

ENTERTAINMENT MADE IN SPAIN: COMPETITION IN THE BULLFIGHTING INDUSTRY

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***Abstract:** Controversial for many reasons, bullfighting is probably one of the most typical entertainment activities in Spain. Bullfights are an idiosyncratic spectacle belonging to the Spanish cultural tradition, but which has also a meaningful economic significance. This paper will look at the role of market forces and competition in the bullfighting industry, describing the peculiarities of its organization and looking at the many anticompetitive features that characterize it. Spanish local authorities are strongly involved in the organization of bullfights and strict and detailed public rules govern the intervening actors and the performance during the shows. Thus, the institutional framework of bullfighting heavily constrains competition conditions in the industry, setting the scenario for a limited role of market forces. Furthermore, history shows that the collective organization of different players involved (promoters, breeders, bullfighters and subordinates) in order to exert their market power has occasionally lead to anticompetitive actions and reactions. Thus, unsurprisingly, the Spanish Competition authorities have dealt with some anticompetitive behaviour by some of the players participating in the bullfighting industry.*

Keywords: Entertainment, Antitrust Law, Competition Law, Bullfighting, Regulation

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Introduction¹

Despite being very contentious for many reasons, related primarily to the respect of animal rights, bullfighting keeps being a representative of Spanish cultural tradition.² Community celebrations and festivities frequently include bullfighting performances as a major attraction.³ Bullfighting is part of the quintessence of Spanish popular culture and is a representation of an elaborate and ritual drama in which the vulnerability of human being is confronted with death and transcendence.⁴ Aside from the historical roots and the cultural face of bullfighting,⁵ the bullfighting industry has strong economic importance,⁶ with implications in several markets. Although bullfighting is not a real sport,⁷ it rivals with sport activities in its economic significance, the impact of bullfighting and related activities in Spain is estimated to be around €2,000 million with a contribution to GDP of 2,4%.⁸ According to some news reports, bullfighting is the cultural event that more VAT (Value Added Tax) income generates for the State in Spain, around €40 million/year.⁹

Apart from the markets directly involved in the organization of the bullfighting show (concerning the inputs needed for the spectacle to take place, to which we will refer later), there are several other markets that may be indirectly affected by this form of entertainment (for example, broadcasting rights in TV and other media). Being such a relevant economic

¹ This paper was presented at the *XXIII CLaSF Workshop*, Madrid, 26th September 2014, comments by attendants to the workshop and by A. Sánchez Graells are gratefully acknowledged.

² See K O BEILIN, 'Bullfighting and the War on Terror: Debates on culture and torture in Spain, 2004–11' (2012) *International Journal of Iberian Studies* 25/1: 61–72; S BRANDES, 'Trophiles and Trophobes: The Politics of Bulls and Bullfights in Contemporary Spain', (2009) *Anthropological Quarterly* 82(3) 779-794 and F LARA, 'Los toros y la legislación española. A propósito de la sentencia del Tribunal Superior de Justicia de Cataluña 854/2001, de 11 de Julio' (2010) *Doxa. Cuadernos de Filosofía del Derecho* 33: 705-724.

³ See C B DOUGLASS, 'The Fiesta Cycle of "Spain"' (1991) *Anthropological Quarterly*, 64/3: 118 and 130, 132-133, 135-137.

⁴ As any the anthropological accounts of bullfighting describe, see C B DOUGLAS, *Bulls, Bullfighting and Spanish Identities* (Tucson, Ar. U of Arizona Press, 1997); G MARVIN, *Bullfight* (U of Illinois Press, Urbana & Chicago 1988) and MCCORMICK, J, *Bullfighting: Art, Technique and Spanish Society* (Transaction Publishers 2000).

⁵ With deep ritual meanings and closely linked to religion, see J-B MAUDET, *Terres de Taureaux. Les Jeux Taurins de l'Europe à l'Amérique* (Casa de Velázquez, Madrid 2010) 107-140 and J PITT-RIVERS, 'The Spanish bull-fight and kindred activities' (1993) *Anthropology Today* 9/4: 11-12.

⁶ See A SCHUBERT, *Death and Money in the afternoon. A History of the Spanish Bullfight* (Oxford U Press 1999) 17 (stressing profit and power underlying this cultural industry).

⁷ Indeed, in comparison with other "bull games", bullfighting is the one which has least been made 'sportive', MAUDET, *Terres de Taureaux* (*supra* n5) 58-59 and 136-137

⁸ In 2012 the impact was measured in €1.730 million, see ERC/CATALUNYA Sí, *Toros & Taxes. Subsidies in Spain and the EU for Bullfighting and Bull Rearing*, 3-4. Maudet reports that some survey had revealed a 69% interest of Spaniards in Bullfighting, and he gives data about the increase in the number of spectacles per year in the beginning of the 21st century, MAUDET, *Terres de Taureaux* (*supra* n5) 281-282.

⁹ See "El IVA taurino financia 175.000 becas y casi 14.000 plazas de educación infantil", *El Mundo* 12 Febr. 2013 (<http://www.elmundo.es/elmundo/2013/02/12/toros/1360691407.html>).

venture in the Spanish entertainment industry, this paper seeks to analyse how the bullfighting industry is organized and how market forces operate in these markets. Bullfights are a unique form of entertainment, deeply rooted in the Spanish history and tradition (known as '*Fiesta nacional*' or National celebration), looking at their current situation and to what role do law and competition play seemed to be of some interest.

The dynamics of the organization of bullfighting are analysed in Section 1 by looking at both the public and private side of this business. The organization of the bullfighting industry as a cultural entertainment industry is strongly conditioned by very heavy government regulation and public intervention, which may shape how the business and competition operates (*infra* §1.1). Nevertheless, aside from the public and administrative framework of the bullfighting industry and markets, private entrepreneurs have always played a crucial role in supplying and organizing the inputs that make the bullfighting spectacle possible, so how the private side of the business is set and operates will also be examined (*infra* §1.2).

Once the organization of the bullfighting industry is described, Section 2 will look at the anticompetitive features that are at the root of how some of these markets function, some of which have been detected by Spanish competition authorities. The sources of anticompetitive behaviour in this industry may be historically traced to the original broad regulatory and public interventions that have always pervaded how bullfighting shows are organized and run. Those interventions have heavily burdened the interplay of competition forces in these markets. There is a rich historical evidence of anticompetitive actions by market players and more recent decisions by the Spanish competition authorities detecting anticompetitive behaviour in the bullfighting industry.

1. Organization of bullfighting

Bullfighting is part of the cultural heritage of Spain and some other countries, and it is entrenched in Spanish history, providing also a very popular identity ground in the country. Bullfights are public spectacles involving ritual actions and *maneuvers* performed to bait and kill a bull for the entertainment of the audience.¹⁰ They are organized in specific venues known as *bullrings*. Spain is the country with the largest number of bullrings worldwide and, therefore, where most of bullfights are organized.¹¹

¹⁰ For the purposes of this paper we will be looking at the most strict and orthodox version of professional bullfighting –aka *Spanish* bullfighting (*corridos* or *novilladas*)-, leaving aside other type of '*bull games*' that may be practiced in Spain and elsewhere (including *rodeo* and *bull-riding*), also centred in the bull, which may involve the participation of the public, and which also belong to Tauromachy, see MAUDET, *Terres de Taureaux* (*supra* n5) 1-12 (for a useful taxonomy included also a geographical map of the countries where they are practiced), 50-51 and 70-75.

