



Competition authorities may establish the scope and duration of prohibitions on contracting with the public sector

Supreme Court Judgment 1655/2025 of 16 December 2025

In our Capsulas of September 2025, we noted that the Spanish Competition Authority (CNMC) had issued an initial decision expressly determining the scope and duration of a prohibition on contracting with public sector, abandoning its previous practice of leaving the decision to the Ministry of Finance.

This judgment directly addresses whether a competition authority (in this case, the regional authority) can directly determine the scope and duration of the prohibition on contracting with the public sector as a consequence of an anti-competitive infringement.

The decision is particularly significant for companies that regularly participate in tenders, as it clarifies the extent of the sanctioning powers of competition authorities and their interaction with the regime of prohibitions on contracting provided for in public procurement regulations.

Background

The dispute arose from a sanctioning decision issued by the Catalan Competition Authority (ACCO). The ACCO, after finding an infringement, not only imposed a fine but also ordered a prohibition on contracting with the public sector.

The sanctioned company challenged the decision, arguing that ACCO lacked the competence to directly impose the prohibition on contracting. In its view, the prohibition, including its scope and duration, had to be determined through the specific procedure provided for in public procurement legislation and by the competent body in that field. The sanctioned company argued that this prohi-

bition could not be imposed by the competition authority in the exercise of its sanctioning powers.

The position of the Supreme Court

The Supreme Court analysed the regime of prohibitions on contracting provided for in Law 9/2017 on Public Sector Contracts (LCSP), noting that Article 72 distinguishes between two situations: one in which the judgment or administrative decision expressly determines the scope and duration of the prohibition on contracting; and another in which no such express determination is made. The possibility under the Public Sector Contracts Act (LCSP) for a judgment or administrative decision to expressly determine the scope and duration of a prohibition on contracting implies that the authority imposing the sanction has the power to rule comprehensively on the prohibition on contracting.

Moreover, the Supreme Court considers that a systematic and teleological interpretation of the rule supports this conclusion, since the prohibition on contracting is a legal consequence triggered by serious competition infringements, and it is reasonable for the body that has in-depth knowledge of the infringement, the market affected and the seriousness of the conduct to modulate the prohibition on contracting.

Finally, the Supreme Court clarifies that this national legal regime is not contrary to Directive 2014/24/EU. It argues so, as EU law does not prevent contracting prohibitions from being imposed by other authorities, provided that the contracting authority retains the power to decide whether exclusion is appropriate in the specific procedure.