Clifford Chance

BRIEFING

Legal bites on consumer protection in Spain (IV)

Consumer protection and corporate risk: why consumer protection risk is no longer purely a legal matter.

10th September 2026

Consumer protection is no longer an area confined to regulatory compliance or the handling of individual claims. In sectors with large customer bases, digital business models or high levels of regulatory supervision, consumer protection risk can directly impact litigation, reputation, relations with regulators, corporate operations and business value.

The phenomenon that has emerged from our experience with Spanish floor clauses ('*cláusulas suelo*'), the European truck cartel case, and recent investigations into digital practices shows us how certain commercial and regulatory decisions can turn into large-scale financial risks when they affect a large number of consumers in the same way.

The issue is no longer simply a matter of responding to complaints or sanctioning procedures, but of identifying early warning signs of risk, coordinating the regulatory and procedural response, and factoring these aspects into corporate risk management systems.

Key issues

1. Consumer protection risk is now a corporate risk, not just a matter of compliance or individual claims.
2. One single business practice can have several consequences all at once: fines, mass litigation, reputational damage and significant financial risk.
3. This phenomenon affects a wide range of sectors, particularly those with large customer bases, digital
4. Class actions and litigation funding increase exposure by facilitating the pooling of claims.

businesses or those subject to strict regulatory supervision.

5 Effective management requires foresight and coordination between early warnings, supervisory response and civil litigation strategy.

6 Digitalisation is broadening the risk perimeter: 'dark patterns', data, AI, customer experience and digital governance.

The transformation of consumer protection compliance into corporate risk

Dealings with consumers are no longer merely a matter of regulatory compliance or handling claims. In companies with large customer bases, digital businesses or a presence in regulated sectors, consumer protection risk now has an impact on product design, marketing strategies, relations with regulators, litigation, reputation and, ultimately, business value.

This transformation has been driven not only by increasingly extensive and stringent regulation, but also by a reality that is hard to dispute: when a business practice affects thousands or millions of consumers in the same way, any incident can take on regulatory, financial and reputational dimensions far greater than those traditionally associated with the corporate world.

One of the key lessons learned is that, when it comes to consumer protection, the impact of non-compliance is rarely limited to a single fine or individual claim. Regulatory investigations, collective litigation or class actions, reputational damage and significant financial risks often form part of a single chain of consequences. There are also less obvious effects that should not be underestimated, such as the impact of certain contractual clauses on the value of portfolios acquired by professional investors, or even on the triggering of guarantee and indemnity mechanisms set out in corporate and financial transactions, being declared null and void or unfair.

All of this means that compliance with consumer protection must now be regarded as a genuine corporate risk. As such, it is necessary to approach this not in terms of pure regulatory cost, but from a strategic perspective capable of integrating it into the company's risk management systems, anticipating its impact and protecting value.

Lesson learned from floor clauses: when a contractual issue becomes a systemic risk

Spanish floor clauses may well have marked a turning point here. What began as a legal debate on substantive transparency in the granting of consumer mortgage loans led to one of the largest episodes of mass litigation in recent Spanish history. More than a decade of court cases, billions of euros in refunds, provisions, legal costs and out-of-court settlements demonstrated how what was initially perceived as purely a contractual issue could turn into a risk with far-reaching financial, regulatory and reputational consequences for an entire sector.

But to limit this transformation only to the financial sphere would be to ignore a substantial part of this phenomenon.

In the telecommunications sector, what seem to be operational issues such as distance selling, unilateral contract amendments and service cancellation procedures have given rise to a high volume of claims and regulatory interventions. In the energy sector, marketing practices, the protection of vulnerable consumers and certain disputes regarding tariffs and changes of supplier have taken on increasing regulatory significance. In the digital platforms sector, recurring subscriptions, personalised advertising, brokerage models and the processing of personal data have significantly broadened the traditional scope of consumer protection risk.

The common thread is clear: business, operational, technological or customer experience decisions, which may initially appear limited in scope, can turn into large-scale legal risk when they affect large customer bases in the same way.

Beyond consumer protection: how a regulatory breach can become a long-term liability

Consumer protection risk is not limited to contractual or transparency issues, either.