¹¹ See MAUDET, *Terres de Taureaux* (*supra* n5) 148-149, 153 and 168-179. Apart from Spain bullfights are also organized in Portugal (*tourada*), the Southern France and some other countries of strong Spanish influence (Bolivia, Colombia, Costa Rica, Ecuador, Mexico, Panama, Peru, Philippines and Venezuela). There may be substantial variations on the performance of the spectacle in some of these countries [f.e, bulls are not killed in Portugal ('*bloodless bullfights*' or '*soft corridas*')]. Moreover none of them reaches the number of spectacles that are performed in Spain, which is the leader by far, indeed it is a good indicator to measure the proximity to Spain, MAUDET, *Terres de Taureaux* (*supra* n5) 423

Although bullfighting shows may have been organized in town squares in their origins, in the mid-XVIII spacious permanent arenas of circular shape were built to host these spectacles,¹² and local authorities were generally involved the construction project (see *infra* §1.1.2).

Bullfighting is deeply entrenched in the Spanish cultural heritage, and its remote historical roots date to Paleolithic times, though only turned to be a popular spectacle in the XVIII century.¹³ Modern bullfighting has evolved from its roots as an elitist tradition to become part of collective folklore.¹⁴ Foot bullfighting as it is practised nowadays comes from that time, with minor changes and innovations in the techniques, weapons used in the performance.¹⁵ Being an entertainment spectacle from the perspective of the audience, it is not easy to define what it is, whether a form of art or a sport performance.¹⁶ Admittedly, in general the physical fitness of the bullfighters is a precondition in order to be able later to adequately master the different techniques required by the show.

Generally, bullfighting shows (*corridos*) are organized during the bullfighting season (which in Europe extends from late March to early October). In each town, shows are arranged as part of a cycle normally coinciding with major local festivities.¹⁷ In a *corrida* six bulls are fought, with performance for each bull lasting around twenty minutes.¹⁸ Generally, three separate teams of bullfighters (*cuadrillas*) intervene in one event, each of the teams fighting two bulls. Each team leader is the matador, who is in charge of directing the performance of his squad and, at the end he is responsible for killing the bull. Depending on the public's satisfaction with his performance, once the bull is dead, the matador may get a prize, consisting either one or two of the bull's ears or its tail.¹⁹

¹² See SHUBERT, *Death and Money in the afternoon* (*supra* n6) 28.

¹³ J KAPLAN, 'Toros, Steers, Ropes, Capes, and Cowboy boots: The inhumane nature of bullfighting and rodeos' (2012) *Mid-Atlantic Journal of Law & Public Policy* 1: 56-59.

¹⁴ On the popular and elite mixture in the modern conception of bullfighting, see A SHUBERT & M SANCHÍS MARTÍNEZ, 'En la vanguardia del ocio mercantilizado de masas: la corrida de toros en España, siglos XVIII y XIX' (2001) *Historia Social* 41: 120.

¹⁵ This article will analyze only *footed* bullfighting (either *corridos* or *novilladas*) but not *horseback* bullfighting (*rejoneo*), though most of the considerations made here concerning the structure and organization on the industry apply to both. Although initially, horseback bullfighting was considered to be more elitist [see MARVIN, *Bullfight* (*supra* n4) 44], that is not the case anymore, see M COLENUTT, *A Load of Spanish Bull- A provocative Guide to Bullfighting* (Galganesh Books 2013) 23-25 and K THOMPSON, 'Classy Performances: The Performance of Class in the Andalusian Bullfight from horseback (*rejoneo*)' (2012) *Journal of Spanish Studies* 13/2: 167-168.

¹⁶ See P HETTER, 'The Aesthetics of the *Fiesta de los toros*' (1954) *Journal of Aesthetics and Art Criticism* 12(4): 475-480.

¹⁷ The San Isidro Fair in Madrid, during the month of May is the largest by far. Also popular are the April Fair in Seville; Las Fallas in Valencia; San Fermín in Pamplona; and El Pilar in Zaragoza.

¹⁸ *Corridos* are different from *novilladas* and *becerradas*, which can be deemed minor bullfighting events (with or without mounted assistants). The main difference among them is the ages of the bulls being fought: five years in *corridos*, from two to four years in *novilladas*, less than two years in *becerradas*. See MARVIN, *Bullfight* (*supra* n4), 37-38.

¹⁹ See KAPLAN, 'Toros, Steers, Ropes, Capes, and Cowboy boots' (*supra* n13) 61-63. On the criteria ruling trophy awards to bullfighters, see J L GARCÍA GARCÍA, 'De trofeos, Devoluciones y sustituciones' in *La Fiesta de los Toros ante el Derecho* (Unión Taurina de Abonados de España, Madrid 2002) 105-111.

Being a singular form of entertainment, bullfighting is deeply rooted in the tradition and in the communities in those places where it is practiced. Despite every once in a while there is an alert about the decline of bullfighting attendance,²⁰ it keeps attracting the same social and mass media attention of other forms of entertainment in Spain.²¹ Of course, despite being a very popular form of entertainment it has also been affected by the current economic situation.²² Though, in absolute terms the number of spectacles organized in Spain has grown from 1999-2007, it has continuously been falling since then.²³

Whilst most of the foreign legal literature on bullfighting focuses in animal rights generally criticizing bullfighting as a form of cruel animal abuse,²⁴ the domestic legal literature rather looks at the detailed legal and administrative requirements of the industry. As we will see later, to guarantee public order in these spectacles and to preserve the essence and culture of the show, it is strictly regulated in every minor detail, legal technicalities abounding and governing how it takes place.

In the next two subsections we will look at bullfighting as a complex business venture involving several relevant parties. Culture and tradition moulded by public regulation and intervention, which strongly condition how this business is organized (*infra* §1.1). Although the public side of bullfighting is key for understanding the functioning of this industry, it would be incomplete without looking at the very relevant private players that make the spectacle possible (*infra* §1.1).

1.1. Public side of bullfighting.

For many reasons, bullfighting is a unique form of entertainment. In its origins and historical evolution it has been the main form of spectacle organized and promoted by the public powers in Spain,²⁵ with strong political motivations.²⁶ Public intervention is embedded in its

²⁰ See, for example, R GRAVES, 'The Decline of Bullfighting,' in *A Thousand Afternoons: An Anthology of Bullfighting* (ed. Peter Haining) London, Peter Owen 1970, 117 ("Spaniards no longer wholeheartedly support the National Fiesta").

²¹ See SHUBERT & SANCHIS 'En la vanguardia del ocio mercantilizado de masas: la corrida de toros en España, siglos XVIII y XIX' (*supra* n14) 124 ("There are numerous comparisons available among the many shows in which a large number of people pay money to get into special venues and observe the actions of highly paid professionals, which are also the subject of a popular adulation. That is, the bullfights are a form of commercialized mass entertainment: a cultural industry").

²² See G KELLEY, 'Debt in the afternoon: bullfighting staggers into crisis', *The Guardian* 11 May 2008 (<http://www.theguardian.com/world/2008/may/12/spain>).

²³ See ANOET, *Análisis Económico de la Fiesta*, 14 Oct. 2013, 6-7 (available at [http://www.taurologia.com/imagenes%5Cfotosdeldia%5C4050 informe de anoet analisis economico de la fiesta.pdf](http://www.taurologia.com/imagenes%5Cfotosdeldia%5C4050%5Cinforme%5Cde%5Canoet%5C analisis%5C economico%5C de%5C la%5Cfiesta.pdf)), where a more detailed analysis by type of spectacle can be found also. The recent *National Strategic Plan for the Protection of Tauromachy*, adopted in Dec. 2013 (available at <http://www.mecd.gob.es/prensa-mecd/dms/mecd/cultura-mecd/areas-cultura/tauromaquia/plan-nacional/Pentauro-aprobado--19-12-13-.pdf>) considers the need to adopt several measures to tackle the parallel decrease in the attendance rates (id. 14-16).

²⁴ See KAPLAN, 'Toros, Steers, Ropes, Capes, and Cowboy boots' (*supra* n13) 52-95 (in parallel with rodeo in the US) and A N VÉLEZ, 'Olé, Olé, Olé, Oh No!: Bullfighting in the United States and Reconciling Constitutional Rights with Animal Cruelty Statutes' (2010) *Penn State Law Review* 115(2): 497-516.

