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**LIDC Report 2025. Question A, Iberian Chapter**

**—ABUSE OF RELATIVE MARKET POWER IN SPAIN—**

**1. Introduction: Origin and Development of the Rules in your Jurisdiction**

Spanish law has long prohibited the abuse of relative market power beyond traditional dominance. Even if it does not mention the terms “relative market power”, Spanish law does recognize the concept of economic dependence under both unfair‑competition and competition acts.

**1.1 Unfair Competition Act**

From an Unfair Competition law standpoint, Article 16.2 of the Unfair Competition Act 1991[[1]](#footnote-1) (UCA) introduced a general clause prohibiting the exploitation of a trading partner who “does not dispose of an equivalent alternative”. This rule, drafted in neutral terms, covers vertical relationships on both the supply and the demand side and is enforceable before the civil Courts through actions for cessation, removal of effects and damages.

Article 16.2 of the UCA was subsequently modified in 1999[[2]](#footnote-2) to insert a presumption of economic dependence where, in addition to normal discount/terms, the supplier must regularly grant a client extra advantages not offered to comparable buyers. Also, a new Article 16.3 introduced two specific per se unfair behaviours under economic dependence situations: First, breaking, even partially, an established commercial relationship without a written, precise notice of at least six months, except for serious breach or force majeure and second, obtaining terms (prices, payment conditions, extra charges, cooperation terms) under threat to break off business relations when those terms are not in the supply contract.

**1.2 Competition Acts.**

The original 1989 Competition Act[[3]](#footnote-3) (LDC 89) did not mention economic dependence. This concept was introduced in the LDC 89 in 1999[[4]](#footnote-4), while the UCA was upgraded, by inserting “the abusive exploitation of a situation of economic dependence” as a modality of abuse of dominant position, together with the same presumption of economic dependence inserted in the UCA.

Consequently, since 1999, abuses of economic dependence were covered simultaneously by both the UCA and the LDC 89, until 2007, when the Competition Act was recast. The new 2007 Competition Act[[5]](#footnote-5) (LDC) deleted the specific wording on economic dependence explicitly noting that it was already addressed in the UCA and that, where appropriate, dependency cases could still be pursued as “distortion of competition by unfair acts” under Article 3 of the LDC.

In practice, from 2007 onwards, Article 16 of the UCA has been the primary legal provision governing private enforcement cases of economic dependence before Spanish Courts, while public enforcement was left with abuses of economic dependence cases where competition is significantly distorted and public interest affected.

**1.3 Sector‑Specific Ex‑Ante Legislation: Food Supply Chain Act 2013.**

Beyond the general framework, Spain adopted a sector‑specific statute that operates ex-ante preventing abuses in imbalanced bargaining situations between primary producers and large retailers. Although the Food Supply Chain Act 2013[[6]](#footnote-6) (recently amended to transpose Directive (EU) 2019/633) does not explicitly use the term “economic dependence”, it addresses it indirectly by imposing specific obligations (such as the need for written contracts, the prohibition of unilateral changes to key contractual conditions or the prohibition express prohibition of below-cost selling, aimed at preventing value destruction along the chain) to prevent abuse from the outset, instead of merely prohibiting it, which is already done by the LCD.

The Food Supply Chain Act 2013 also establishes a sanctions regime and a monitoring body (the Food Information and Control Agency – AICA) to detect violations with certain legal presumptions benefiting the weaker party. By presuming that prices must cover costs, that "grey list" practices are inherently unfair, and that producers are the weaker party, the Food Supply Chain Act 2013 systematically dismantles the imbalance between primary producers and large distributors. It forces transparency, accountability, and fairness, shifting the burden of proof to those with the most power and making it significantly easier for weaker parties to defend their rights.

Therefore, an abusive practice in the food sector could be denounced both under the general umbrella of the LCD and under the specific and more protective regime of the Food Supply Chain Act 2013.

**2. Identifying relative market power: a conceptual conundrum**

Since Spanish law does not account for the terms “relative market power”, it has been the role of Courts and scholars to fill the gap in terminology and explain the abuse of relative market power from the standpoint of the law, which labels it as exploitation of economic dependence.

In the following sections, a more detailed explanation is provided on the interplay between the concepts of market power, defining the relevant market, economic dependence, imbalance, and the assessment of alternatives. In any case, before analysing these concepts, it is important to remark that the application by Spanish Courts has been uneven, especially in the weight given to each of these concepts in each case.

To shed light on the matter, the latest Supreme Court Judgment addressing this topic, dated 27 May 2025 (ECLI:ES:TS:2025:2348) clearly explains that the unlawfulness lies in the alteration of the competitive structure of the market and the hindering of competition among economic agents in that market which may be caused not only by companies that abuse their absolute dominant position, but also by companies which, without having such a dominant position, have relative market power and exploit the dependence of their customers or suppliers who have no equivalent alternative for the exercise of their activity, so that, due to the asymmetry of market power, they prevent or hinder competition.

In what follows, a section will be devoted to each of these concepts, which serve as a prerequisite before determining if the relatively dominant company has abused its position. After laying the groundwork to assess the potential unlawfulness of the behaviour, Section 3 will explain the Spanish experience in determining the abuse of relative market power.

**2.1. Making sense of relative market power**

Spanish competition law does not formally recognize “relative market power” as an autonomous legal category. However, the concept of “economic dependence” regulated under Article 16.2 of the UCA, operates as a functional equivalent. As previously explained in Section 1.1, the provision deems it unfair for a company to exploit the situation of economic dependence of its clients or suppliers when they lack an equivalent alternative for the normal exercise of their business activity.

This enables the legal framework to address vertical commercial relationships, typically characterized by significant imbalances in bargaining power, even in the absence of a dominant position in the relevant market.

