantly declined in 2022 and 2023 before picking up again in 2024 and in 2025.[37]

[33] Decision of 6 february 2020, case S/0631/18 ADIDAS ESPAÑA.

[34] Judgment of 13 October 2011, case C-439/09 *Pierre Fabre Dermo-Cosmétique* ECLI:EU:C:2011:649.

[35] Judgment of 6 December 2017, case C-230/16 *Coty Germany* ECLI:EU:C:2017:941.

[36] Judgment of 19 September 2024, case C-264/23 *Booking.com and Booking.com (Deutschland)* ECLI:EU:C:2024:764.

[37] See the European Commission Report on Competition Policy 2025, available at https://competition-policy.ec.europa.eu/document/download/0011426b-7b98-49aa-ba0f-a728544af722_en?filename=annual-competi-

The second factor that stands out, as far as this third period is concerned, is the pre-eminence of cartel enforcement. Even though the progressive rise in relative terms of cartel decisions is a theme that cuts across all three periods, the make-up of decisions was more balanced in the first and the second – with a greater role for cartel-like decisions in 2009-2015 and the growing prominence of non-cartel ones in 2016-2020. Once again, a similar trend is observed, albeit in a less marked manner, at the EU level. In spite of the difficulties that cartel enforcement has encountered in recent years, the latest European Commission's report shows that the fight against cartels is still a prominent area of enforcement. There is a third factor that is also inevitably apparent in the European landscape. With the growing importance of digital platforms in the economy,[38] it is only logical that their activity attracts scrutiny by agencies. In 2023, the Spanish Competition Authority adopted an infringement decision in relation to conduct involving Amazon.[39] It would be reasonable to assume that this case will be followed by other investigations in the same industry in the short to medium term.

Explaining the evolution of enforcement

Pan-European factors

The analysis in the preceding section suggests that the evolution of enforcement by the Spanish Competition Authority bears two main hallmarks. One is the progressive decline in activity, effectively captured in the trend line in Figure 1. Another one is the growing role of cartel enforcement over time. It would be difficult to try and argue that this evolution can be attributed to one specific factor. This article identifies four main potential explanations. These are not mutually exclusive. One of the immediate insights that one can draw from the discussion above is that it would be difficult to argue that the observed trends can be attributed exclusively to endogenous factors – or, if one prefers, to factors relating to the dynamics and operation of the Spanish Competition Authority. Some of the comparisons with the activity of the European Commission show that the same direction of travel can be observed in other European jurisdictions.

One of the EU-wide factors that explain the overall decline in enforcement, at which Section 2 already hinted, is the marked reduction in the number of leniency applications by participants in cartel conduct. Leaving aside the reasons underpinning the drop in numbers,[40] it seems clear that firms' calculus has changed over the past decade, and that the leniency route is less attractive than it used to be for them. As a result, competition authorities across Europe need to adapt their behaviour to ensure that cartel conduct is effectively deterred. One obvious way forward in this sense is to initiate ex officio investigation to make up for the decline

tion-report_2025_report_part2_swd_EN.pdf, page 5 (accessed 8 May 2026).

[38] EUROPEAN COMMISSION *Competition policy for the digital era*, Publications Office, 2019. Available at https://data.europa.eu/doi/10.2763/407537 (accessed 30 january 2026).

[39] Decision of 12 july 2023, case S/0013/21 AMAZON / APPLE BRANDGATING.

[40] WILS, W. Should the EU Competition Damages Directive be revised to grant companies that have received immunity from fines under the competition authorities' leniency programmes also immunity from damages? *Concurrences*, 2023, N° 3-2023, pp. 52-71.

in leniency applications. As observed by Wils,[41] the success of the leniency programme since the 1990s had the unintended consequence of making authorities overly reliant of them, much to the detriment of ex officio investigations. This factor, in turn, may have signalled to participants in cartel conduct that the risk of an ex officio probe would be low.