²⁵ See, for example, F J VELÁZQUEZ SAHAGÓN, 'Institucionalización de racionalidades en una industria cultural: la tauromaquia en México' (2011) *Gestión y Estrategia* 40: 74-76 and 84-86 underlines that it cannot be considered

historical evolution, and it keeps being a major feature of the industry. However, in modern times, public intervention has changed and evolved and it is embodied through regulation and supervision (*infra* §1.1.1), ownership of bullrings (*infra* §1.1.2), and subsidies (*infra* §1.2.3).

1.1.1. Government regulation and supervision

Bullfighting spectacles have traditionally (and are still) heavily regulated.²⁷ Allegedly, the legislative rules and regulation on bullfighting are inspired on guaranteeing the public order and safety during the performance and on preserving the purity of bullfight (*fiesta*). While, the former inspiration concerns the *external dimension* of bullfighting –preserving safety of people and goods and the public order in these spectacles –²⁸, the later deals with the *internal dimension* of bullfighting –the technical and artistic intricacies and development of the bullfighting show (*regulae artis*)-.²⁹

The external dimension of the bullfighting show is not different from the one that is faced in any other public spectacle (sports or cultural events), what distinguishes bullfighting is that rules also introduce several other formal requirements aimed at ordering and governing how the show takes place. Indeed, these formalities are *constitutive rules*, because they make the

a regular business activity, analysing the different social, ritual and symbolic meanings and roles bullfighting had developed throughout history.

²⁶ See SCHUBERT, *Death and Money in the afternoon* (supra n6) 181-214.

²⁷ Although there may be rules on the matter by the different regions, the two main rules are Act 10/1991 of 4 April, regarding administrative powers on bullfight spectacles (Official Gazette 82 of 5 April 1991, available at <https://www.boe.es/buscar/pdf/1991/BOE-A-1991-8266-consolidado.pdf>) and Royal Decree 145/1996 of 2 February, modifying and re-writing the Regulation of Bullfighting Spectacles (Official Gazette 54 of 2 march 1996, available at <https://www.boe.es/buscar/pdf/1996/BOE-A-1996-4945-consolidado.pdf>). An explanation of the origins and evolution of this regulatory bias (initially justified in preserving public order but later covering the artistic and technical features of bullfighting) see MARVIN, *Bullfighting* (supra n4) 63-65. See also a critique of the excessive regulatory bias by L CLEMENTE, *La tauromaquia a través de sus conflictos. Jurisprudencia Taurina* (Aranzadi 2009) 25-27 and 43.

²⁸ According to the Spanish Supreme Court, “*The purpose of this administrative intervention is to ensure that the bull –an essential element in the fight- fulfills the conditions conducive to the smooth running of the bullfight, thus mentoring the viewer’s rights*” [Legal ground third, of Judgment of 17 May 2001, Administrative Chamber (section 6)].

²⁹ Unfortunately, legal rules and regulation target (and intermingle) the *external dimension* with the bullfights’ *internal dimension* see L HURTADO GONZÁLEZ, *Toreros y Derecho. Una aproximación al régimen jurídico de la profesión taurina* (Tirant lo Blanch, Valencia 2013) 22. Also critically, from a similar perspective, J I PRADA BENGOA, ‘Hacia un nuevo marco institucional para el sector taurino’, in *La Fiesta de los Toros ante el Derecho* (Unión Taurina de Abonados de España, Madrid 2002) 219-223. The *National Strategic Plan for the Protection of Tauromachy*, justifies the need of regulating the internal dimension on the public interest in protecting and promoting bullfighting as a part of the national historic, artistic and cultural heritage [see *National Strategic Plan* (supra n23) 9-10]. See a good proof in Legal ground 4, 2nd paragraph of the Supreme Court Judgment, Administrative chamber (full), of 23 June 2000 [“*they are not but the formal and correct regulation of the first third of the show in bullfights and heifers, for the sake of their own purity as a national festivity (fiesta nacional), for which all the referred precautions result in every case necessary, also the public interest inherent in the show and even the public order which could also be affected*”].

spectacle possible, as they define it and prescribe the only conditions under which the so can be organized and developed.³⁰

In a sense, one could argue that the formal rules of bullfighting can be related with the sport/game rules that prescribe how competition takes place in sports (generally inspired in preserving fairness among players and teams but also in the interest of the spectacle and match's attendants), however there is not normally such type of rules in other cultural spectacles (because creativity rules everything) and, for that very reason, bullfight rules seem to be unique from that perspective.³¹

Indeed, like in sports, together with *constitutive rules*, in bullfighting there are also *regulative rules*, which introduce several mandatory rules of practice for bullfighters and their squad that can be violated, sanctions being prescribed if so occurs. Differently from other types of sports or entertainment,³² here the public powers have set the rules and also are in charge of administering and enforcing them.³³ That of course, changes somehow the legal nature of the rules, but also transforms the nature of their enforcement, as administrative sanctions are prescribed in case violations of the rules occur.

The public regulation and supervision of the bullfight are aimed at ordering the whole spectacle, with several strict rules on eligibility, procedures and phases that must be followed. This is the only pre-set or 'mechanical' part of the show, as the rest of it is left for the spontaneity involved in dealing with a wild animal and with bullfighter's skills and craft.³⁴

On the other hand, bullfighting is protected as cultural heritage by a recent parliamentary declaration,³⁵ and regulation prescribes all the details of the show, and further gives the local administrative authorities the power to monitor and intervene while it is conducted, providing them with sanctioning powers. Besides, decentralization of powers to the regions has also reached regulation and monitoring of bullfighting, with rules and powers varying among different regions in the country.³⁶ Navarra,³⁷ the Basque Country,³⁸ Aragón,³⁹ Andalucía⁴⁰ and

³⁰ See G MCFEE, *Sport, Rules and Values. Philosophical Investigations into the nature of sport* (Routledge, London 2004) 35-36 and 43 (explaining also the difference with sport *regulative* rules). Indeed, see W VAMPLEY, 'Playing with the rules: Influences on the development of regulation in sport', (2007) *International Journal of the History of Sport* 24(7): 845 ("Yet cockfighting, another animal sport with death as the outcome, developed a complex set of rules under which the determination of victory and the role of the bird handlers was carefully defined").

³¹ See HURTADO GONZÁLEZ, *Toreros y Derecho* (*supra* n29) 205-206.

³² See several examples of constitutive rules evolution and development in VAMPLEY, 'Playing with the rules' (*supra* n30) 845-851.

³³ HURTADO GONZÁLEZ, *Toreros y Derecho* (*supra* n29) 212-213

³⁴ See MARVIN, *Bullfight* (*supra* n4) 64-65 ("The regulations defined the order and nature of the stages which the bull had to go through and what was left for the performers was the stylistic freedom of executing the movements considered appropriate to each of the predetermined stages").

³⁵ See Act 13/2013, of 12 November, for regulating bullfighting as cultural heritage (Official Gazette 272 of 13 November, available in Spanish at <http://www.boe.es/boe/dias/2013/11/13/pdfs/BOE-A-2013-11837.pdf>). Commenting on the origins and basic provisions of this Act, which mandates public powers to promote bullfighting, see D FERNÁNDEZ DE GATTA, 'La Ley de 12 de noviembre de 2012 para la regulación de la tauromaquia como patrimonio cultural: una esperanza para el futuro' (2014) *Diario La Ley* 8239: 2-16.

³⁶ See also MAUDET, *Terres de Taureaux* (*supra* n5) 147 (only the Basque Country and Andalucía have drafted a complete regulation, the rest of the regions have focused more in popular bull games).

Castile & León⁴¹ had adopted regional regulations, though there is considerable dispute and confusion about the legality and constitutionality of the diverse regional rules adopted.⁴² Indeed a region has gone as far as prohibiting bullfighting in their territory (Catalonia).⁴³ Regulation covers every conceivable detail of the bullfighting spectacle, ranging from the bulls' condition and other tools and materials used in the performance, to the qualification of the different players, and the different phases and procedures through which the event is run. In particular, legal rules have built a jungle of registries, bureaucracy and red-tape that shapes the spectacle.