The provision allows for the sanctioning of abusive conduct when one party takes advantage of the other party’s lack of a viable alternative, which may occur in structural intermediation scenarios. In fact, the provision on abuses of relative market power was initially conceived to be integrated in the LDC as part of the general clause on abuse of dominant position. However, it was finally decided to include a specific provision in the UCA.

Nonetheless, Article 3 LDC establishes that the distortion of competition can also be found in cases where an anticompetitive behaviour is deemed unfair and could affect public interest. Introducing the public interest element to assess an otherwise private matter in the field of competition is a novelty of the Spanish legal system. Abuse of relative market power does not necessarily fall into a competition infringement. However, in a given case, if there could be a prejudice to public interest, it could be considered as a competition infringement which could be investigated by the Spanish Competition Authority (CNMC). This article has been criticized by the doctrine in cases of public enforcement given the difficulty to determine when an unlawful conduct has an impact on public order.[[7]](#footnote-7)This parallel prohibition of the exploitation of economic dependence, both in the UCA and in the LDC (if it affects public interests), has been considered by some scholars as unnecessary from a legislative point of view, as the mechanism provided in the UCA alone would suffice to ensure the protection of legitimate interests, without incurring in overlaps that complicate the effective protection of the rights concerned.[[8]](#footnote-8)

Spain lacks case law analysing the scope of abuses of relative market power that can affect public interest. The CNMC investigated in 2014 a case concerning the provisioning of two supermarket chains where one was alleged to be economically dependent on the other. The CNMC used the turnover percentage reasoning used by the European Commission in Rewe (COMP/M.1221 REWE/MEINL). The CNMC closed the file. After this decision was appealed, the High Court (Audiencia Nacional), in its judgment dated 28 June 2023 (ECLI:ES:AN:2023:3458) argued that while article 3 LDC could be applicable in cases relating to economic dependence, it is not possible to argue that an unfair competition behavior can affect public interest if such behaviour is susceptible to benefiting consumers.

Regardless of the discussion on the possible application of public enforcement under the LDC on abuse of relative market cases, most of the legal doctrine focuses on private relations B2B, and consider that Article 16.2 UCA can serve as a “general clause prohibiting the abuse of contractual power in commercial relationships between undertakings”. This shifts the focus away from competition rules, framing the issue as something that applies to any commercial contract. The focus here is not on harm to the market, but on the relationship between businesses. What matters is whether one party uses its stronger position to impose unfair terms on the other. It is a way to protect fairness and prevent abuse in everyday commercial dealings.[[9]](#footnote-9)

Nevertheless, the inclusion of the abuse of relative market power in the Unfair Competition Act instead of the Competition Act has resulted in a more comprehensive regulation, which allows to combat these behaviours even when a competition law infringement has not taken place, this is, in cases when the consequence of the exploitative behaviour lacks the notoriety or relevance to affect public interest.[[10]](#footnote-10) In line with this, Article 3 of the Spanish Unfair Competition Act expressly provides that acts of unfair competition are actionable independently of whether they constitute a breach of antitrust law, thereby reinforcing the complementary relationship between both legal regimes.

Abuse of dominant position can be understood in absolute terms, meaning that a key player has control over the whole relevant market. The public interest in avoiding these practices is a key principle of competition law. By contrast, when the power held by an undertaking in the market is not absolute, the potential abuse is no longer considered an infringement of competition law. The same behaviour could either be considered as a competition infringement or as an unfair competition practice depending on whether the company’s market power is absolute or relative. Therefore, the absoluteness of the market power marks the threshold to differ if the LDC is applicable, or if the case must follow the unfair competition regime.

The exploitation of a situation of economic dependence is a clear example of the contradictions in the Spanish legal system regarding competition, as it is classified in two ways: as an antitrust offence under the LDC and as an act of unfair competition under the UCA. This regulatory duplication creates legal uncertainty and procedural complexity, as the same conduct can be prosecuted through administrative and civil channels, with the risk of contradictory rulings and double jeopardy. Legal doctrine and case law tend to consider that there is no real “double punishment”, but rather that, depending on the dominant position of the company and the relevance of the conduct, the offence will be dealt with in the antitrust or civil courts, but not cumulatively.

Precisely because of the sheer importance of differentiating absolute market power from market power that can only be exerted upon certain market players, it is unfortunate that neither the LDC nor the UCA make express reference to the term “relative”.

Nonetheless, Spanish Courts are aware of the close connection of these abuses with competition law and have given a definition of what ought to be understood as relative market power. The judgment of the Provincial Court of Madrid dated 10 January 2006 (ECLI:ES:APM:2006:15039A) provides an explanation:

“The doctrine studies this case in comparison with no other than the abuse of a dominant position in the market as provided for in the Competition Act, finding the difference in the absolute nature of the latter as opposed to the relative nature of the former. This makes it necessary to consider the particularities of the strategy of the company that may find itself in a situation of dependence and to check whether there are equivalent alternatives in the relevant market.”

Relative market power can also be defined in terms of the unlawful behaviour, that could not reasonably be carried out if other companies are not economically dependent on such company.

The judgment of the Commercial Court of Barcelona dated 21 March 2022 (ECLI:ES:JMB:2022:2973) defines it as a "position of strength” used to impose abusive conditions, agreements or clauses that distort, damage, or harm the position of weaker companies in the market, either in relation to competitors or in relation to the market and their relative position therein.

To sum up, beyond the presumption in Article 16.2 LCD regarding economic dependence explained in Section 2.4, Spanish law does not contain further legal or factual presumptions applicable to the assessment of relative market power. Case law links these concepts using a reverse explanation. The judgment of the Provincial Court of Córdoba dated 26 June 2018 (ECLI:ES:APGR:2018:1134) states that it must be denied that a company has relative market power if the company has an equivalent alternative to place its product or service in the defined relevant market.

The determination of economic dependence remains highly contextual and requires a detailed case-by-case analysis. No fixed thresholds or general presumptions are applied. Therefore, while economic dependence may serve as a proxy to address situations similar to relative market power, it does not establish it as a distinct legal category under Spanish competition law.

