Takeover of a listed company as a result of a restructuring and a "legally impossible" compulsory public bid

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The gaming company Codere was restructured some years ago, when the bondholders took over and ousted the founding family from the company.

A series of legal battles ensued. In one of them the founding family requested the CNMV (the Spanish securities market commission) to obligate the leading bondholders to make a *compulsory* public bid for 100% of the shares at a fair price. They claimed the bondholders breached the legal provision which requires to make a public offer when control of a company is obtained.

The CNMV rejected the request and was sued before the National Court (*Audiencia Nacional*), which dismissed the claim[1] because the remedy sought was "legally impossible", given that (i) the regulations do not provide for any "mechanism" to have the controlling shareholder make a public bid and (ii) a public bid was not possible anyway, as Codere had already been delisted as a consequence of its liquidation.

The National Court noted that the legal consequences of violating the obligation to make a public bid are two, namely sanctions (including fines) and the prohibition to exercise the voting rights attached to the shares. According to the judgment, these consequences are deterrent enough to avoid that a takeover is "implemented in practice".

However logical this reasoning may seem, it did not provide a fully satisfactory solution to the peculiarity of the case, for the takeover was indeed "implemented in practice" and the decision of the court was somehow the surrender to a *fait accompli*.

[1] Judgment of 10 April 2024 (appeal 1511/2021).