By law, both bulls and bullfighters need to be enrolled in the apposite registers, which prescribe both the qualities that they need to meet.⁴⁴ As it will be explained later, bull registries restrict the breed of animals that can be used, limiting the amount of bulls that can be used (see *infra* §1.2.2). In the case of bullfighters, anyone that fulfills the requirements of practice and experience (which are progressive depending on the specific type of show)⁴⁵ can be enrolled and would be able to perform (see *infra* §1.2.3).⁴⁶

³⁷ Decree 249/92 of 29 June.

³⁸ Decree 183/2008 of 11 November.

³⁹ Aragón Decree 223/2004 of 19 October.

⁴⁰ Andalucía Decree 68/2006 of 21 March.

⁴¹ Castilla y León Decree 57/2008 of 21 August.

⁴² See D FERNÁNDEZ DE GATTA, 'Prohibiciones taurinas y Administración Pública: las sentencias del caso 'Carmen de Távora' y el futuro de la fiesta de los toros' in E GARCÍA DE ENTERRÍA & R ALONSO GARCÍA (coord), *Administración y Justicia. Un análisis jurisprudencial. Liber amicorum Tomás-Ramón Fernández*, vol I (Civitas, Cizur Menor 2012) 1072-1078; ID, 'Régimen jurídico de la fiesta de los toros: de las prohibiciones históricas a los reglamentos autonómicos del siglo XXI', (2009) *El Consultor de los Ayuntamientos y de los Juzgados* 24: 3632-3634; ID, 'El régimen de los festejos taurinos populares: evolución y regulación entre dos siglos', in M ARENILLA SÁEZ (coord), *La Administración Pública entre dos siglos. Homenaje al Prof. M. Baena del Alcázar* (INAP Madrid, 2010) 1477-1479; HURTADO GÓNZALEZ, *Toreros y Derecho* (*supra* n29) 24-42 (especially in what it has to do with the internal dimension of bullfighting) and 76-86 (criticizing the absurdity of the regional registries created by some regions) and also CLEMENTE, *La tauromaquia a través de sus conflictos* (*supra* n27) 26 and 41-48 (reporting that some of the judicial disputes relate to the interrelation of national and regional rules/powers).

⁴³ See Catalanian Act 28/2010 of 3 August (unconstitutionality claim pending). See KAPLAN, 'Toros, Steers, Ropes, Capes, and Cowboy boots' (*supra* n13) 68-69 and MAUDET, *Terres de Taureaux* (*supra* n5) 289. There has been considerable debate on the constitutionality of the Catalanian Act banning bullfights, see P DE LORA, 'Corridos de toros, Cultura y Constitución' (2010) *Doxa. Cuadernos de Filosofía del Derecho* 33:739-775; FERNÁNDEZ DE GATTA, 'Prohibiciones taurinas y Administración Pública' (*supra* n42) 1080-1087 and T R FERNÁNDEZ RODRÍGUEZ, T R, 'Sobre la constitucionalidad de la prohibición de las corridas de toros en Cataluña' (2010) *Doxa* 33:725-738. It is not true that bullfighting is prohibited in the Canary Islands, see FERNÁNDEZ DE GATTA, 'Prohibiciones taurinas y Administración Pública' (*supra* n42) 1078-1080.

⁴⁴ See Order of 25 January 1993 approving the rules of operation of the bullfigthing registries (Official Gazette 28 of 2 February, available at <https://www.boe.es/boe/dias/1993/02/02/pdfs/A02741-02743.pdf>).

⁴⁵ See *supra* n18.

⁴⁶ In other countries, legislation has gone further and the requirement of hiring a national bullfighter is imposed by Law (see article 28 of the Peruvian Act 28131 of 10 December 2003, of artists, interpreters and performers, "at least one matador of Peruvian nationality must participate in any bullfighting event. At least one apprentice bullfighter (novillero) of Peruvian nationality must participate in events involving young bulls (novillos)")

Legislation was modified in the 1990s to fight “horn shaving” and other practices of artificial horn manipulation, introducing detailed procedures for bull examination by veterinarians *ex ante* and *post mortem* to assess if the horns had been manipulated and potential sanctions for breeders if it was proved that occurred.⁴⁷

1.1.2. Public ownership of bullrings

The vast majority of the fixed and stable bullrings are owned by the municipalities or other public institutions (the provinces or the regions), and this gives additional weight to the public side of the bullfighting industry.

It is difficult to say accurately the number of bullrings existing in Spain, it seems to be around 3000⁴⁸. The regulation classifies the bullrings hierarchically in different categories,⁴⁹ with relevance on the rules governing the show. Nevertheless, the public powers never manage or run the bullrings themselves, but rather give them in public concession to bullfight promoters.⁵⁰

In that way, the bullrings remain under public property but are managed by private undertakings. There are several options how this public-private cooperation can be organized, but it generally takes the form of a works concessions. By law, when public powers award a concession of a bullring they need to follow public procurement rules,⁵¹ to ensure the legality and regularity of the transaction, and select the best bids in terms of quality and price. The bidding and award procedure needs to follow different steps and fulfil strict regulatory requirements, in order to make the process competitive and transparent.⁵²

(available at <http://portal.unesco.org/culture/es/files/34186/11824191023LeyPeru28131.pdf/LeyPeru28131.pdf>). Apparently, a similar restraint against Spanish bullfighters was put in place by Colombian and also other Latin American countries, MAUDET, *Terres de Taureaux* (*supra* n5) 356.

⁴⁷ Described by KAPLAN, “Toros, Steers, Ropes, Capes, and Cowboy boots” (*supra* n13) 59. The legal disputes for sanctions due to these practices are paramount, see CLEMENTE, *La tauromaquia a través de sus conflictos* (*supra* n27) 117-183.

⁴⁸ See ‘El Mundo del toro’ (available at <http://www.torobull.com/toro/mundo-del-toro.htm>). The number would be much larger if mobile bullrings are included. Given their artistic features, some bullrings are even architectural monuments (f.e. Ronda, Nimes).

⁴⁹ Bullrings are classified in categories (1st, 2nd and 3rd) according to their bullfighting tradition or the number of spectacles performed annually (Article 23 of 1996 Regulation of Bullfighting). Only the bullrings of Bilbao, Córdoba, Madrid, Pamplona, San Sebastián, Sevilla, Valencia and Zaragoza are of first category. Madrid and Seville stand out as the most relevant bullfighting venues in Spain, MAUDET, *Terres de Taureaux* (*supra* n5) 245.

⁵⁰ CLEMENTE, *La tauromaquia a través de sus conflictos* (*supra* n27) 185. Nevertheless, as it happens sometimes in public concessions, the role of the tender should not be exaggerated, as they may occasionally happen that *ex ante* the awarding power has a preference for one of the bidders.

⁵¹ Currently, the Public Sector Contracts Law, which consolidated text was approved by Royal Legislative Decree 3/2011, as recently amended by Royal Decree-Law 1/2014. For a broad study of the legal treatment of concessions under Spanish public procurement rules, see A RUIZ OJEDA, *La concesión de obra pública* (Madrid, Civitas 2006).