The market analysis carried out in abuse of relative market power cases is narrower in comparison to regular competition law in abuses of dominant position cases. As public interest is not concerned under unfair competition, civil litigation is only focused on the damage that one of the parties has suffered, as opposed to the traditional concern of competition law regarding the negative effects on the market. Following this narrow scope, although the relevant market is defined as is usually done in competition law cases, the relative market power of the defendant is only studied in relation to the claimant, i.e., relative market power is measured only in terms of the companies concerned, with no regard to other players in the market over whom the same company can also have relative market power.

The judgment of the Provincial Court of Álava dated 11 June 2012 (ECLI:ES:APVI:2012:575) simply refers to relative market power as “market power vis-à-vis the claimant”. This reasoning has been applied in other cases, such as in the judgment of the the Provincial Court of Madrid dated 18 January 2019 (ECLI:ES:APM:2019:1046). Courts have expressly stated that the “relativeness” of the market power applies only to the claimants. The judgment of the Provincial Court of Madrid dated 28 October 2011 (ECLI:ES:APM:2008:15141) stresses that there is no need to specify if the company is also dominant in relation to the majority of other companies competing with the claimant, which is what distinguishes the situation of economic dependence in unfair competition.

**Intermediation power as a proxy for relative market power**

Spanish law does not explicitly recognize intermediation power as a distinct legal concept. Nevertheless, some scholars have argued that in digital markets, certain platforms exercise structural control over market access, intermediating between economic agents and creating asymmetric dependencies that are functionally equivalent to relative market power. Although this power does not fall within the traditional framework of market dominance, whether it is absolute or relative, it nevertheless enables gatekeeping practices and abusive behaviour. The academia contends that Spanish unfair competition law, through Article 16.2 UCA, provides a partial legal basis to address these cases, though in absence of a clear legislation on the matter.[[11]](#footnote-11)

The concept of intermediation power is rather underexplored, even in fields where it is more evident, such as competition law. Take the example of the Booking case (CNMC, Case S/0005/21), where the CNMC found that the platform imposed unfair commercial terms and restricted hotels’ access to competing platforms, leveraging its central position as a necessary intermediary for access to demand. However, the decision made no reference to the concept of “intermediation power”, despite the case reflecting its features.[[12]](#footnote-12)

The CNMC could explicitly address the notion of intermediation power, as it reflects a growing source of asymmetry and dependency in digital markets. Recognizing this concept would allow the CNMC to better capture the competitive risks posed by dominant platforms acting as unavoidable intermediaries, particularly in B2B contexts where business users have little or no negotiating leverage. Pursuant to Article 3 of the LDC, the LDC is applicable to unfair practices that distort free competition and affect the public interest. In cases involving digital gatekeepers, intermediation power may serve as a relevant analytical category for identifying such distortions.

This omission illustrates that even in scenarios where the notion would be very relevant, intermediation power remains absent from Spanish enforcement practice. There may be a lack of regulatory development of relative market power as an autonomous concept, with such imbalances still being addressed through traditional legal concepts like abuse of dominance or economic dependence, without yet fully adapting to the emerging structural forms of power. Underscoring this concept is a sign that unfair competition is Spain still needs a much deeper advancement.

Nonetheless, case law has also dealt with cases where the market power of the company in the distribution channel is accounted for. The judgment of the Commercial Court of Madrid dated 1 June 2023 (ECLI:ES:JMM:2023:4736) analyses a claim filed by a road transportation association against Spain’s main railway operator, Renfe. Some of the associates were companies offering bimodal transportation services, meaning that goods were transported both by road and by train. The association argues that the rise in prices by the railway operator also has an impact on companies only operating in the road transport sector given the dominant position that Renfe holds over many railway routes and its power to intermediate to otherwise independent players in the market.

What is noteworthy of this case is the strategy followed by the claimants and the interplay between competition law and unfair competition: while Renfe has an absolute dominant position ─not relative─ in the railway transportation of goods market, it is not possible for companies not represented in such market to claim an abuse by the dominant company. However, what the plaintiff argued was that Renfe could influence and had relative market power over the whole distribution channel, even if it only operated on rails.

**Digital markets and intermediation power**

At the EU level, Regulation (EU) 2022/1925 of the European parliament and of the council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (**DMA**) has formally recognized structural intermediation power. The regulation introduces an ex-ante regime for large digital platforms designated as “gatekeepers,” acknowledging their role as essential intermediaries between businesses and consumers. Although the term “intermediation power” is not explicitly used, the regulatory design is built upon this concept, recognizing that such platforms can impose unilateral conditions, restrict competition, and hinder innovation. The DMA targets a range of unfair commercial practices commonly associated with gatekeeping behaviours, functioning as a complementary instrument to national unfair competition laws, offering a specific regulatory response to those emerging structural forms of power that traditional legal tools, such as the UCA only partially address.

Whereas 40 of the DMA even regards the dependence of business users on the core platform services and promote multi-homing in the distribution channels. This is relevant to the topic discussed in this report, as it shows that in digital markets, gatekeepers control the commercial relationship between business users and final users and, ultimately, have a relative market power over the distribution channel.

Therefore, the market where the companies operate can determine the use of special criteria to assess the market power and dependency in the commercial relationship, although the law does not make distinctions by sector.

**2.2. Defining the relevant market**

The law does not make any distinction with regard to the market where an imbalance in bargaining power may occur. However, there is extensive literature analysing abuse of relative market power in various sectors and scenarios. While criteria related to the market are highly intertwined with the criteria to assess the alternative and the situation of economic dependency, it becomes clear that there are notable differences depending on the companies involved in the behaviour and the specific market where these companies operate.