Even if a competition authority were committed to reviving cartel enforcement and to making ex officio investigations a central aspect of its arsenal against such conduct, completing such a shift can be neither easy nor swift. Altering the internal machinery of a cartel division within a competition agency – that is, developing the necessary tools to detect potential hardcore violations of competition law, training officials to conduct investigations on their own motion and reallocating resources – cannot be achieved overnight. Therefore, a temporary decline in anti-cartel activity would be an expected consequence of the shift towards ex officio enforcement. From this perspective, the current period would not be a permanent state of affairs but a transitional period towards a more balanced approach to the fight against these practices. Crucially, the Spanish Competition Authority has taken concrete steps to enhance its ability to detect and deter cartels on its own motion. These are discussed in detail below.

A marked decline in anti-cartel enforcement would arguably not be problematic if it were coupled with more intense activity in relation to other practices. This is not, however, what the empirical evidence about competition agencies tends to show. It appears – and, again, this is an EU-wide phenomenon – that venturing into new areas of enforcement is not straightforward to achieve or to observe in practice. There are certain areas where European authorities appeared to have displayed a certain reluctance to venture. In this sense, commentators like Anne Witt have pointed out that the European Commission has not prioritised investigations requiring a case-by-case analysis of the effects of the practice.[42] With some exceptions,[43] the European Commission has focused, by and large, on so-called 'by object' infringements, which dispense authorities with the need to perform an effects assessment. The preliminary references submitted to the ECJ by national competition authorities reveal a similar tendency.[44] Against this background, one should not be surprised that the Spanish Competition Authority has not made up for the decline in leniency applications by shifting its efforts towards 'by effect' conduct.

Jurisdiction-specific factors

While not denying the relevance of the abovementioned, EU-wide factors, there are reasons to believe that other factors, specific to the Spanish Competition Authority and/or the Spanish context, may have played a role in the evolution of enforcement in the country. If one pays attention to the prioritisation strategy followed by the Spanish Competition Authority, it

[41] Ibid.

[42] WITT, A. The enforcement of Article 101 TFEU: What has happened to the effects analysis? *Common Market Law Review*, 2018. 55(2), pp. 417-448.

[43] See, for example, Commission Decision of 11 July 2022 case AT. 40305- NETWORK SHARING - CZECH REPUBLIC.

[44] For a discussion of the relevant case law, which has led to a steady stream of references asking the European Union Court of Justice to interpret the notion of restriction by object, see IBÁÑEZ COLOMO, P. Restrictions by object under Article 101(1) TFEU: From dark art to administrable framework, *Yearbook of European Law*, 2024, 43, 224–260. doi: https://doi.org/10.1093/yel/yeae010.

appears that the 'convergence' (2016-2020) and 'post-Covid-19' periods were not driven by a clear, overarching mission guiding enforcement across the board. They differed in this regard from the approach it followed during the 'catching-up' period, during which it was possible to discern a marked focus on a particular type of case. Put differently, the latter two periods followed a 'bottom-up' approach to enforcement, which appears to be reactive in nature, whereas the 'catching-up' period was instead 'top down' and proactive in nature.

The experience of enforcement by the Spanish Competition Authority suggests that a reactive approach to enforcement that is mostly driven by firm behaviour may have an impact on the number of investigations conducted. In the absence of a clearly defined mission – or set of priorities –, a decline in, among others, complaints and leniency applications can be expected to contribute to an overall decline in the levels of enforcement. In fact, when one compares decision-making by, respectively, the Spanish Competition Authority and the European Commission, the absence of a discernible 'top down' approach to the prioritisation of cases in the case of the latter is the single most distinctive difference between the two authorities. As far as the European Commission is concerned, it is possible to identify a clear set of themes in its practice. These themes are reflected in the way enforcement evolves. At any given point in time since the entry into force of Regulation 1/2003, there are clusters of decisions signalling a particular priority.[45] This 'top down' approach may contribute to explaining why the levels of activity by the European Commission have not fluctuated as much as those of its Spanish counterpart.

There is a second factor, specific to the Spanish context, that might have played a role in the levels of enforcement activity. Article 36 of Law 15/2007 was amended in 2023. The goal of the amendment was to extend the maximum length of infringement proceedings from 18 to 24 months. This amendment may well have contributed to the observed decline in the levels of activity. It appears, at the very least, that the legislative change coincided with the period where the drop in the number of decisions was more marked. One cannot rule out that, in the absence of the amendment, some investigations that are still ongoing at the time of writing would have been concluded. After all, the amendment gives an obvious incentive to the Spanish Competition Authority to extend the length of proceedings and build a more robust case. This is all the more so considering that the nature of investigations has changed as a result of the decline in the number of leniency applications. By their very nature, ex officio probes tend to be more complex and demanding in terms of resources.

