Legal 500
Country Comparative Guides 2025

Spain

Competition Litigation

Contributor

Rēgula

Pedro Suárez

Partner | pedro.suarez@regula.law

Javier Pérez

Partner | javier.perez@regula.law

This country-specific Q&A provides an overview of competition litigation laws and regulations applicable in Spain.

For a full list of jurisdictional Q&As visit legal500.com/guides

Spain: Competition Litigation

1. What types of conduct and causes of action can be relied upon as the basis of a competition damages claim?

All infringements of EU and Spanish competition law (including cartels, vertical restraints and abuses of dominance) can give rise to damages claims. These actions may be follow on (based on a prior infringement decision) or stand-alone (requiring the claimant to fully prove the infringement in court).

The primary basis for such claims is extra contractual liability arising from breaches of imperative norms (articles 1 and/or 2 of the Competition Act 15/2007 and/or articles 101 or 102 TFEU), pursued under the special regime in articles 71-81 of the Competition Act (implementing Directive 2014/104/EU, i.e. the Damages Directive) or, alternatively, article 1902 of the Civil Code. Claims may also rely on articles 15(2) and 32(5) of the Unfair Competition Act 3/1991, which treats participation in an antitrust infringement as unfair competition. Damages claims can be combined with other forms of relief.

2. What is required (e.g. in terms of procedural formalities and standard of pleading) in order to commence a competition damages claim?

Actions follow ordinary civil procedure. The statement of claim must set out the facts, legal grounds, quantified amount (or, exceptionally, its estimated basis) and supporting evidence (including infringement decisions and expert reports), with certified translations where required. Since Organic Act 1/2025, a pre litigation alternative dispute resolution attempt (e.g. negotiation, mediation or a confidential binding offer) is mandatory.

Claimants may seek targeted disclosure under articles 283 bis (a)-(k) of the Civil Procedure Act (transposing articles 5-8 of the Damages Directive) either with the claim or pre action, but must file the claim within 20 days of final access to the evidence.

For foreign defendants, service of the claim and disclosure orders must comply with the relevant international instruments to ensure valid notification.

3. What remedies are available to claimants in competition damages claims?

Claimants are entitled to full compensation: actual loss, loss of profit and interest (article 72(2) of the Competition Act and article 17(2) of the Damages Directive).

Non pecuniary damages are also possible. Claimants may seek specific relief such as orders to cease or prohibit the infringing conduct, along with declaratory orders or nullity claims.

Interim measures under article 727 of the Civil Procedure Act (injunctions, asset freezes or deposits) are available where there is a prima facie case, a risk of irreparable harm and security is provided.

4. What is the measure of damages? To what extent is joint and several liability recognised in competition damages claims? Are there any exceptions (e.g. for leniency applicants)?

Damages are assessed on a but for basis. Courts draw on the European Commission and Spanish competition authority's quantification guides, with the Supreme Court in *Sugar Cartel* (judgment of 7 November 2013, ECLI:ES:TS:2013:5819) stressing that expert reports must rest on sound methodology, reliable data and a reasonable counterfactual. If quantification is too difficult but the claimant has made a genuine effort to prove harm, courts may estimate damages on a 'broad axe' basis under article 76 of the Competition Act.

Article 73 of the Competition Act codifies joint and several liability in line with the Damages Directive and the CJEU's judgment in C-312/21 – *Tráficos Manuel Ferrer* (ECLI:EU:C:2023:99). SMEs are exempt unless they led the cartel or are repeat offenders, and immunity recipients are liable only to their own direct and indirect customers, or more broadly if others cannot fully compensate.

5. What are the relevant limitation periods for competition damages claims? How can they be suspended or interrupted?

Following the Damages Directive, article 74 of the Competition Act provides a five year limitation period, replacing the former one year tort period, starting when the claimant has reasonable knowledge of the infringement, harm and infringer's identity. The CJEU in C 605/21 – *Heureka Group* (ECLI:EU:C:2024:324) held the clock runs from publication of the Commission decision's summary, while the Supreme Court in *Envelopes* (judgment of 5 June 2025, ECLI:ES:TS:2025:2621) ruled that for claims linked to a national decision, time generally runs from the end of judicial review unless earlier knowledge is proven.

Limitation is interrupted (i.e. restarted) during judicial review of the decision (article 74(3) of the Competition Act) and resumes one year after it ends. Separately, under article 1973 of the Civil Code, it can be interrupted at any time by a sufficiently detailed written demand served to the defendant.