This is especially noteworthy in the case of digital markets, where professional users rely more heavily on digital platforms and are exposed to eventual abusive practices. The growth in market power of digital platforms in recent years is undeniable. Market relations are more complex and require digital support to reach the intended target audience of a product or service. The relevance of digital platforms opens a wider discussion on the role of gatekeepers and the relative market power that they hold over the wide array of professional users in their networks. The fields of competition law, unfair competition and the DMA collide so that the assessment of an abuse of relative market power cannot be isolated from other areas that otherwise would not gain such relevance.

As we will explain in Section 2.4, the superior bargaining power is a kind of asymmetric dependency that can be determined by the structure of the market and the position of one company towards another. In the case of digital markets, gatekeepers, by definition of the position they hold and the requirements set in the DMA to be considered as such, will probably hold a market power that is not absolute, but rather, relative and measured in a B2B context. Following common practice in competition law, the assessment of the economic dependence requires to previously define the relevant market in each case, as this is the market where the business user can find viable and equivalent alternatives.

Spanish case law has defined the criteria to define the relevant market. Case law, such as the judgments of the Provincial Court of Castellón dated 1 June 2006 (ECLI: ES:APCS:2006:484), the Provincial Court of Barcelona dated 10 may 2007 (ECLI: ES:APB:2007:6352), the Provincial Court of Vizcaya dated 23 June 2011 (ECLI: ES:APBI:2011:406) and Provincial Court of Madrid dated 28 October 2011 (ECLI: ES: APM: 2011:15141) have held that the relevant market must be defined from the perspective of the allegedly dependent firm taking into account legal, economic, and technical feasibility of alternatives. Additional factual indicators include the proportion of turnover tied to the dominant party (typically exceeding 30%), the duration and stability of the relationship, exclusive dealing clauses, specific investments made, switching costs, and relative size asymmetries.

The judgment of the Provincial Court of Madrid dated 28 October 2011 (ECLI:ES:APM:2011:15141) also follows the same reasoning: in order to properly consider any of these factors, it is necessary to first define the relevant market.

Notwithstanding this, the Courts have been flexible when assessing the alternatives of the dependent company, not just in the relevant market, but also in other related markets. Therefore, though not said expressly, the alternatives could be outside the relevant market if such market was defined only by addressing the current line of work and not other potential activities that the company could reasonably perform.

This is relevant, as the relevant market is defined by accounting the different markets where a company can be present, not just the market where the contract with the defendant lies.

**2.3. Lack of equivalent alternatives**

The assessment of alternatives has been for the most part unsuccessful for claimants, who must prove their lack of an equivalent alternative. There are no fixed criteria to determine whether a company has alternatives, as this must be studied on a case-by-case basis. To illustrate the difficulty of the claimants’ burden of proof, the judgment of the Provincial Court of Madrid dated 25 July 2024 (ECLI:ES:APM:2024:10789) analyses a case in the food products transportation market:

The claimant carried out practically all its activity with the defendant, a supermarket retail chain. The trucks used for transportation were adapted to the supermarket's requirements and labeled with its logo. Consequently, the trucks that transported food products for this supermarket could not be used to provide transport services for other companies. In other words, part of the truck fleet was exclusively used by the retailer even if no exclusivity clause was contained in the agreement. Although the plaintiff claimed that it would be difficult to recondition the trucks to provide services to another company, the Court found that there is no sufficient evidence of a lack of reasonable alternatives, which prevents the Court from establishing economic dependence of the transport company on the supermarket.

The existence of an alternative is not in itself sufficient to rule out a situation of economic dependence; the alternative must also be equivalent. This notion of equivalence involves two interrelated elements: (i) sufficiency, referring to the objective capacity of the alternative to meet the essential commercial needs of a typical operator in the relevant market, particularly in quantitative terms, and (ii) reasonableness, which, in turn, considers the specific circumstances of the allegedly dependent undertaking, assessing whether the alternative can be used without undermining its competitive viability.

This includes an analysis of factors such as increased costs, loss of know-how, investments tailored to the original relationship, contractual obligations like exclusivity or non-compete clauses, and potential loss of brand appeal. Even where alternatives exist and are quantitatively sufficient, they may not be reasonable if the costs of transition are disproportionate or would severely impair the firm's ability to compete.

These criteria are especially relevant to assess franchise agreements, which, despite being formally configured as a relationship between legally independent entrepreneurs, can give rise to situations of strong economic and functional links between the parties, particularly when there are exclusive supply clauses, specific non-reusable investments or intensive operational integration of the franchisee into the network.

However, these characteristics do not automatically presume the existence of economic dependence but rather require a strict case-by-case assessment, focusing on whether the allegedly dependent operator lacks real and equivalent alternatives for carrying out its activity without suffering serious harm.

The existence of exclusivity, the transfer of a trademark, access to know-how, the adaptation of the image of the premises or even a post-contractual non-competition obligation are not sufficient to establish a situation of economic dependence and must be analysed in relation to the actual possibility of leaving the network without incurring a disproportionate economic cost. Likewise, the fact that the franchisee acts on its own behalf and takes business risks is a relevant factor that reinforces its autonomy and makes it difficult for dependence to exist.

On the other hand, even when dependence is proven, not every exercise of power by the franchisor is unlawful. This limitation acts as a guarantee to prevent the distortion of the competitive regime inherent in franchising.[[13]](#footnote-13)

A reasonable assessment of the existence and viability of alternatives is necessary. It is not enough for an alternative to exist in the abstract; it must be functional and economically feasible for the allegedly dependent company. For example, if the franchisee's activity is linked to the image of the network through a visible logo on its delivery truck, as it occurred in the case law mentioned above, the need to change the logo could be considered a reasonable and low-cost adaptation, sufficient to rule out the existence of economic dependence, as case law has ruled.

Alternatively, if leaving the network would involve the purchase of a new vehicle or the loss of specific investments of considerable value, the alternative could not be considered viable, and a situation of dependence could be found. What is relevant is not only the formal availability of other options, but their actual ability to allow the operator to continue its activity under comparable conditions and without suffering disproportionate harm.