⁵² Under Spanish law, those contracts are subjected to strict procedural and transparency rules regardless of their value remaining below the EU thresholds. See A SÁNCHEZ GRAELLS, ‘Public Procurement below Thresholds in Spain’, in R CARANTA & D DRAGOS (eds), *Outside the EU Procurement Directives—Inside the Treaties?*, vol. 4 (European Procurement Law Series, Copenhagen, DJØF, 2012) 259-281. These rules are bound to change due

The operation of the bullring and the organization of bullfights are considered to be public functions and public services (within the powers of culture and leisure activities that the municipalities have recognized by Law),⁵³ and the bidding process will introduce conditions in accordance with that fact. Those conditions are frequently linked to the organization of local festivities and events. Tender specifications limit the organization options of the bullfighting promoter, forcing him to organize some events in conditions that may not be profitable, they may also impose ticket price limits and/or also intervene or constraint how he runs the bullring (requiring a number of shows, specific breeds or bullfighters, etc.).⁵⁴

1.1.3. Subsidies to bullfighting

The traditional festivity and popular appeal of bullfighting has also lead to large subsidies by public powers at different tiers of public administration to promote the organization of these activities. Bullfighting training schools are also supported by public powers.⁵⁵ At the end, according to some estimates, the public backing to bullfighting entails that the authorities end up paying at least 1/3 of the tab of an activity that has become deficitary.⁵⁶ That would include €130 million/year that bull stockbreeders get from the EU's Common Agricultural Policy (CAP).⁵⁷

1.2. Private side of bullfighting

Aside from the very relevant public facet of bullfighting, the industry features several private actors whose contribution is essential for the spectacle to be organized and take place. They contribute with the basic resources, which are needed in the performance. The peculiarities of bullfighting as a form of entertainment affect how industry is organized in the private side, so it is worthwhile to have a look at the different players involved.

to the need to transpose Directive 2014/23 on concessions to the Spanish legal order. For a comment on the new requirements imposed by the Concessions Directive, see R CRAVEN, 'The EU's 2014 Concessions Directive' (2014) *Public Procurement Law Review* 23: 188-200.

⁵³ See Articles 25.2.l) and m) of Act 7/1985 of April 2, on regulation on the basis of the local organization of the State (Official Gazette 80 of 3rd April, available at <https://www.boe.es/buscar/pdf/1985/BOE-A-1985-5392-consolidado.pdf>).

⁵⁴ See CLEMENTE, *La tauromaquia a través de sus conflictos* (supra n27) 245. For example, allegedly tender specifications for the Madrid Bullring (*Las Ventas*) restrict innovative proposals by favoring most 'conservative' options (*id* 222).

⁵⁵ See COLENUIT, *A Load of Spanish Bull* (supra n15), 13.

⁵⁶ Estimates for 2012 almost reached €600 million, see ERC/CATALUNYA SÍ, *Toros & Taxes* (supra n8) 3-4 (though allegedly this calculation was probably an underestimation and ignored several other direct payments to bullfighting related activities). It is further considered that "If bullfighting were left alone, it would go broke; and both opponents and champions argue that without assistance, as a business it has no future" (*id*. 9).

⁵⁷ See ERC/CATALUNYA SÍ, *Toros & Taxes* (supra n8), 7. According to MAUDET, *Terres de Taureaux* (supra n5) 252, a third of the revenues of a farming exploitation for the breed of *lidia* bulls come from the CAP. For an explanation of the intricacies of CAP application in the cattle industry, and specifically to the *lidia* bulls, see I BARDAJÍ AZCÁRATE, 'La aplicación de la Política Agrícola Común en el ganado de lidia', in *Economía de la ganadería de lidia en España* (*Revista del IEE*, nº 3/2005), 71-82.

The promoters are the major driving force behind the organization (*infra* §1.2.1), they put together the two essential ingredients for a bullfight to take place: bulls and bullfighters. Being a very specific type of bull, *lidia* bull breeders (*infra* §1.2.2) contribute with a crucial input of the show. Bullfighters' contribution, together with their team and assistants, is also paramount for the show to occur (*infra* §1.2.3).

Interestingly enough, despite these players act together in making the spectacle possible, each of them has diverse interests. Indeed, history of bullfighting shows many conflicts among them, when one of them tries to protect or improve collectively their corresponding positions in the industry at the detriment of the rest.⁵⁸ A permanent tension exists among the different groups involved (promoters/breeders/bullfighters),⁵⁹ represented through different unions and professional associations.⁶⁰ As it will be shown later, the corporatism of different bullfighting actors carries together substantial risks of anticompetitive behaviour (see *infra* §2). For example, and some decisions by the competition authorities in Spain have dealt with the issue, the advent of broadcasting rights in the second half of the 20th century provides a good example of the fight among them to assign and share the proceeds from the sale of bullfighting broadcasting rights.

1.2.1. The bullfight promoter

The main force organizing the bullfighting shows is the promoter.⁶¹ After receiving the concession of a bullring, this entrepreneur puts together all the necessary inputs for the spectacle to happen. There are two main associations of bullfight promoters: Asociación Nacional de Organizadores de Espectáculos Taurinos (ANOET) and Unión Nacional de Empresarios Taurinos Españoles (UNETE). The ANOET is the largest association, representing the majority of promoters, including those exploiting almost all the first and second category bullrings.⁶²

Promoters are the ones assuming the business risks of the organization of the event,⁶³ and also the ones that will reap any profits that may be obtained (everything within the framework provided by the conditions under which the bullring was conceded, *supra* §1.1.2). In organizing a bullfight, promoters develop a wide range of diverse separate activities and incur

⁵⁸ See VELÁZQUEZ SAHAGÓN, 'Institucionalización de racionalidades en una industria cultural' (*supra* n25) 81.

⁵⁹ For a sample of the disputes in court of the several professionals that due to regulation have to be involved in the organization of the show (veterinarians, health care providers, construction managers for mobile bullrings), see CLEMENTE, *La tauromaquia a través de sus conflictos* (*supra* n27) 51-57

⁶⁰ Although neither interest's groups are monolithic, see SHUBERT, *Death and Money in the afternoon* (*supra* n6) 42-43

⁶¹ See <http://portaltaurino.net/enciclopedia/doku.php/anoet>.

⁶² See VELÁZQUEZ SAHAGÓN, 'Institucionalización de racionalidades en una industria cultural' (*supra* n25) 78 describes the bullfighting organizer as the economic axis of the industry, getting and putting together different people and resources to maximize the quality/profitability of the show.

⁶³ See HEMINGWAY, E. "Bullfighting, Sport and Industry", *Fortune* July 28, 2013, 10 ("So the promoter is at the mercy if all sorts of incidents").

in the respective expenses.⁶⁴ Promoters are responsible for complying with the requirements set by law and regulation concerning the organization and development of the spectacle (*supra* §1.1.1). However, from a management and commercial perspective, in organizing bullfighting spectacles, promoters generally plan the whole season of shows that will occur in each bullring. Successful promoters aim to combine the best bullfighters with the most respectable bull breeders, making it attractive for attendants.⁶⁵

However, in designing the program for a specific bullfighting show, organizers cannot ensure the attendants a great spectacle. The selection of the specific animals and the individual bullfighters announced for the afternoon show is the primal decision adopted by the promoter and is the major call for attendants to show-up and a precondition for a great spectacle.⁶⁶ As the performance involves wild animals, their behaviour is largely unpredictable. However, experience shows that breeders tend to provide different types of bull in terms of presence (size and horns) and aggressiveness, and promoters can select the bulls based on that. The talent and artistic qualities of bullfighters may be more easily ascertained by promoters, some of them well known for their capabilities and ability to match bulls coming from specific ranches. Again there is no way the promoter can predict how they are going to interact with the animals and if they will manage to engage with animal in making a good spectacle.⁶⁷

On the other hand, it is not infrequent for promoters to operate several bullrings at the same time, as they are able to profit from scale economies and to counteract/bargain against their input providers. Aside from this horizontal consolidation trend, it can also be the case of promoters operating in upstream markets, with interests in bull breeding ranches and representing bullfighters.⁶⁸

1.2.2. Ranchers or lidia breeders

Together with bullfighters, the bull is the other essential input for the spectacle. Bulls are of a particular breed, prepared only for this purpose (fighting bulls or *Lidia* bulls). *Lidia* bulls

⁶⁴ Reportedly the number of activities exceeds of 100, see ANOET, *Analisis económico de la fiesta* (*supra* n22), 23-26 and 39-42 (however, the largest expense involved in organizing a *corrida* being bullfighters' salaries).