The future of enforcement: the rise of new tools

One of the fundamental conclusions to draw from the analysis above is that some transformations at the pan-European level require agencies to re-think their approach to enforcement in general and towards cartel conduct in particular. If competition law and policy are to remain effective, the system needs to signal to actual or potential participants in cartel arrangements that competition agencies have the means and the resources to detect the most egregious infringements. The concrete implication of this insight is that agencies need

[45] IBÁÑEZ COLOMO and KALINTIRI (2020).

to renew and sharpen their tools. The Spanish Competition Authority has emerged as one of the European and global leaders in this regard by exploring the potential of AI-based technology assisting it in the detection of potentially anticompetitive strategies.

As far back as 2018, the Spanish Competition Authority set up an Economic Intelligence Unit within its Competition Directorate.[46] The development of tools for the detection of anticompetitive conduct is one of the tasks with which the Unit was entrusted[47]. These efforts have already come to fruition and hint at the way forward for the Spanish Competition Authority. The Unit has developed the Bid Rigging Algorithm for Vigilance in Antitrust (BRAVA)[48], which is an AI-assisted tool which relies on extensive datasets and which allows the Spanish Competition Authority to identify – with a high degree of accuracy – anomalies in the behaviour of firms taking part in public procurement procedures and thus potential instances of collusion.[49]

4. Conclusions

There are two ways to look at the activity of the Spanish Competition Authority between 2009 and 2025. One is a story that places an emphasis on the challenging present and the uncertain future ahead. The inescapable present is one that has seen a significant decline in enforcement since the Covid-19 pandemic and where the drop in the number of cartel investigations has not been compensated by an increase in the investigation of cases of a different nature. A second story is one that puts the present in perspective and focuses on the remarkable transformation of the Spanish competition law system in less than two decades. A competition authority that was focused on the development of a 'competition culture' during the early 2010s is now emerging as one of the global leaders in the use of advanced technologies in the detection of cartel conduct. From this perspective, the current enforcement figures are the expression of the transition that the system is undergoing. The future – which we hope to discuss in a future edition of this Yearbook – will tell us which of the two stories is the one that best captured the *zeitgeist*.

[46] Comisión Nacional de los Mercados y la Competencia, *Unidad de Inteligencia Económica* https://www.cnmc.es/vigilamos-la-competencia/unidad-de-inteligencia-economica (accessed 30 April 2026

[47] Comisión Nacional de los Mercados y la Competencia, The CNMC's journey to bid rigging detection, in SCHREPEL, T., GROZA, T., *Computational Antitrust Worldwide: Fourth Cross-Agency Report*, 2025, pp. 90-94. doi: http://dx.doi.org/10.2139/ssrn.5305055

[48] Comisión Nacional de los Mercados y la Competencia, *Premio a BRAVA, el proyecto de IA de la CNMC contra el fraude en contratación pública* (CNMC Blog, 11 April 2024) https://blog.cnmc.es/2024/04/11/premio-a-brava-cnmc-contra-el-fraude-en-contratacion-publica/ (accessed 30 April 2026).

[49] GARCÍA JIMÉNEZ, A. Inteligencia artificial y ciencia de datos para la detección de colusión en la contratación pública: la experiencia de la CNMC, in PONCE SOLÉ, J., VILLORIA MENDIETA, M. (eds) *Anuario del Buen Gobierno y de la Calidad de la Regulación 2024. La inteligencia artificial y la regulación pública. El Reglamento de la Unión Europea de 2024 y su impacto en el sector público, con especial atención al mundo local*, 2024, pp. 323-352; GARCÍA JIMÉNEZ, A., PÉREZ RODRÍGUEZ, J.J. Herramientas de Inteligencia Artificial para la detección de colusión en licitaciones públicas: un análisis práctico, in CAMPOS ACUÑA, M.C. (ed.) *Kit básico para la implantación de la inteligencia artificial en el Sector Público*, Aranzadi la Ley, 2025, pp. 357-385.