Claimants have also tried to unsuccessfully justify the lack of an equivalent alternative based on non-economic factors such as reputational effects. It is interesting to mention the case analysed by the Provincial Court of Pontevedra in its judgment dated 5 May 2016 (ECLI:ES:APPO:2016:642). The dispute occurred between a hospitality establishment and the company supplying beverages. The dispute revolved around certain economic conditions imposed by the supplier in relation to a specific and well-known Spanish beer brand, Estrella Galicia. The claimant, a Galician establishment, argued that such beer was one of the most demanded products by its clients, and that it was dependent on offering that specific brand. While it can be the case that certain brands and products have a special weight on sales, the alternative must be analysed following the relevant market concerned, and since that specific beer does not constitute a product market in itself, it cannot be argued that there is an unfair competition infringement.

This case is a paradigmatic form of economic dependence as it is what has been termed dependence arising from the composition of the range of goods or services offered, which occurs when the inclusion of a certain company’s products or services among those offered to the public by another undertaking is essential to ensure the latter’s competitiveness. This type of relationship typically arises in the retail distribution sector, particularly between the distributor in a position of dependence and the manufacturer, commonly a supplier of branded goods. In order to establish the existence of such dependence, it is necessary to assess, on the one hand, the position of the relevant products or services in the market, taking into account factors such as price, quality and promotional expenditure; and, on the other hand, the negative reaction of customers to the absence of the given product or service from the distributor’s offering.

In other cases, the relative market power of the defendant has been declared even without a proper assessment of alternatives when the position of the dependent company is clear for the Court. In the judgment of the Provincial Court of Pontevedra dated 24 April 2008 (ECLI:ES:APPO:2008:1396), the claimant proved that a high percentage of their sales were destined solely for the defendant, and that the company had adapted its production structure to the needs of the “relatively” dominant company. The Court did not deem necessary any additional proof to assert the relative market power of the defendant.

The market analysis carried out in abuse of relative market power cases is narrower in comparison to regular competition law in abuses of dominant position cases. As public interest is not concerned under unfair competition, civil litigation is only focused on the damage that one of the parties has suffered, as opposed to the traditional concern of competition law regarding the negative effects on the market. Following this narrow scope, although the relevant market is defined as is usually done in competition law cases, the relative market power of the defendant is only studied in relation to the claimant. This is, relative market power is measured only in terms of the companies concerned, with no regard to other players in the market over whom the same company can also have relative market power.

In comparative terms, it is worth highlighting that Latin American systems refer to Spanish doctrine and case law on economic dependency. In Ecuador, for example, the First Instance Resolution Commission (CRPI) of the Superintendency for the Control of Market Power (SCPM) has expressly referred to Spanish rulings to support its decisions regarding the decisive role played by supermarkets as buyers, as opposed to small brick and mortar shops, which forces many suppliers to maintain commercial relations with these large retailers. This practice is based on the idea that lack of access to such distribution channels entails a substantial loss of market share, which reinforces the notion of a lack of real and equivalent alternatives. However, unlike in Spain, the CRPI upheld a fixed threshold of 50% of turnover concentrated on a single customer as a criterion for determining the existence of dependence.[[14]](#footnote-14)

**2.4** **Assessing economic dependence**

The parameters or indicators used to determine the existence of relative market power or, alternatively, a situation of economic dependence are mainly based on two aspects:

The first consists of defining the relevant market, which must be done not according to an objective test as in classical antitrust analysis under Article 102 TFEU and Article 2 of the LDC, but from a subjective perspective, tailored to the specific firm and relationship under scrutiny. In the context of economic dependence, the market definition must focus on the commercial environment in which the allegedly weaker undertaking operates.

The second one relates to the actual availability of alternatives, as it has been explained in Section 2.3. Economic dependence may arise not only where no alternative commercial partners are present, but also where those alternatives are not reasonably equivalent in terms of viability, sufficiency, or commercial effectiveness. This test includes an evaluation of whether the dependent undertaking can realistically substitute for the stronger firm, considering market barriers and the functionality of any substitute platforms or suppliers.

Additional indicators may support the identification of a situation of economic dependence. These include the strength or public recognition of the brand controlled by the allegedly stronger firm, its market share, the exclusivity or long-standing nature of the relationship, the share of the dependent firm’s turnover derived from that relationship, and the degree of specialization of the market in which it operates.

Such conduct, when abusive, constitutes an act of unfair competition under Article 16.2 of the UCA. While today this form of abuse is clearly included under the UCA, it was at one point regulated under the general competition rules as previously explained. This type of conduct takes market power into account, which is normally a feature of antitrust enforcement rather than unfair competition law. For this reason, it is classified by legal doctrine as a market-based unfair practice.[[15]](#footnote-15)

As for the criteria to determine an abuse of economic dependence, Article 16.2 UCA establishes two cumulative requirements: **(i)** the existence of an economic dependence, and **(ii)** its abusive exploitation. The law also introduces a rebuttable or *iuris tantum* legal presumption of the existence of an economic dependence where a supplier regularly grants a client additional advantages not provided to similar customers, in addition to usual discounts or terms. This presumption has been narrowly interpreted by Spanish Courts, requiring that such advantages be substantial and not merely anecdotal. In any case, this presumption does not dispense with demonstrating abusive exploitation.

