

# Spanish prohibition to bid due to competition law infringements: key updates

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## What you need to know, at a glance

The Spanish Supreme Court has redefined how the prohibition to bid following competition law infringements is applied and clarified the role of the authorities and contracting bodies.

## Why does it matter?

The new doctrine directly affects companies involved in competition law infringement proceedings and their participation in public tenders.

## What should I do?

See the practical recommendations.

The prohibition to bid following competition law infringements is playing an increasingly central role in competition law infringement proceedings. In 2026, the Supreme Court clarified key aspects of this measure. This briefing summarises the most significant points and their practical implications for businesses.

## Key points

- 1 Competition authorities can determine the scope and duration of the prohibition to bid
- 2 The contracting body can set-aside the prohibition to bid on a case-by-case basis
- 3 Self-cleaning measures are crucial for mitigating the impact of the prohibition to bid
- 4 The Supreme Court has set out the criteria for determining the scope and duration of the prohibition to bid
- 5 The proportionality test for the prohibition to bid differs from that applied when determining fines
- 6 The CNMC's Communication on the prohibition to bid remains in force, but the Supreme Court's criteria take precedence

## **The prohibition to bid due to a breach of competition law**

The prohibition to bid for public sector contracts is not a penalty, but a legal consequence of committing a serious or very serious infringement of competition law (among other areas in which an infringement gives rise to this type of prohibition).

It may last for up to three years and apply to any sector, even if there is no infringement linked to public procurement.

The CNMC has already imposed prohibitions to bid, both in decisions finding abuse of a dominant position (*Eólica de Alfoz*, *UFD Contadores* and *Distribución Hidrocarburos*), and in cases involving horizontal (*Servicios Agencias de viajes*) and vertical conducts (*Icon*). To date, the CNMC has linked the scope of the prohibition to bid to the conduct under scrutiny, whether that be the market in which the infringement occurs or an adjacent market affected by it. The maximum duration imposed by the CNMC to date has been six months, but regional authorities have imposed prohibitions of up to 24 months and with a broader scope than the market affected by the infringement.

## **Spanish competition authorities can determine the scope and duration of the prohibition to bid**

The Supreme Court (judgments [6103/2025](#) and [178/2026](#)) has settled the debate over who has the authority to determine the scope and duration of the prohibition to bid:

- Spanish competition authorities can impose a prohibition to bid in their infringement decisions and specify its scope (which entity or entities are prohibited from bidding, or in which market) and duration. This doctrine validates the practice of regional competition authorities, who were pioneers in this field, as well as recent decisions by the CNMC.
- If the infringement decision does not specify the scope and duration of the prohibition to bid, the power to determine these matters passes to the Ministry of Finance, following a report from the State Public Procurement Advisory Board.

This doctrine provides legal certainty and ensures consistency in practice between the regional competition authorities and the CNMC.

## **The contracting body's power to set-aside the prohibition to bid**

The Supreme Court also clarifies that even where a ban has been imposed by a competition authority, the contracting body may decide not to apply it in a specific tender. This margin of discretion is particularly important for companies that have implemented robust and verifiable self-cleaning measures during or after the infringement proceedings.

The company must document the measures taken and formally request an exemption in the tender process, adding the relevant comments to the European Single Procurement Document (ESPD) after answering 'yes' to the question in the ESPD regarding '*agreements with other economic operators aimed at distorting competition*'.

## **The proportionality test for the prohibition to bid differs from that applied to the determination of fines**

Recent Supreme Court judgment [783/2026](#) requires an independent analysis of the proportionality of the prohibition to bid, separate from the assessment used for the fine.

The judgment refers to criteria relating to a case of bid rigging, but also provides general principles applicable to any anti-competitive conduct.