6. Which local courts and/or tribunals deal with competition damages claims?

At first instance, competition damages claims are heard by the commercial chambers of the provincial first instance courts (formerly commercial courts). Judgments are appealable to the provincial courts of appeal, except for fast track follow on claims under €3,000. Further appeals on points of law may be brought before the Supreme Court.

Jurisdiction is generally based on the defendant's domicile. If the defendant is not domiciled in Spain, the claimant may sue where the harmful event occurred or produced its effects, relying on Regulation (EU) 1215/2012 (CJEU's judgment in C-30/20 – *Volvo and Others*, ECLI:EU:C:2021:604) or Supreme Court case law (order of 19 March 2019, ECLI:ES:TS:2019:3430A). In joint infringements, the claimant may choose the court of any defendant's domicile.

Consumers may alternatively bring claims before the court of their own domicile (Supreme Court's order of 13 October 2022, ECLI:ES:TS:2022:13976A).

7. How does the court determine whether it has jurisdiction over a competition damages claim?

The claimant asserts material and territorial jurisdiction in the statement of claim, and defendants may challenge it in their submissions. If contested, the court issues an interlocutory decision, which is subject to appeal.

In any event, courts must examine material jurisdiction *ex officio*.

8. How does the court determine what law will apply to the competition damages claim?

Applicable law is decided in the final judgment. Parties are expected to raise choice-of-law arguments in their pleadings, though the court may otherwise assess the issue *ex officio*. There is no separate preliminary phase on applicable law.

Courts apply the relevant conflict rules; notably, at the EU level, Rome II (Regulation (EC) 864/2007) for non contractual obligations. Foreign law must be proven by the party relying on it.

9. What is the applicable standard of proof?

No special standard applies beyond ordinary civil principles and the EU principles of effectiveness and equivalence already codified in the Damages Directive. Claimants must prove the existence and amount of harm, though courts may estimate damages on a 'broad axe' basis under article 76(2) of the Competition Act where harm is established but precise quantification is too difficult.

On pass-on, the Supreme Court in *Envelopes* (judgment of 5 June 2025, ECLI:ES:TS:2025:2621) ruled that defendants must prove, transaction by transaction, the actual passing on of any overcharge; generic claims of cost offsets are insufficient.

10. To what extent are local courts bound by the infringement decisions of (domestic or foreign) competition authorities?

Under article 75 of the Competition Act, final decisions of Spanish competition authorities (national or regional) bind civil courts in damages actions. Even before transposition of the Damages Directive, the Supreme Court confirmed this binding effect, while non final decisions were treated as persuasive (judgment of 9 January 2015, ECLI:ES:TS:2015:191), in line with the CJEU's later ruling in C 25/21 – *Repsol* (ECLI:EU:C:2023:298).

Decisions of other EU Member State authorities create a rebuttable presumption of infringement.

European Commission decisions are binding on Spanish courts under Regulation 1/2003, whether final or under review.

11. To what extent can a private damages action proceed while related public enforcement action is pending? Is there a procedure permitting enforcers to stay a private action while the public enforcement action is pending?

Private actions no longer require a prior infringement decision, but ongoing public enforcement often shapes the litigation. The limitation period is suspended while an infringement decision is under appeal.

Courts may stay proceedings under article 434(3) of the Civil Procedure Act while a Spanish authority's decision is pending, or under articles 42-43 for broader prejudicial issues, though practice varies. When the claim relies on a Commission decision under review, courts cannot contradict the decision but may in principle order a stay under EU law.

Competition authorities cannot stay civil cases themselves but may intervene as *amicus curiae.*

12. What, if any, mechanisms are available to aggregate competition damages claims (e.g. class actions, assignment/claims vehicles, or consolidation of claims through case management)? What, if any, threshold criteria have to be met?

Spanish law offers procedural and substantive aggregation routes:

- The Civil Procedure Act allows joinder of claims sharing 'a link by reason of the title or cause of action', a broad test assessed case by case. Admissibility is decided at the preliminary hearing.
- Representative actions. Consumer associations may bring actions. Until Directive 2020/1828 is transposed, they must show whether the claim involves 'collective' (identifiable) or 'diffuse' (indeterminate) interests, which is treated as a preliminary matter.
- Tort claims can be assigned to SPVs or claims vehicles. The Supreme Court's broad interpretation of 'credit' permits bundling of claims, with validity reviewed in the first instance judgment.