Bibliography

ALIMONTI, R., KÜMMEL, S. and NAU, T. The interplay between leniency programmes and private enforcement: the economist perspective on recent policy proposals, Concurrences Review, *Competition Law Journal*, 2023, volume 21, issue 4, pp. 170-179. doi: https://doi.org/10.4337/clj.2022.04.04.

Comisión Nacional de los Mercados y la Competencia The CNMC's journey to bid rigging detection, in Schrepel, T., Groza, T., *Computational Antitrust Worldwide: Fourth Cross-Agency Report*, 2025, pp. 90-94. doi: http://dx.doi.org/10.2139/ssrn.5305055 .

DUNNE, N. *Commitment Decisions in EU Competition Law*, Journal of Competition Law and Economics, 2014, 10(2), 399–444. https://doi.org/10.1093/joclec/nht047.

European Commission *Competition policy for the digital era*, 2019, available at https://data.europa.eu/doi/10.2763/407537 (accessed 30 January 2026).

European Commission *Ex post evaluation of the implementation and effectiveness of EU antitrust remedies*, 2025, available at https://competition-policy.ec.europa.eu/document/download/53e9348d-4f11-46ef-9098-526e24313ee8_en (accessed 30 January 2026).

GARCÍA JIMÉNEZ, A. Inteligencia artificial y ciencia de datos para la detección de colusión en la contratación pública: la experiencia de la CNMC, in PONCE SOLÉ, J., VILLORIA MENDIETA, M. (eds) *Anuario del Buen Gobierno y de la Calidad de la Regulación 2024. La inteligencia artificial y la regulación pública. El Reglamento de la Unión Europea de 2024 y su impacto en el sector público, con especial atención al mundo local*, 2024, pp. 323-352.

GARCÍA JIMÉNEZ, A., PÉREZ RODRÍGUEZ, J.J. Herramientas de Inteligencia Artificial para la detección de colusión en licitaciones públicas: un análisis práctico, in CAMPOS ACUÑA, M.C. (ed.) *Kit básico para la implantación de la inteligencia artificial en el Sector Público*, Aranzadi la Ley, 2025, pp. 357-385.

IBÁÑEZ COLOMO, P. Restrictions by object under Article 101(1) TFEU: From dark art to administrable framework, *Yearbook of European Law*, 2024, 43, pp. 224–260. doi: https://doi.org/10.1093/yel/yeae010.

IBÁÑEZ COLOMO, P.; KALINTIRI, A. The Evolution of EU Antitrust Policy: 1966–2017, *Modern Law Review*, 2020, vol. 83 (2), pp. 321-372. doi: https://doi.org/ggxv6m.

SCHWEITZER, H.; DE RIDDER, S. How to Fix a Failing Art. 102 TFEU: Substantive Interpretation, Evidentiary Requirements, and the Commission's Future Guidelines on Exclusionary Abuses, *Journal of European Competition Law & Practice*, Volume 15, Issue 4, June 2024, pp. 222–243. doi: https://doi.org/10.1093/jeclap/lpae033.

VAN BAEL, I. 'A "Big Bang" in EC Antitrust Enforcement Procedure' in *30 Years of European Legal Studies at the College of Europe / 30 ans d'études juridiques européennes au Collège d'Europe*, P.I.E. – Peter Lang, Bruxelles, Bruxelles, Bern, Berlin, Frankfurt am Main, New York, Oxford, Wien, 2005.

WILS, W. Should the EU Competition Damages Directive be revised to grant companies that have received immunity from fines under the competition authorities' leniency programmes also immunity from damages? *Concurrences*, 2023, N° 3-2023, pp. 52-71.

WITT, A. The enforcement of Article 101 TFEU: What has happened to the effects analysis? *Common Market Law Review*, 2018. 55(2), pp. 417-448.

YSEWYN, J., KAHMANN, S. The Decline and Fall of the Leniency Programme in Europe, *Concurrences Review*, Nº 1-2018, pp. 44-59. Available at SSRN: https://ssrn.com/abstract=3126172.