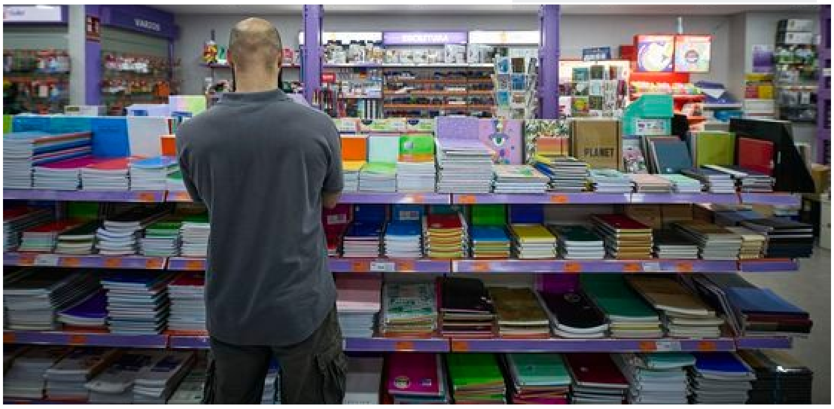
# fines imposed on the textbook cartel

The High Court rejects the CNMC's appeal against the National Court's ruling that overturned sanctions against 34 publishers in May for coordinating prices and sales conditions, considering that it was modified after the deadline.



A stationery store, a place where textbooks are sold. (Europa Press/Jesús Hellín)

By **Alejandro Galisteo**
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**EC EXCLUSIVE**

E **The textbook cartel** case comes to an end. The **Supreme Court** has dismissed the appeal filed by the **National Markets and Competition Commission (CNMC)** against the ruling of the **National Court**, which in May overturned the sanctions imposed on **34 publishers** and the **National Association of Publishers of Books and Teaching Materials (ANELE)**.

In a ruling dated October 8, to which **El Confidencial** has had access, the High Court puts an end to the administrative proceedings that **began in 2019** with fines totaling **€34 million** against some of the country's leading publishers for coordinating prices and conditions for the sale of school books.

The National Court had already overturned the CNMC's penalty decision, considering that the body had corrected "substantial data in the calculation of the fine **after the deadline**." Everything revolved around a table—number 9 in the file—which **the CNMC modified twenty days after issuing the** original **decision**. According to the judges, this correction was not a mere typographical error, but a substantial alteration that affected the duration of the infringing conduct and the market shares attributed to the sanctioned companies. "This is not a mere material correction," the Chamber stated at the time, "but a substantive modification that affects the content of the sanctioning decision."

## Case closed

The Supreme Court has now definitively closed the case. In its ruling, the judges declared **inadmissible the appeal** filed by the **state attorney**, who was defending the interests of the CNMC. The decision means that the National Court's ruling stands and the sanctions are completely overturned.

The State Attorney questioned **two of the main arguments** in the lower court's ruling. "We are dealing with a correction of a material error, as it was only in relation to the duration of the conduct, with the act of correction granting identical procedural, substantive, and resolution content to the corrected act." Furthermore, the CNMC's representation "considers that this is a single disciplinary proceeding in which disciplinary power is exercised in relation to two separate but **very serious infringements,** and the rectification only refers to one of them, so that, in any case, the nullity should have been partial."

Thus, the State Attorney had argued that the rectification agreement issued **on June 20, 2019** "grants identical procedural, substantive, and resolution content to the rectified act," defending that it was a simple correction of a material error limited "to the duration of the conduct." In his argument, he claimed that "neither Table 10, which lists the penalty rates, nor Table 11, which lists the penalties ultimately imposed, were subject to any correction; the only error noted occurred in Table 9 and can be seen by considering only the data in the administrative file."

Furthermore, it argued that the CNMC had exercised "its power to impose penalties in relation to two separate but **very serious infringements**," and therefore, in any case, "the contested decision should have been declared partially null and void" rather than completely annulled.


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## No interest for the Supreme Court

However, the Supreme Court judges have not accepted these arguments. In its ruling, the High Court concludes that the appeal "**clearly lacks** objective **interest** for the formation of case law," emphasizing that the legal debate raised by the CNMC had already been studied by the Chamber itself in previous rulings.

The First Section, with Judge **Diego Córdoba Castroverde** presiding, recalls that the case law on the limits of rectifying errors was already established in the ruling of **July 24, 2018,** which the National Court had taken as a reference and had even been invoked by the State Attorney's Office itself. "Seeking to have us make a new assessment of the facts in order to modify the conclusions reached by the lower court," the Supreme Court reproaches, in direct reference to the attempt to reopen a strictly factual debate.

With regard to the second ground for appeal—the application of the principle of conservation of acts and the possibility of partially annulling the decision—the Chamber adds that there is "**abundant case** law" on this point, "without any justification for the need to qualify, clarify, or specify it for legal situations other than those contemplated therein."

Consequently, the Court dismisses the appeal and upholds the decision of the National Court, imposing the costs of the proceedings on the CNMC. "No appeal may be lodged against this decision," concludes the ruling, which definitively closes the case.

## Law firms involved in the case

Some of the country's leading law firms specializing in competition law participated in the proceedings. According to information consulted by this media outlet, **Cuatrecasas** represented **Pearson Educación; Garrigues** represented **Anaya; Latham & Watkins** represented **Santillana; Clifford Chance** represented **Edelvives; Callol, Coca & Asociados** represented **Oxford University Press; DLA Piper** represented **Macmillan; Ramon y Cajal Abogados** represented **Edebé; Uría Menéndez** represented **Editorial SM;** and **A&O Shearman** represented **McGraw Hill.**

Although the CNMC's decision has been overturned in its entirety, the ruling is due to a formal defect: the expiry of the proceedings after substantial elements of the sanction were modified after the deadline. The courts have not **assessed the substance of the allegations**, i.e., the collusive conduct or the material existence of the cartel.

Therefore, the material accusations have not been discussed, and the CNMC's administrative file **retains probative value** in terms of proving the facts. This means that the judicial closure of the administrative proceedings does not prevent consumers or families affected by possible overpricing—as a result of coordination between publishers on the prices of school books—from bringing **civil actions for** damages.

In practice, the Supreme Court's ruling definitively buries the fines, but leaves the way open for **individual or collective claims** by those who can prove that they paid inflated prices during the years in which the CNMC identified the restrictive practices.

Law firms CNMC

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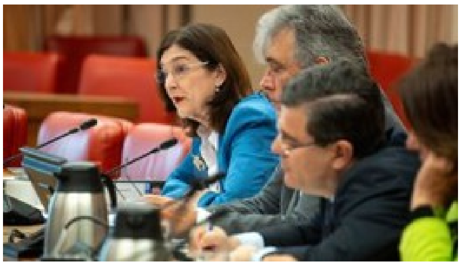

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