Spanish Supreme Court judgments in the *Envelope Cartel* saga:

Selected points of wider European interest

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Background: The Spanish *Envelope Cartel*

- Single and continuous cartel in paper envelopes across the entire Spanish territory, **1977–2010**. Price-fixing, customer allocation, and innovation restrictions. CNC decision of 25 March 2013 (341 pages).

- These are the **first Supreme Court judgments in the *Envelope Cartel* damages litigation**: ***Socialist Party*** (STS 889/2025, 5 June 2025) and ***ING Bank*** (STS 971/2025, 17 June 2025). Against earlier appellate judgments (Barcelona Court of Appeal), defendants were denied leave to bring cassation appeals in 2022.

- Key **timeline**:
  - CNC decision: 25 March 2013 (pre-Damages Directive)
  - Final after judicial review (Supreme Court rejecting leave to bring cassation appeal): 27 October 2017
  - Socialist Party and ING's claims filed: 2019

- **The Spanish investigation led to a parallel EC investigation** into a related, wider EEA-wide cartel (2014 EC decision), including follow-on (torpedo) litigation in Sweden.

1. Time limitation: when does the clock start?

- The Supreme Court fixed the *dies a quo* at 27 October 2017, when the CNC decision became final after judicial review (order denying last cartelist leave to appeal). It then applied the 5-year limitation period under Art. 10 of the Damages Directive consistently with C-267/20 – *Volvo and DAF Trucks*.

- **Rationale grounded in national tort law principles**: until judicial confirmation, all elements of the claim were not fixed "as judicial truth" (the clock does not even start until that moment). The CNC decision was appealed on grounds capable of altering its content (not just the fine amount – the appeal also raised *non bis in idem* and nullity connected to the EC investigation), and claimants had no access to the non-public administrative proceedings. Reasoning upheld **despite the defendant being a third-position leniency applicant** (that had acknowledged the existence of the cartel, though it challenged part of the substantive findings).

- **Close in result to –later– C-312/21 (*Nissan Iberia*), but different in approach**. *Nissan* is framed through Art. 101 TFUE effectiveness. **The Supreme Court acknowledges EU law but ultimately anchors finality in national doctrine in broader terms**.

2. Harm: what is presumed and what still had to be shown

- No Directive presumption of harm applies *ratione temporis*. **The Supreme Court derives the presumption from the nature of the cartel and the CNC's own findings** of "appreciable overcharges" and "significant distortion of competition" in its **effects analysis** (for determining the amount of the fine).

- **Harm extends *beyond* the "Large Customers" lists included in the decision**. The Supreme Court holds that the cartel's agreements aimed at improving prices across "all sectors, channels and clients of the national market". Customer lists were only the institutional mechanism for key accounts; separate price-fixing agreements applied market-wide. Restricting harm to listed clients would undermine the principle of effectiveness. **The burden then shifted to the defendants** to show that a relevant part of those purchases was made at competitive prices from non-cartel firms – which they did not do.

- **Underlying, non-addressed issue: estimation of volume of commerce**.

3. Judicial overcharge estimation: accepted, but driven by evidence

- The Supreme Court upholds the appellate courts' **20%** linear overcharge applied by judicial estimation (estimación judicial). This power was already available pre-Directive.

- Justified because the claimant was not passively inactive: a genuine expert report was filed, even though the appellate court had rejected its conclusions. Exact quantification was exceptionally difficult given the cartel's characteristics: 33+ years duration, nationwide scope, ~90% market share, evidence destruction orders, and confidentiality protocols adopted by the cartelists.

- The **CNC decision** served as an evidentiary anchor of the 20% overcharge – not as automatic proof of quantum. **Its findings on market effects, appreciable overcharges, and competition distortion had been validated in judicial review**, where the defendant had a full opportunity to contest them. The Supreme Court expressly rejects the argument that the CNC's effects data served only to calculate the fine.

- The Supreme Court rejects the defendants' expert (Forest Partners) during-and-after cost-based analysis for ING, endorsing the appellate courts' reasoning that a cost-based method was unreliable in a 30+ year cartel that also restricted technological development – **costs embedded accumulated inefficiencies**.

4. Interests: Time value of money

- The Supreme Court distinguishes **two functions**:
  - **Pre-claim updating**: forms part of the principal award as a "**debt of value**". Its purpose is full compensation, including monetary depreciation and the lost opportunity to use the money. The statutory interest rate chosen by the claimant's expert is applied (**both inflation and statutory rate –and potentially other rates– are admissible**; neither is mandatory).
  - **Post-claim moratory interest**: ordinary statutory interest runs from judicial demand.

- ***Compound* capitalisation accepted for pre-claim updating** (first Supreme Court ruling in antitrust damages actions validating compound interest). In a long-running cartel, it better restores the real value of the loss and the lost use of money, because simple capitalisation ignores the reinvestment capacity of accrued interest. Citation of the Spanish competition authority's Quantification Guide (2023).

- **Moratory interest from filing is also upheld despite reduction of overcharge claim**: applying the modern standard of "reasonableness of the claim" rather than strict mathematical coincidence between amounts claimed and awarded (*in illiquidis non fit mora* doctrine relaxed).

5. Pass-on defence – Socialist Party's subsidy issue

- The *Socialist Party* case raises a unique pass-on variant: the claimant's **envelope purchases were partially funded by public subsidies**. Spanish electoral law provides two types of subsidy:
  - **Specific/earmarked** subsidy: a fixed amount per voter *exclusively* for mailing costs (encompassing envelopes, postage, electoral material).
  - **General/ordinary** electoral subsidy: based on seats and votes obtained, freely allocable to any electoral expense within statutory caps.

- Where the **specific** subsidy covered **100% of the relevant expense → no recoverable damage**, because the cost was effectively shifted to the public administration. If coverage was partial (even 91–99%), the uncovered fraction remained recoverable at the 20% overcharge rate.

- Where the cost was funded from the **general subsidy**, the appellate courts' reasoning is upheld: paying the cartel overcharge reduced the PSOE's available budget for other electoral activities → **lost reinvestment** = real loss. The TS rejects the PSOE's extra claim for opportunity cost where the specific subsidy = 100%, given the rigid delimitation of eligible expenses under Art. 175.2 LOREG.

Thank you!

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