Legal doctrine has identified four main categories of economic dependence: (i) dependence arising from the composition of the offer, which occurs when specific products or services are essential for the dependent undertaking’s competitiveness, particularly when their withdrawal would trigger a negative reaction from consumers; (ii) dependence related to the internal organisation of the undertaking, which arises when a company has tailored its operations or structure to a particular partner, making substitution costly or unfeasible; (iii) dependence resulting from scarcity, linked to the absence of viable alternatives due to structural or temporary market constraints; and (iv) dependence based on the relative bargaining power of the buyer, where a single client concentrates the commercial outlet of a supplier, with no functionally equivalent distribution channels available.[[16]](#footnote-16)

The judgment of the Provincial Court of Cordoba dated 25 January 2012 (ECLI:ES:APCO:2012:690) states that a company is dependent on another when it cannot terminate the commercial relations it maintains with the company with relative market power or strong company without its competitive capacity being seriously affected. Moreover, the equivalent alternative in the relevant market is not viable when, despite the existence of other sources of supply on the market, this alternative is not real but merely potential, or when the reorientation of the production or operations of the affected undertaking that necessarily involves a change of activity would jeopardize the dependent undertaking's survival on the market.

The judgments of the Provincial Court of Madrid dated 12 and 16 December 2014 (ECLI:ES:APM:2014:18847 and ECLI:ES:APM:2014:17200) offer interesting considerations regarding the criteria to assess economic dependency and the existence of alternatives. Article 16.3 of the UCA considers that if a company is economically dependent on another, it is unfair and discriminatory to terminate an established business relationship without prior notice period of, at least, six months. Case law stresses that considering termination as an unfair competition infringement can only occur under very specific circumstances.

In any case, adding the temporal scope raises a new criterion to assess alternatives. It could be interpreted that the six-month notice period is the time that a dependent company would need to adapt its commercial activity without the company in which it depends. While the legislators might follow such rationale, the criteria to assess if there is an alternative is not time bound to find an equivalent company or supplier in less than six months.

In the judgment of the Barcelona Provincial Court dated 31 July 2017 (ECLI:ES:JMB:2017:4565) the Court analyses a case where a company terminated with prior notice its commercial relationship with its distributor, with whom it had an indefinite and exclusive contract. While the distributor was dependent on the supplier, what otherwise would have been considered an unlawful termination of a commercial relationship, was considered lawful because the claimant had been given sufficient time to reorient its activity after the termination.

However, this raises an interesting discussion. When it comes to urgent commercial deals, any company would be dependent on others unless there was an immediate alternative. For instance, if a business in agriculture regularly works with a supplier, it could not be argued that such a company is dependent if it cannot find a viable equivalent alternative in a short period of time, regardless of the narrow time window the agricultural company has before its product goes to waste.

To sum up, using time as a criterion to assess alternatives must be done cautiously. The relevant market can be influenced by time constraints and operate on longer or shorter notice. The assessment on economic dependence and the existence of alternatives must take into consideration the specifics of the market, but there is not a fixed criteria on time to assess the existence of alternatives and determine if a company is economically dependent on another which would have relative market power.

**2.5 Other criteria to determine relative market power**

Spanish law does not establish fixed thresholds for the size, turnover, products or brands that automatically determine whether an undertaking has relative market power.

The Spanish legal framework adopts a case-by-case approach to address the concept of “relative market power”. Article 16.2 of the UCA focuses on the dependence and ability of an undertaking to significantly affect the commercial freedom of its counterpart, regardless of its overall market share.

When assessing whether an undertaking has relative market power, qualitative and contextual factors come into play to analysed the commercial relationship from the point of view of economic dependency.

However, although size and turnover are not solely considered for determining relative market power, Spanish case law has assessed turnover to determine if the alleged dependent company has equivalent alternatives. When it comes to assessing relative market power, case law has considered the sector where the dominant company operates. Certain markets are especially inaccessible for new operators and heavily regulated. In the judgment of the Provincial Court of Madrid dated 23 October 2020 (ECLI:ES:APM:2020:16506), the Court confirmed the position of relative market power of the defendant and the lack of alternatives that the dependent company had, though it did not appreciate the existence of an abuse of such relative dominance. The sector in question was the national lottery sale points. In fact, the economic dependency in such market is inherent. When defining the relevant market, the Court stated that not even other state-run games or privately run betting games could be included in the relevant market, as these constitute other areas that are distinct from the strict structure of national lottery sale points.

However, this view was later clarified by the Spanish Supreme Court in its judgment of 27 May 2025 (ECLI:ES:TS:2025:2348), which stressed that holding relative market power does not, by itself, constitute an abuse. According to the Supreme Court, an abuse of economic dependence requires a conduct that is objectively unjustified, disproportionate, and detrimental to the dependent undertaking. In the case at hand, the defendant's introduction of new sales channels (online channel) was deemed legitimate, proportionate and not discriminatory, particularly given that traditional lottery agents continued to benefit from these channels. Therefore, while economic dependence was acknowledged, no abuse of that dependence was found.

In another judgment of the Commercial Court of Madrid dated 8 April 2019 (ECLI:ES:JMM:2019:221), the Court stated that in the case of the lottery, the state-owned company not only has relative market power, but also power over the management and regulation of the market. While this could serve as a definition of absolute dominance in competition law, as the case only deals with unfair competition, the Court did not delve deeper into the interplay between both and uses the competition law concept vaguely for a case of abuse of relative market power.

The lack of alternatives determines the relative market power, but as in the case of competition law, it is only the abuse of such a dominant position that is considered unlawful. In fact, defendants may even accept their relative market power over some companies. In the judgment of the Provincial Court of Murcia dated 27 May 2021 (ECLI:ES:APMU:2021:1700) the defendant confirmed its relative market power. The relevant market was the organization of large music and arts festivals. It was not disputed that the music festival in question had generated a whole market in itself with no other alternative, not even other festivals conducted in a different city. Being relatively dominant is not unlawful. While defendants are normally not keen to admit their position of superior market power, dominance does not lead to automatic abuse, so that relative marker power can be undisputed, leaving the Court to just focus on the existence of an unlawful behaviour.

Spanish practice captures bilateral imbalance through qualitative indicia of negotiating asymmetry: brand strength/reputation, control of an essential input or access channel (including intermediation platforms), data advantages, switching costs, and the capacity to dictate non‑equitable terms or to threaten unjustified termination. These criteria operationalise the relative position between the two parties beyond simple size or turnover.