In September 2015, the US Environmental Protection Agency issued a formal notice of violation which led to the "Dieselgate" vehicle emissions scandal. What initially appeared to be a case about technical specifications and regulatory compliance ultimately turned into a multi-faceted corporate crisis with repercussions across multiple jurisdictions. Administrative fines, compensation paid to consumers, vehicle recalls and repairs, litigation costs and the corrective measures put in place showed how a business decision that directly affected consumers can erode value on a massive and sustained scale.

This logic is not unique to consumer protection. It can also be seen in other regulatory areas where the private enforcement of the law increases a company's financial exposure. One particularly illustrative example is competition law.

The EU Damages Directive (Directive 2014/104/EU on actions for damages for infringements of competition law) and its transposition into national laws have established a civil liability regime that turns certain antitrust infringements into potential sources of mass litigation. While not a consumer case in the strict sense, the European truck cartel shows how a regulatory breach can become a humongous litigation risk. The €2.93 billion fine set by the European Commission in 2016 was followed by a widespread wave of damage claims across Europe. The significance of this phenomenon lies not only in the amount of the administrative fine, but also in the potential for the damage claims to multiply, over a period of years, the financial exposure initially associated with the infringing conduct.

This potential for regulatory breaches to turn into long-term financial risks is a defining feature of the business environment today.

Factors driving up risk: class actions, litigation funding and forum shopping

This phenomenon also exhibits a remarkable capacity for accelerating risk. Factors that significantly reduce the cost of access to justice and boost the possibility of pooling individual claims include: the gradual introduction of class-action mechanisms – driven in Europe by Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers and its transposition into national law –, the development of an increasingly sophisticated market for litigation funding, the growing specialisation of law firms and mass claims platforms, as well as the opportunities for forum shopping within the European Judicial Area.

Shift from reactive management to anticipating risk

Consumer litigation today must be managed as a business risk and not merely as a series of court cases. This requires shifting from a reactive approach to conflict management, to a methodology for the early identification, assessment and mitigation of risk.

This methodology should be based on information already available within the company itself: customer service records, complaints, recurring disputes, regulatory requirements, internal resolution criteria and early warnings from business or marketing departments. When properly analysed, this information makes it possible to identify patterns, trends and potential sources of mass litigation before it reaches the courts.

It also requires continually monitoring developments in case law and regulations, so that new interpretative criteria can be swiftly incorporated into claims resolution, contractual documentation, product design and litigation strategy processes. In particular, it requires close coordination between the regulatory defence strategy and the civil litigation strategy. Experience shows that these two aspects can rarely be managed in isolation without creating inconsistencies, undermining legal positions or increasing additional risks.

As for corporate governance, this shift also has direct implications for a company's governing bodies. Identifying and monitoring the risks arising from dealings with consumers is gradually ceasing to be a purely operational matter and is instead becoming a key component of a company’s risk management systems.

Digitalisation is broadening the traditional risk perimeter

The digital economy adds another variable, making this analysis even more complex.

Consumer protection risk was traditionally associated with contractual clauses, marketing processes and regulatory breaches that could be identified in specific documents. However, a growing proportion of the current risk stems from the very design of the customer experience. In the digital environment, the risk may lie not only in the clause but also in the service sign-up process, the choice architecture (how choice options are designed), the barriers to cancelling a service, the way consent is configured and the algorithmic logic that personalises an offer.

Recent European regulatory investigations into 'dark patterns' (deceptive techniques used by online platforms to manipulate users' behaviour) reflect precisely that shift. The contrast between the ease of signing up for a service compared to the difficulty of cancelling it, interface designs capable of influencing consumer behaviour, and certain personalisation practices (tailored marketing, etc.) are coming under increasing scrutiny by consumer, data protection and digital regulatory authorities.

The key is that, in many cases, these decisions regarding the design of services, digital architecture, sign-up processes or the use of artificial intelligence systems are made within business, marketing, technology or customer experience departments without any prior assessment of their implications in terms of legal and corporate risk. Added to this is the convergence of regulations governing consumer protection, personal data protection, digital services, digital markets and artificial intelligence, which multiplies a company's potential areas of exposure and makes it hard to adopt an approach based on regulatory silos.