⁶⁵ See SHUBERT, *Death and Money in the afternoon* (*supra* n4) 51, pointing out the frequent issuance of 'season tickets', that as a package need to be attractive for subscribers. For similar considerations reflecting rodeo shows' promotion and organization, see J HIBDON, 'The Economics of Rodeo Cowboys' (1989) *The Social Science Journal* 3(26): 240-241 (though there are differences as rodeo is also a contest).

⁶⁶ For that reason, litigation may spring if changes and substitutions occur or if the event is cancelled, with sanctions being imposed to the promoter and the bullfighters See CLEMENTE, *La tauromaquia a través de sus conflictos* (*supra* n27) 69-82 (f. e., if the bullfighter refuses to take part in the show for which he was announced given that the bulls are different than those agreed). Likewise, in the Spanish legal tradition bullrings are given preference according to their corresponding category in case changes are made in the selection of the bulls to be used, see CLEMENTE, *La tauromaquia a través de sus conflictos* (*supra* n27) 405-408.

⁶⁷ See MARVIN, *Bullfight* (*supra* n4) 80 and 86.

⁶⁸ MAUDET, *Terres de Taureaux* (*supra* n5) 287 refers to vertical integration in the bullfighting industry mentioning the famous promoter *Chopera*, who runs several bullring concessions, has interest in some breeding farms, and represents several famous *matadors*.

belong to race *bos taurus ibericus*, descendant of one of the four or five founding castes from the 18th Century in Spain.⁶⁹

Although *lidia* bulls are raised under the guardianship of ranchers, who protect them and regulate their environment, they are raised under condition of relative wilderness, without having confronted a man on foot prior to entering the bullring arena.⁷⁰ They are distinguished from other bulls by the presence, shape and movement in the ring, by their aggressive and fierce disposition to charge and attack. Bravery, power, nobility and appearance are essential features of *lidia* bulls, which have been achieved through a process of unnatural selection, in which ranchers exclude and weed out those bulls that were not considered aggressive enough.⁷¹ All the breeding process is targeted at preparing the bull for the bullfight, including 'tests' of calves for bravery when they are young (*tientas*), selection according to the morphology of the animal, feeding, training and living conditions.⁷²

Aside from formal legal and regulatory requirements of age and weight (depending on the category of the bullring and the type of spectacle), bulls need to meet further aesthetic and braveness conditions that cannot be predicted in advance. Nevertheless, through history several breeders have acquired high reputation for breeding aggressive *lidia* bulls and, therefore, provenance of the bulls used in each show is very relevant (almost as relevant as the acting bullfighters).⁷³ Reports point out that the economic profitability of this activity is questionable.

On the other hand, in accordance with the Bullfighting Law and Regulation, only those breeds registered within the *lidia* genetic family book (*Libro Genealógico de la Raza Bovina de Lidia*) in the Ministry of Agriculture could be used for bullfighting.⁷⁴ Moreover, regulation also

⁶⁹ MAUDET, *Terres de Taureaux* (*supra* n5) 76-77

⁷⁰ MARVIN, *Bullfight* (*supra* n4) 89, 94 and 102.

⁷¹ There is a complex process of animal husbandry by ranchers, which involves testing of male and female cattle used for breeding *lidia* bulls, as described by MARVIN, *Bullfight* (*supra* n4) 87-95 and 99-105.

⁷² On the evolution of the *lidia* bull breeding farms have strongly been affected by legal changes and the economic situation, see J M LOMILLOS; M E ALONSO & V GAUDIOSO, 'Análisis de la evolución del manejo en las explotaciones de toro de lidia. Desafíos del sector', (2013) *Información Técnica Económica Agraria* 109(1) 49-68.

⁷³ See VELÁZQUEZ SAHAGÓN, 'Institucionalización de racionalidades en una industria cultural' (*supra* n25) 79. Fearsome reputation of some bulls (those more harsh and aggressive) that have killed a number of bullfighters: *Victorino Marín*, *Cebada Gago*, *Miura* or the Portuguese farmer *Palha*. Some legal conflicts have arisen concerning the registration of the ranch name as a trademark, see Burgos Provincial Court Judgment of 31 December 2002, Civil Chamber (Sect.3) on the notoriety of "Los Bayones" and bad faith registration, see also CLEMENTE, *La tauromaquia a través de sus conflictos* (*supra* n27) 415-418.

Although the *lidia* bull market is considered to be national (see *infra* §2 and DCC resolution of 22 of July of 1999, *Ganaderías de Lidia*, 436/98, *supra* n109) MAUDET, *Terres de Taureaux* (*supra* n5) 233, points at the possible existence of 'different' bull markets according to the breed, as this normally carries a substantial price difference (lots of six bulls for a show would range from 9,000 to 72,000€).

⁷⁴ The Royal Decree 60/2001, of 26 January, concerning the racial prototype of bull breed for bullfighting classifies the race in 5 castes, 17 sub-castes and 6 lines, distributed according to genetic, morphologic and ethologic criteria (Official Gazette 38, of 13 February 2001, 5255-5261). MAPA, 2010. Ministerio de Agricultura, Pesca y Alimentación, *Censo de la raza de Lidia 2010* (<http://www.magrama.gob.es/es/ganaderia/temas/zootecnia/razas-ganaderas/razas/catalogo/autoctonafomento/bovino/lidia/iframe-ejemplo-arca.aspx>). On the singularities and uniqueness of the breed see LOMILLOS,

imposes breeders to be registered in a registry of breeders of *lidia* genetic family (*Registro de Empresas Ganaderas de Lidia*) in the Ministry of Internal Affairs introducing a duplicative requirement that restricts access to the market two years, as only firms that had been registered for that period are allowed to send their bulls to a bullfight.⁷⁵ An absurd additional regulatory requirement is imposed to the breeders of brand their cattle with the identifying sign of the association to which they belong (if any).⁷⁶

There are approximately than 1400 *lidia* bull breeders in Spain,⁷⁷ geographically concentrated in Andalucía, Castilla y León, Extremadura, Castilla La Mancha and Madrid. Bull breeders are grouped together in distinct associations: *Unión de Criadores de Toros de Lidia* (UCTL), *Ganaderos de Lidia Unidos* (GLU), Agrupación Española de Ganaderos de Reses Bravas (AEGRB). The UCTL is the oldest and more prestigious association, and it had until de 1930s' the monopoly of the supply of *lidia* bulls for bullfights (its still the largest in terms of bulls killed per year or the land covered by the farmers that belong to it).⁷⁸

1.2.3. Bullfighter (*matador*) and his squad

The bullfighter is the essential human contribution to the spectacle. Historically bullfighters were heroic figures, revered in popular culture. Although the *matador* is the main actor, a team of assistants (*cuadrilla*) needs to be formed,⁷⁹ as matadors do not act alone, and they are legally required to be formed with at least 6 people. Each bullfighter organizes his team,⁸⁰ that form a single squad hired by the promoter for the performance in each show. Bullfighters' support-staff performs crucial tasks in the different phases of the show. Historically, there is

ALONSO & GAUDIOSO, 'Evolución del sector de la producción del toro de lidia en España. Censos y ganaderías', *Información Técnica Económica Agraria* 108(2) 207-221. Some genetic variations are on the verge of extinction, see LOMILLOS, ALONSO & GAUDIOSO, 'Análisis de la evolución del manejo en las explotaciones de toro de lidia. Desafíos del sector' (*supra* n72) 63-64.

⁷⁵ See MAUDET, *Terres de Taureaux* (*supra* n5) 78. The Supreme Court had occasion to give its opinion on this restraint to business freedom following the complaint of breeders, considering it was justified in the protection of general interest and the public good, "represented by the guarantee of purity and integrity of the bullfighting genetic family, because an absolute freedom to breed fighting bulls could endanger the survival of the bullfighting shows" (judgment of 2 of July 1996, Administrative Chamber).