The legal presumption in Article 16.2 UCA (regular “additional benefits” to one customer versus comparable buyers) is a direct proxy for imbalance, though rebuttable. Courts require evidence on comparable buyers and regularity. However, as previously indicated, the presumption addresses the issue of economic dependence, but not the issue of the existence of an abuse.

Moreover, duration/stability of the business relationship may increase sunk costs and bargaining asymmetry. However, even long‑standing relationships with material weight in the dependent’s revenue do not automatically establish an unlawful imbalance.

In any case, the core test remains the lack of an equivalent alternative and, crucially, the abusive exploitation of the existing economic dependence, as stated in the judgment of the Provincial Court of Barcelona dated 2 April 2024 (ECLI:ES:APB:2024:3140).

**2.6 Sector-specific criteria.**

In digital platforms/marketplaces (hotels-OTAs, etc.), network effects and visibility (ranking), parities/MFN, possible multihoming (other OTAs, direct sales, metasearch engines), disintermediation costs/time, and data/lock-in are considered.

The legal doctrine considers that in the case of digital platforms, "relative market power" is captured by dependence on access to demand and switching costs; however, it must be proven that, for example, the hotel could not multi-home or sustain the activity through other means than through a specific digital platform. The CNMC in the Booking case (S/0005/21) sanctioned an abuse of a dominant position due to operating restrictions (wide parities, unfair conditions) but dismissed the case under Article 3 of the LDC and 16.2 of the UCA because dependence/unfair abuse had not been independently proven.

In regulated sectors, such as the public lottery sector, the legitimate business objectives of the network operator, the non-disruption of the traditional relationship, and non-discriminatory treatment between channels was analyzed. The Supreme Court in its judgment dated 27 May 2025 (ECLI:ES:TS:2025:2348) admitted the existence of asymmetry (relative dependence on lottery administrations), but denied the existence of abuse: new channels (receipt and online sales) had an objective justification, did not displace the relationship, and the treatment was not arbitrary. The judgment is based on proportionality and justification rather than quotas.

Moreover, as explained in Section 1, the Food Supply Chain Act establishes ex ante mandatory rules that rebalance negotiation: mandatory written contract, prohibition of unilateral modifications, payment within 30/60 days, contract registration, and a black/gray list of practices. Additionally, the "equivalence of alternatives" is qualified by perishable goods/logistics and by the established prohibitions: last-minute cancellations for perishable goods, imposition of unagreed costs, etc.

In the road freight transport, there are also Ex Lege protection against imbalances, such as the mandatory fuel price review (Article 38 of the Law on Land Transport Contracts for Goods[[17]](#footnote-17)) and the prohibition of working below cost (Royal Decree Law 14/2022[[18]](#footnote-18)) with a consignment note and information are more important. Proof of Article 16.2 of the UCA is not required, since the regulator has established a price/cost floor and formalities to prevent exploitation of the actual carrier in asymmetric relationships.

**2.7 The importance of economic and expert reports.**

Under Article 16.2 of the UCA, economic and industry expert reports are key evidence to demonstrate (i) the existence of economic dependency, i.e., a lack of equivalent alternatives, and (ii) whether abusive exploitation took place.

In order to create a map of alternatives and carry out the "reasonable equivalence" test, an "operational" definition of the set of realistic alternatives for the dependent party is performed, including the time and cost of switching, contractual restrictions (exclusivity or non-compete), capacities, barriers, multihoming, etc. It usually includes a table of alternative suppliers/partners, approval deadlines, required investment, and risk of loss of value.

In its judgment dated 27 May 2025 (ECLI:ES:TS:2025:2348), the Supreme Court dismissed Article 16.2 of the UCA because, even though there was a close relationship its judgment dated 27 May 2025 (ECLI:ES:TS:2025:2348) the States-owned company's measures pursued legitimate purposes and did not "empty" the relationship, and abusive conduct was not proven. The judgment focused on alternatives and proportionality.

In a "share-of-wallet" and concentration of revenue risk report, an accounting-economic analysis is carried out of the relationship's weight on the dependent's turnover/margin but connecting it to the existence (or not) of alternatives and switching costs (not valid in isolation).

An assessment of sunk costs and "specificity of investments" involves an expert report on the specificity of assets (IT, molds, certifications, training, logistics integration, brand awareness) and quasi-equity assets that the other party could expropriate; quantification of the value lost if the partner changes.

A market/sector analysis and "essentiality" of the input/channel test are tests of practical essentiality (e.g., "gatekeeper" platform, single input, channel with captive demand), elasticities, quotas, access time to other channels, and bottlenecks.

In the abovementioned judgment dated 27 May 2025 (ECLI:ES:TS:2025:2348), the Supreme Court accepted the legitimacy and proportionality of channel changes when they do not erode the relationship or discriminate without justification.

Other assessments used are (i) the switching tests related to the time-to-migrate and total cost of change, which include Gantt charts/approval schedules, migration CAPEX/OPEX calculations, operational risk, learning curves, and contractual penalties, (ii) the assessment of the impact and proportionality of the "abuse" (suitability/necessity/balancing test) and (iii) the economic analysis of the proportionality of the conduct with respect to a legitimate objective, less restrictive alternatives, and incremental harm to the employee's competitive capacity (not mere contractual inconvenience).

Regarding the “additional benefits” benchmark (iuris tantum presumption of article 16.2 LCD), it is a comparative expert report that shows whether the "large customer" receives regular benefits not granted to comparable partners (define comparable, control size/volume/risk). This assessment serves to trigger the presumption, which the other party can rebut.

**3. Abuse of relative market power.**

As already indicated, under Spanish law the existence of an economic dependence or an imbalance of power is not forbidden, only the abuse of economic dependence is. Thus, once the existence of an economic dependence is proven, it is still necessary to examine whether there is an abuse of such economic dependence.