Precisely for this reason, consumer protection risk management is no longer a matter for legal departments alone to tackle, but has become a cross-functional responsibility affecting the company as a whole.

Figures from the European Commission's 2025 Consumer Conditions Scoreboard clearly illustrate the impact of this new digital economic environment. Consumers who shop online are more than 60% more likely to encounter problems than those who shop via traditional channels. And concerns regarding scams, fraud, advertising practices and the use of personal data are now among the main factors eroding consumer confidence in the digital markets.

These figures are not only relevant in terms of customer experience. In digital markets, a higher number of incidents also increases the likelihood of regulatory intervention, the pooling of claims, scrutiny of business models and reputational damage. The scale of the digital environment turns what seem to be individual problems into potentially systemic risks.

The conclusion is clear: consumer confidence is an economic asset. When that confidence is eroded, the consequences quickly spill beyond the legal sphere to impact customer acquisition and retention, brand positioning, relations with regulators and, ultimately, business value.

Consumer protection risk also has an impact on corporate transactions

As we mentioned at the start, there is also a perhaps less visible aspect where this transformation has direct and immediate consequences for investors, shareholders and executives: corporate transactions.

Until relatively recently, consumer protection risk analysis played a secondary role in many due diligence processes. However, maintaining that approach today could have significant financial repercussions on corporate transactions. Companies with large customer bases, online businesses, technology platforms and financial institutions may accumulate risks that are not apparent in traditional due diligence processes: a history of claims not properly handled, business practices under scrutiny, shortcomings in contractual documentation, weaknesses in data governance or potential regulatory breaches that may only come to light years after a transaction has been completed.

Added to this is the fact that developments in national case law and that of the Court of Justice of the European Union in areas such as consumer protection and damage claims have significantly reinforced the principles of effectiveness and effective court protection in the pursuit of such claims, contributing, in certain cases, to temporarily prolonging exposure to risk and to increasing the uncertainty associated with quantifying risks financially.

The opportunity today lies in integrating this aspect into strategic analysis and company valuation, identifying risks at an early stage, quantifying their potential impact and putting in place remedial or mitigating measures, where necessary. In corporate transactions, this entails reviewing not only agreements, sanctions and ongoing litigation, but also claims patterns, marketing models, digital architecture, data governance, relations with regulators and potential exposure to future claims.

A final word

In short, consumer protection risk is not a new phenomenon. What has changed is its potential to lead to large-scale financial consequences while, at the same time, affecting relations with regulators, civil litigation, reputation, asset valuation and corporate decision-making.

Managing it effectively requires more than simply responding to complaints or amending agreements: it requires identifying the early warning signs, anticipating mass litigation scenarios, coordinating the regulatory and procedural response and factoring legal risk into business decision-making.

It is this integrated approach that enables companies to protect business value, reduce uncertainty and transform a potential source of risk into a competitive advantage. And it is, in all likelihood, one of the most relevant issues that companies will have to tackle in the coming years.

María Guinot
Partner, Disputes

Email: maria.guinot@cliffordchance.com
Mobile: +34 656 288 015

Jaime Almenar
Partner, Disputes

Email: jaime.almenar@cliffordchance.com
Mobile: +34 680 602 966

Laura del Campo
Senior Associate, Disputes

Email: laura.delcampo@cliffordchance.com
Mobile: +34 657 417 662

Laura García-Valdecasas
Senior Associate, Disputes

Email: laura.garciavaldecasas@cliffordchance.com
Mobile: +34 649 145 586

cliffordchance.com

Clifford Chance, Paseo de la Castellana 110, 28046 Madrid, Spain

Clifford Chance, S.L.P.

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest** • Casablanca • Delhi • Dubai • Düsseldorf • Frankfurt • Hong Kong • Houston • Istanbul • London • Luxembourg • Madrid • Milan • Munich • Newcastle • New York • Paris • Perth • Prague** • Riyadh* • Rome • São Paulo • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

*AS&H Clifford Chance, a joint venture entered into by Clifford Chance LLP.

**Clifford Chance has entered into association agreements with Clifford Chance Prague Association SRO in Prague and Clifford Chance Badea SPRL in Bucharest.