⁷⁶ Critically CLEMENTE, *La tauromaquia a través de sus conflictos* (*supra* n27) 68.

⁷⁷ See MAUDET, *Terres de Taureaux* (*supra* n5) 250-251 (11,500 *lidia* bulls were killed in 2003).

⁷⁸ See MAUDET, *Terres de Taureaux* (*supra* n5) 253. See ANOET, *Análisis Económico de la Fiesta* (*supra* n22) 21.

⁷⁹ See SHUBERT, *Death and Money in the afternoon* (*supra* n6) 54 and 56

⁸⁰ Legally it has been discussed whether this makes the matador a business enterprise itself (with relevance for tax and social security purposes), see CLEMENTE, *La tauromaquia a través de sus conflictos* (*supra* n27) 279 (quite strongly he refutes considering the bullfighter a businessman, as instead he believes him to be an artist, *id* 267). There is a collective agreement among all the associations representing the different players (bullfighters and bullfight promoters) that regulates the specificities of the their relationships (contracts, salaries, contingencies, duties and liabilities), see *Bullfighting National Collective Agreement* (Official Gazette 85 of 8 April 2010, 31996-32037, available <https://www.boe.es/boe/dias/2010/04/08/pdfs/BOE-A-2010-5653.pdf>; which was still in force until 31 December 2014, see Official Gazette 69 of 29 March 2014, 24844-24845 <http://www.boe.es/boe/dias/2014/03/21/pdfs/BOE-A-2014-3034.pdf>).

some evidence of class-conflicts between the matador and his subordinates⁸¹, which led the later to collectively organize to protect their interest (Unions of picadors and *banderilleros*). Nowadays there are professional associations or unions representing the collective interests of each of these players: *Unión Profesional de Matadores de Toros, Novilleros, Rejoneadores y Apoderados* for matadors and *Unión de Picadores y Banderilleros Españoles Asociación de Mozos de Espada y Puntilleros Españoles* for the rest of team members.

From a legal perspective, bullfighters are considered similar to other artists or performers, which are hired by the promoter together with their squads.⁸² The matador is the leader or boss of the team,⁸³ normally carrying a brand-name with reputation,⁸⁴ and he is in charge of deciding how the performance takes place, giving orders to the members of his squad. In practice bullfighters are represented by agents (*apoderados*), which are in charge of the organizational and logistic features of bullfighters participation in the spectacle (contract management, travel logistics, marketing, advertising, bull choosing, training, PR). As in any other agency relationships, bullfighters agents are a key aspect of the industry and they have a fiduciary relationship with their principals (*intuitus personae*), based on trust, as the bullfighter's agent is in charge of representing and defending his principal interest in all the relationships with other players in the industry (mainly in the relationship with the bullfight promoter).⁸⁵

Like in sports and other cultural and artistic performances the reputation of good *matadores* and their squads is one of the most relevant features of the spectacle. Allegedly, there is historical evidence that bullfighters have been better paid than other professional athletes.⁸⁶

⁸¹ See SHUBERT, *Death and Money in the afternoon* (*supra* n6) 61. Including also, the 'sword-handler' (the helper, literally 'the man who looks after the capes' or '*mozo de espadas*'), see HURTADO GONZÁLEZ, *Toreros y Derecho* (*supra* n29) 165-169.

⁸² Technically they have a (special) joint (or group) labor relationship with the promoter (despite sometimes the matador signs a single contract through a legal company formed for tax reasons) HURTADO GONZÁLEZ, *Toreros y Derecho* (*supra* n29) 118-177. It is unclear the type of legal nexus that ties the matador with his assistants, though probably it can be considered to be an atypical "team contract" (*id* 150-158)

⁸³ History shows evidence of matadors' power of bullfighters which in the past included the power to name substitutes if for some reason they were not able to attend and perform at a particular show (and that may negatively affect the interest of promoters), SHUBERT, *Death and Money in the afternoon* (*supra* n6) 47.

⁸⁴ Which occasionally had even be registered as a trade name, raising the typical conflicts known in trademark law, see for example, concerning the trademark "El Cordobés" and the obligation of use, Supreme Court Judgment of 22 January 2000, Civil Chamber (Sect. 1) and J PLAZA PENADÉS, 'El Cordobés' Caducidad de la marca "Manolo el Cordobés". Comentario a la STS de 22 enero 2000' (2001) *Revista Aranzadi de derecho patrimonial* 6: 407-412 and CLEMENTE, *La tauromaquia a través de sus conflictos* (*supra* n27) 419-421.

⁸⁵ Though, paradoxically, sometimes bullfight promoters are also agents of some bullfighters, which may give rise to conflicts of interest, CLEMENTE, *La tauromaquia a través de sus conflictos* (*supra* n27) 297. On the main characteristics of this contract see HURTADO GONZÁLEZ, *Toreros y Derecho* (*supra* n29) 95-113 and L MARTÍNEZ CALCERRADA L, 'El contrato de apoderamiento taurino', in *La Fiesta de los Toros ante el Derecho* (Unión Taurina de Abonados de España, Madrid 2002), 149-154.

⁸⁶ See SHUBERT, *Death and Money in the afternoon* (*supra* n6) 76-77 (and also they are used as commercial images to promote other products and services). In Spain there is evidence, despite the decrease in the number of spectacles and performances, that their salaries have been rising, which the promoters attribute to strong pressure by their Unions and rigid collective labour bargaining structure, see *Análisis Económico de la Fiesta*, 17-20.

This probably reflects also the possibility that they may be killed in the ring.⁸⁷ Reputation for good technique and braveness are the essential features of successful bullfighters, generally measured by the number of prizes gathered along the season. The history of bullfighting is full of famous matadors that achieved in their times celebrity status.⁸⁸ In recent times, an unofficial ranking of bullfighters is made based on the prizes they got in the season, which is closely correlated also with the number of performances and the compensation paid.⁸⁹

Traditionally, Andalucía has been the main cradle of matadors.⁹⁰ In more recent times bullfighters come from almost every region of Spain and from some Latin American countries as well. There is also a strong endogamy among bullfighters (sons following fathers as bullfighters).⁹¹ Although the origins of this job are closely related to the artisanal guilds, nowadays many bullfighters are trained in 'bullfighting schools' (some of which are publicly run and funded), which have become a force to be considered behind the increase of the popularity of bullfighting.⁹²

Eligibility rules set strict limits and conditions that should be met by those that act as professional bullfighters, and also by the rest of the members of their squad. Limitations and requirements are based on prior experience and a classification in different categories is formed on that basis. Regulation requires that all professional actors intervening in the show to be registered in their respective roles and categories in the professional bullfighting general registry, therefore excluding everyone else from participating in the bullfight. Although, bullfighters themselves have complained against the restraint the registration requirement imposed, it has been upheld in court as a plausible way to guarantee the quality of the spectacle.⁹³

1.2.4. Other players involved

In the past, horse dealers were also a very relevant group involved in the bullfighting business, but their relevance has decreased since in 1926 the picadors' horses started wear padding to protect them from the bull's horns.⁹⁴

Given the relevance of adequately assuring the bull is healthy and in perfect condition for the bullfight, veterinarians play a very relevant role in the preparation of the show. In the same

⁸⁷ Although data shows that the number of deaths in the ring is limited: 259 between 1771 and 1920, see J J BONIFAZ, *Víctimas de la fiesta* (Espasa Calpe, Madrid 1991).

⁸⁸ To name a few: *Mazzantini, Frascuelo, Belmonte, Lagartijo, Gallo, Bocanegra, Manolete, Cordobés, Pepe Illo, Pedro Romero, Costillares, Guerrita, Bombita, El Tato, El Chiclanero, Machaquito, Montes, Camisero, Litrí, Ordoñez.*

⁸⁹ An unofficial ranking or scale of matadors is constructed every season according to the prizes they got (taking into account the category of the bullring). See COLENUTT, *A Load of Spanish Bull* (*supra* n15) 58.