Art. 16.2 of the UCA prohibits any abuse (literally “exploitation”, in the wording of the law) of economic dependence. The existence of such abuse is presumed “when a supplier, in addition to the usual discounts or conditions, must regularly grant its customer other additional benefits that are not granted to similar buyers”.

Therefore, there is not a legal definition of what an abuse of economic dependence is, but the wording of the law suggests that standard commercial practices are not only a benchmark but could even create a legal presumption (iuris tantum) of the existence of an abuse. However, other forms of abuse are possible. Some commentators in Spain interpret Art. 16.2 UCA as requiring that the commercial conditions imposed must be unjustified and disproportionate, thus diminishing the commercial opportunities of the affected parties[[19]](#footnote-19).

In practice, the case-law of the Spanish Courts has not developed a single theory of abuse in cases of economic dependence. The approach of the Spanish Courts is on a case-by-case basis, in light of the economic and legal context.[[20]](#footnote-20) Some trends could be identified in this regard:

(i) Legal presumption: the conditions applied to similar buyers

The benchmark of the conditions applied to similar buyers has been confirmed by the Spanish Courts on several occasions, including by the Spanish Supreme Court in its Judgment dated 29 February 2012 (ECLI:ES:TS:2012:1580).

(ii) Per se abuses

Some commercial practices are considered per se abusive in case of economic dependence. Such is the case of discriminatory practices between customers. Such discrimination could take place between customers dependent of the perpetrator but also (or even more so) between dependent and non-dependent customers. It also covers cases of refusal to supply as well as the imposition of unfair conditions. as underlined by the Spanish Supreme Court Judgment dated 27 May 2025 (ECLI:ES:TS:2025:2348).

(iii) By analogy to abuse of dominant position in competition law

Some Courts have held that the abuse of economic dependence could also be interpreted in light of the notion of abuse of dominant position in competition law, including the Court of Appeal of Madrid Judgment dated 28 October 2011 (ECLI:ES:APM:2011:15141).

Nonetheless, the analysis of an abuse of economic dependence should be clearly distinguished from the analysis carried out in the case of abuse of dominant position. In cases of economic dependence, it is not necessary to prove the existence of a restriction of competition or whether the abuse is exclusionary or exploitative. It is not necessary to analyse whether the market as a whole has been affected; only the conditions applied to the individual parties This has been underlined by the Spanish Supreme Court Judgment dated 29 February 2012 (ECLI:ES:TS:2012:1580). In other words, all abuses of economic dependence are, by definition, exploitative and subjective.

With regard to commercial practices, the prohibition of abuse of economic dependence covers both price or non-price infringements, including refusal to supply or unfair commercial conditions. Furthermore, although all the case law deals with commercial conditions applied in the framework of existing business relationships, nothing prevents to invoke Art. 16.2 with regard to future commercial conditions, provided that there is sufficient evidence that such conditions will be certainly applied. Article 32 of the UCA expressly provides for the possibility of prohibiting conduct that has not yet been implemented.

Last, but not least, with regard to remedies, the Spanish Unfair Competition Act provides for a number of possible remedies (other than a judicial declaration of having breached the UCA): (i) order of cessation of the unfair conduct (abuse of economic dependence); (ii) order of prohibition of its future repetition; (iii) order for removal of the effects produced by the unfair conduct; and (iv) damages (caused by the unfair conduct).

The UCA does not provide for any form of possible negotiation between the parties. However, the current procedural rules in Spain[[21]](#footnote-21)ense require any possible claimant in all sorts of procedures (including in cases of infringements of the UCA) to try to reach a voluntary agreement between the parties by any of the means provided by the law (mediation, negotiation, etc).

**4. Abuse of relative market power.**

The Spanish legal framework for the abuse of relative market power, anchored in the UCA, reflects a pragmatic recognition of the complexities created by imbalanced commercial relationships that do not amount to dominance in the classical sense. Such instrument is necessary to bridge the gap below dominance, especially in fragmented or highly intermediated chains (healthcare, agri‑food, retail distribution, digital intermediation) and it complements dominance‑based rules and ex ante sector statutes.

Effective market functioning cannot always be guaranteed by focusing exclusively on absolute dominance. Spanish experience demonstrates that substantial harm can arise where companies exploit their superior bargaining position in the absence of equivalent alternatives for trading partners, particularly in B2B contexts. The inclusion of “economic dependence” as a legal concept allows Spanish Courts to address a spectrum of harmful practices that would not be captured by traditional dominance-based regulation. As digital platforms reshape market structures and dependencies, the relevance of a relative power test that looks at bilateral market relationships (rather than market shares or classical dominance) has only grown.

Spanish law’s approach, centring upon a contextual and functional case-by-case assessment of dependency rather than fixed thresholds of market share or turnover, ensures flexibility but reduces legal certainty. However, this approach also reduces the risk of overregulation and allows room for legitimate commercial conduct, particularly in fast-evolving markets where regulatory certainty must balance with flexibility.

While the broad, context-driven criteria allow for nuance, they also lead to a certain degree of unpredictability, as recognized in academic commentary and jurisprudence. The reliance upon expert economic evidence and judicial discretion means that outcomes can be less foreseeable than under a rule-based or market share threshold system. This can complicate compliance efforts for businesses, particularly where similar conduct could be actionable under either competition or unfair competition law, with overlapping or unclear jurisdictional boundaries.

There is, thus, space for improvement, especially enhancing legal certainty through harmonization of criteria and clear guidelines. The Spanish experience, and the structure of its legal regime, underscore the necessity and value of the abuse of relative market power as a regulatory tool for the preservation of competitive, fair B2B markets. The development of specialized, context-driven criteria for identifying and remedying such abuses increases the resilience of the system against novel and disruptive business models, especially in the digital sector.

However, continuing efforts toward clarity, predictability, and proportionality—perhaps including further alignment with EU developments and international comparative experience—will be essential to ensure that the rules promoting a functioning competition are genuinely effective and just.

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