13. Are there any defences (e.g. pass on) which are unique to competition damages cases? Which party bears the burden of proof?

The key competition specific defence is pass on. Under article 78 of the Competition Act, the burden of proof lies with the defendant to show that any overcharge was passed down the chain. The standard is demanding: the Supreme Court in *Envelopes* (judgment of 5 June 2025, ECLI:ES:TS:2025:2621) held that generic offset arguments are insufficient, requiring transaction by transaction evidence.

Parental liability is another distinct feature: article 71 presumes parent companies liable for their subsidiaries' infringements unless decisive influence is rebutted.

Defendants may also raise general civil defences, such as mitigation (Supreme Court's judgment of 4 March 2015, ECLI:ES:TS:2015:669).

14. Is expert evidence permitted in competition litigation, and, if so, how is it used? Is the expert appointed by the court or the parties and what duties do they owe?

Yes. Expert reports are standard in competition cases. Claimants typically file them with the claim; defendants may submit theirs later, but no later than five days before the preliminary hearing.

Experts are usually party appointed but must act independently and meet professional standards. Courts can appoint experts, generally on request, though this is rare. Courts are not bound by expert conclusions and may assess harm based on the entire evidentiary record.

In *Sugar* (judgment of 7 Novembre 2013, ECLI:ES:TS:2013:5819), the Supreme Court set methodological standards for expert reports, requiring robust models, well founded assumptions and reliable data.

15. Describe the trial process. Who is the decision-maker at trial? How is evidence dealt with? Is it written or oral, and what are the rules on cross-examination?

After admissibility, a preliminary hearing frames the issues, resolves objections and rules on evidence.

Trial is largely oral: witnesses and experts are examined and cross examined under adversarial principles, alongside documentary and other evidence. In fast track proceedings, the preliminary hearing and trial are combined. Judges decide both fact and law (there are no juries) and closings are generally oral.

Disclosure, when ordered, proceeds separately on a streamlined track.

16. How long does it typically take from commencing proceedings to get to trial? Is there an appeal process? How many levels of appeal are possible?

Timelines vary. Straightforward follow on actions often conclude within 12-18 months, while complex cases may take three to four years at first instance.

Appeals lie from first instance judgments to the provincial court on fact and law. Fast track claims under €3,000 end at first instance with no appeal.

A further appeal on points of law may be brought before the Supreme Court, and ultimately before the Constitutional Court in cases involving breaches of fundamental rights.

17. Do leniency recipients receive any benefit in the damages litigation context?

Yes. Under article 73 of the Competition Act, immunity recipients are jointly and severally liable only to their own direct or indirect customers or suppliers, and to others only if the remaining infringers cannot provide full compensation. Contribution claims against them are likewise restricted.

Leniency and settlement statements are absolutely protected from disclosure.

18. How does the court approach the assessment of loss in competition damages cases? Are "umbrella effects" recognised? Is any particular economic methodology favoured by the court?

Courts apply a but for test. On econometric evidence, no single econometric methodology is mandated: they rely on the record, competition authorities' guides and case law principles. If precise quantification is too difficult, article 76(2) of the Competition Act and general civil law principles allow judicial 'broad axe' estimation.

Umbrella and lingering effects are recognised but require adequate proof.

19. How is interest calculated in competition damages cases?

In *Envelopes* (judgment of 5 June 2025, ECLI:ES:TS:2025:2621), the Supreme Court confirmed statutory interest as the default from the date the harm arose until the claim is filed, unless another rate is proven, and endorsed compound interest as the standard capitalisation method.

Procedural interest, at a higher statutory rate, accrues simply from judgment until payment.

20. Can a defendant seek contribution or indemnity from other defendants? On what basis is liability allocated between defendants?

Yes. Under article 1145(2) of the Civil Code and article 73(5) of the Competition Act, jointly and severally liable infringers may seek contribution after final judgment or settlement; allocation is determined at that stage, with no detailed statutory criteria beyond the Damages Directive framework.

Cartel liability is generally joint and several, but SMEs and immunity recipients have limited exposure. Article 77 allows settling parties to bar subsequent contribution claims against them.

21. In what circumstances, if any, can a competition damages claim be disposed of (in whole or in part) without a full trial?

Following the preliminary hearing, the court may declare the action inadmissible on exceptional grounds under the Civil Procedure Act (e.g. lack of legal capacity or *lis pendens*).

The case can also conclude early if the defendant admits the claim, or if the parties settle or withdraw at any stage.