Thus, the assessment of whether the prohibition to bid is proportionate must be based on the circumstances of the specific case and, in particular:

- The operator's bad faith, which must be evident, as reflected both in the company's behaviour and in the deliberate nature of its conduct.
- The competitive structure and specific characteristics of the relevant market.
- The viability of future tender processes, assessing the actual impact that the restriction may have on freedom of access and the diversity of operators in the sector, as well as on the preservation of the principles of transparency, equal treatment and efficiency. The Supreme Court notes that the authority imposing the prohibition to bid must consider, for example, the frequency of tender processes and the duration of public contracts.
- The seriousness and duration of the infringement committed.
- The extent to which the offending company was involved in the conduct giving rise to penalties.

These criteria apply not only to competition authorities but also to administrative bodies that are required to determine the scope and duration of a prohibition to bid if these have not been specified in the infringement decision.

## **Impact of the new case law on the CNMC's guidance regarding the prohibition to bid**

Although many of the elements set out in CNMC Communication 1/2003 on the prohibition to bid match the Supreme Court's criteria, there are certain criteria included in the Communication that are not addressed by the Supreme Court (the extent of the damage caused or the existence of mitigating or aggravating factors).

These criteria would be applicable provided that (i) they are derived from the effective application of the principles of proportionality and legal certainty in the specific case; and (ii) they fall within one of the Supreme Court's criteria or, at the very least, do not contradict them. For example, an aggravating factor consisting of leading the conduct could be linked to the criterion of the degree of participation, whilst the criterion of the damage caused could fall under the seriousness of the offence.

## **The importance of self-cleaning and compliance measures**

The imposition of a prohibition to bid does not necessarily mean that it must be enforced. Self-cleaning measures, which include compliance programmes, can prevent the prohibition to bid from being enforced.

It is not enough simply to adopt a compliance programme; it must be implemented and monitored, documented, and must demonstrate that it

reduces the risk of further infringements (see Judgment 2362/2025 of the High Court of Catalonia).

These programmes can:

- Prevent a prohibition to bid from being imposed (see, for example, the decision of the Basque Competition Authority in the *Publicidad Ayuntamiento de Bilbao* Case).
- Assist in reviewing or overturning the application of the prohibition to bid imposed by a competition authority (e.g., the CNMC's decision in the '*Licitaciones de Material Militar*' case or the Andalusian Competition Authority's decision in the *Contratación TAC SAS* case).

As regards the criteria that self-cleaning measures must meet in order to be viewed favourably by the competition authorities, the key aspects are: conducting internal investigations, imposing disciplinary measures, effectively implementing a compliance programme, establishing a whistleblowing channel, providing specific competition law training, setting up a risk oversight committee, and implementing policies and codes of ethics within the company (IPRO Report 1/2025 of the Galician Competition Authority).

In any event, the CNMC is currently in the process of revising its guidance on compliance programmes, and the revised version is expected to be published in 2026, providing greater clarity on the criteria that compliance programmes must include.

### **Possibility of exclusion from the specific procedure if signs of collusion are detected**

The contracting body may exclude companies if it finds signs of collusion in a specific tender, following a report from the competition authority, regardless of whether or not there is a prohibition to bid. Recent practice confirms that these cases stand up to scrutiny in special appeals proceedings relating to procurement and administrative litigation (see the judgment of the High Court of Andalusia of 12 December 2025, 19277/2025).

### **Practical recommendations**

1. During the infringement proceedings before the competition authority:
  - (i) check that the criteria for determining the scope and duration are in line with Supreme Court case law.
  - (ii) implement self-cleaning measures at an early stage and ensure they are properly documented.
2. If a prohibition to bid has already been imposed:
  - (i) apply for a provisional suspension (regardless of whether or not the scope and duration have been specified).
  - (ii) at the same time, implement self-cleaning measures and request a review of the prohibition to bid.
  - (iii) ensure that the criteria for determining the scope and duration are in line with Supreme Court case law.

3. If a tender process is currently open:
  - (i) if there is a prohibition to bid in force, request that the contracting body waive the prohibition in this specific case, given the self-cleaning measures that have been implemented.



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