Alternative dispute resolution mechanisms may temporarily suspend proceedings under article 81 of the Competition Act.

22. What, if any, mechanism is available for the collective settlement of competition damages claims? Can such settlements include parties outside of the jurisdiction?

There is no dedicated collective settlement framework. Claims may be settled before the court, which approves the agreement giving it *res judicata* effect, or privately with subsequent withdrawal of the case.

Settlements bind only the parties that adhere, though third parties, including those outside Spain, may join if they choose.

23. What are the rules for disclosure of documents (including documents from the competition authority file or from other third parties)? Are there any exceptions (e.g. on grounds of privilege or confidentiality, or in respect of leniency or settlement materials)?

Articles 283 bis (a)-(k) of the Civil Procedure Act allow either party to request proportionate, targeted disclosure from the opposing party, third parties or the authority's file. Requests may be made with or after the claim, or pre action; if made pre action, the claimant must file the claim within 20 days of final access to the evidence.

Leniency statements and settlement submissions are absolutely protected. Other file materials are generally available once public enforcement ends, though courts may limit disclosure to protect confidentiality and trade secrets.

Lawyer to lawyer communications cannot be disclosed.

24. What procedures, if any, are available to protect confidential or proprietary information disclosed during the court process?

Under article 283 bis(b) of the Civil Procedure Act, courts may order redactions, in camera hearings, restricted access, non confidential summaries, redacted judgments or confidentiality rings for evidence obtained through disclosure.

The Trade Secrets Act 1/2019 (implementing Directive (EU) 2016/943) adds protection for confidential information constituting trade secrets through procedural safeguards and liability triggers.

25. Can litigation costs (e.g. legal, expert and court fees) be recovered from the other party? If so, how are costs calculated, and are there any circumstances in which costs recovery can be limited?

Spanish law applies the 'loser pays' rule: the prevailing party generally recovers costs if it succeeds in full or substantially. If only partially successful, the court may deny costs. This is consistent with the EU principle of effectiveness recognised by the CJEU in C 312/21 – *Tráficos Manuel Ferrer* (ECLI:EU:C:2023:99).

Recoverable costs include lawyers' fees (referred to non binding bar guidelines), court agent fees, expert fees and court fees. Recovery is capped at one third of the claim's value, and courts may adjust costs based on reasonableness, consulting the bar association if needed.

26. Are third parties permitted to fund competition litigation? If so, are there any restrictions on this, and can third party funders be made liable for the other party's costs? Are lawyers permitted to act on a contingency or conditional fee basis?

Yes. Third party funding is permitted and common, with no competition-specific restrictions. Funders are not normally liable for adverse costs unless they contractually assume that risk.

Contingency and conditional fees are also permitted; the Supreme Court (judgment of 4 November 2008, ECLI:ES:TS:2008:6610) struck down bar rules banning them as anti competitive.

27. What, in your opinion, are the main obstacles to litigating competition damages claims?

Several hurdles persist, both procedural and practical:

- Complex, data intensive cases. Robust econometric evidence is essential but costly and time consuming. Targeted disclosure helps bridge evidentiary gaps but adds layers, delay and expense.
- Fragmented, small-value litigation. The absence of an effective collective redress framework scatters small claims across courts, overburdening the system, producing inconsistent rulings and diverting resources from larger, more meritorious cases.
- Capacity and willingness. Court congestion, 'one size fits all' approaches and a limited culture of disclosure and settlement slow resolution and discourage alternative dispute resolution.

28. What, in your opinion, are likely to be the most significant developments affecting competition litigation in the next five years?

Competition damages litigation in Spain is entering a more mature but demanding phase:

- Collective redress. Opt in models will consolidate through SPV bundled claims, particularly for B2B and some B2C cases. If approved, Spain's delayed transposition of Directive 2020/1828 is expected to introduce opt out actions led by certified entities, reshaping the field as in other European jurisdictions.
- Case-law consolidation. Building on *Trucks* and *Envelopes*, the Supreme Court is likely to resolve outstanding issues, improving predictability.
- Fewer but stronger cases. As mass claim waves (e.g. *Trucks*, *Car Manufacturers*) fade and courts demand more rigorous expert evidence, the docket will narrow to stronger cases, with settlement gaining prominence. Fewer competition authority decisions may also spur more stand-alone claims.

Contributors

Pedro Suárez
Partner
pedro.suarez@regula.law

Javier Pérez
Partner
javier.perez@regula.law