⁹⁰ See SHUBERT, *Death and Money in the afternoon* (*supra* n6) 63.

⁹¹ See SHUBERT, *Death and Money in the afternoon* (*supra* n6) 66.

⁹² See MAUDET, *Terres de Taureaux* (*supra* n5) 285-286

⁹³ Again, see judgment of the Supreme Court of 2 of July 1996 (*supra* n75).

⁹⁴ See COLENUTT, *A Load of Spanish Bull* (*supra* n15) 72 and SHUBERT, *Death and Money in the afternoon* (*supra* n6) 41

vein, medical doctors and surgeons are involved in the treatment of bullfighters and their team while the spectacle takes place.⁹⁵

On the other hand, like in other cultural and sport events, it is important to consider the specific features of demand side in the bullfighting markets. There are a large number of regular attendants to bullfighting events -aside from occasional attendants.⁹⁶ Indeed, “season tickets” are a frequent form of commercialization of these spectacles (and the same happens with broadcasting rights packages which are mostly bought per season by spectators). Moreover, due to the heavy public involvement in the organization of the show (see *supra* §§1.1.1, 1.1.2 and 1.1.3), regular attendants are given a relevant role (and even power) in the organization and performance of the spectacle.⁹⁷

2. ANTI-COMPETITIVE PRACTICES IN BULLFIGHTING INDUSTRY

Bullfighting combines a structure similar to any other commercialized mass leisure industry with some peculiar features that heavily drag competition in the markets involved. Public intervention and detailed regulation of the bullfighting spectacle strongly conditions the business strategies that can be followed, impeding innovation and making competition illusory.

As mentioned above (*supra* §§1.1.2 and 1.1.3), the involvement of public powers in bullfighting a striking feature of these markets.⁹⁸ Moreover, it is not only that a vast amount of public money and resources poured in the market (ownership, concessions, subsidies), but also that regulation strongly curbs the players’ actions in the market, introducing entry barriers (by conditioning the human and animal inputs that can be used) and limiting innovation.⁹⁹

⁹⁵ Some conflicts have been brought before the Spanish Defence Competition Court concerning territorial restraints imposed by the medical professional associations in case of bullfights organized in mobile bullrings. See DCC resolutions of 11 July 1994, r74/94 *Cirujanos Taurinos*; of 26 July 1995, r122/95 *Cirujanos Taurinos II* and of 19 February 1999, 416/97 *Colegio Médicos Ávila*. See also CLEMENTE, *La tauromaquia a través de sus conflictos* (*supra* n27) 398-403.

⁹⁶ See HEMINGWAY, ‘Bullfighting, Sport and Industry’ (*supra* n62) 11. On the surprising legal conflicts that may arise by the “ownership” of those season tickets, see CLEMENTE, *La tauromaquia a través de sus conflictos* (*supra* n27) 409-411.

⁹⁷ See Chapter II of Title IV of the Regulation of Bullfighting Spectacles (*supra* n27).

⁹⁸ Which in one occasion prompted a boycott by all market players against the amendment of the Regulation of Bullfighting Spectacles (*supra* n27), that the DCC considered lawful as a legitimate measure, lacking any anticompetitive object or intention, in a collective conflict with the public administration, see DCC resolution of 12 March 1999, 429/98, *Espectáculos Taurinos*. See CLEMENTE, *La tauromaquia a través de sus conflictos* (*supra* n27) 395-397.

⁹⁹ It can even be argued that regulation of every detail and aspect of the spectacle clearly constrains freedom of enterprise and innovation, running against spectators’ interests (that have no choice), HURTADO GONZÁLEZ, *Toreros y Derecho*. 206. But the Supreme Court has rejected the argument “*the principle of free enterprise is balanced with the general interest and public good demands. Accordingly, the provision in question does not contradict "per se" the constitutional provision, as it follows a line of conduct of the authorities consistent with the protection of the public interest and the public good, represented by the guarantee the purity and integrity of*

Indeed, from its origins the role of market forces in the bullfighting industry had been clearly diminished. In the 18th century the organization of bullfighting shows was conceived as a royal privilege,¹⁰⁰ awarding local monopolies to welfare institutions (hospitals) and corporations of aristocrats (*Reales Maestranzas de Caballería*).¹⁰¹ From that period dates evidence of price fixing for bulls by breeders,¹⁰² and boycotts to ‘hard’ bullfighting breeders by matadors¹⁰³ and, likewise the collective attempt of bullfighters to extract higher fees for fighting ‘hard’ bulls.¹⁰⁴ On the other hand, there was also evidence of a promoters’ cartel to limit bullfighters’ earnings (to 7.000 pesetas per fight at that time), with retaliatory measures against those promoters who exceeded the cap.¹⁰⁵

Tensions among different players in the industry, and the clash of their powers in trying to assert their respective powers in extracting further profits, have generally lead to collective decisions, increasing the risks of anticompetitive behaviour.¹⁰⁶ Although the Spanish competition authorities have found in these markets many of the same types of anticompetitive behaviour that could be found elsewhere (cartels and other multilateral restraints), many recent cases concern the fight among the several players in asserting their

the lidia bull; an absolute freedom in livestock breeding of lidia bulls could endanger the survival of bullfighting, as the bull is the essential element of the same, with consequent impact on the overall economy, with impact not only in professional and business sectors directly related to these products, but also indirectly in important sectors of the national economy” (Legal ground 2, paragraph 10 of Supreme Court Judgment of Administrative Chamber of February 11, 1999; *id*, Legal ground 2, paragraph 10 of Supreme Court Judgment of Administrative Chamber of July 2, 1996).

¹⁰⁰ See SHUBERT, *Death and Money in the afternoon* (*supra* n6) 18 (he also reports on the attempts of breeders to break that monopoly when the Madrid’s promoter decided to use Portuguese bulls, *id* 45-46).

¹⁰¹ Formed to stimulate fine horsemanship (in Seville, Ronda, Granada). See Colenutt, *A Load of Spanish Bull* (*supra* n15) 5-6.

¹⁰² See SHUBERT, *Death and Money in the afternoon* (*supra* n6) 48 (together with an agreement not to pay bullfighters any money they demand for fight a particular breeder’s bulls).

¹⁰³ See SHUBERT, *Death and Money in the afternoon* (*supra* n6) 44 (referring to the boycott of *Miura* and his promotion the breeders association UCT to react by imposing their members’ bulls on promoters and bullfighters). Similar actions seem not to be infrequent in these markets as it has recently occurred with the boycott of several star bullfighters against the promoter of Seville’s bullring. See ‘Morante, Manzanares, Talavante, El Juli y Perera vetan a La Maestranza’, *El Mundo*, 28 January 2014 (available at <http://www.elmundo.es/cultura/2013/12/12/52a9d69661fd3d23128b456c.html>)

¹⁰⁴ See SHUBERT, *Death and Money in the afternoon* (*supra* n6) 45

¹⁰⁵ See SHUBERT, *Death and Money in the afternoon* (*supra* n6) 47 and HEMINGWAY, E. “Bullfighting, Sport and Industry”, *Fortune* July 28, 2013, page 12.

¹⁰⁶ “*The peculiarities of organizing the bullfight has made commonplace the collective association in groups of different players (promoters, bullfighters, subordinates and livestock breeders). And these associations are those that have stipulated the conditions under which the transactions should be conducted in the marketplace”*, CLEMENTE, *La tauromaquia a través de sus conflictos* (*supra* n28) 373-374. Accordingly, in Hemingway’s writings on bullfighting he somehow suggested that matadors were the only player involved in the show that earned money because they were collectively organized, HEMINGWAY, “Bullfighting, Sport and Industry” (*supra* n62) 10.

rights in the new businesses for exploitation of image and broadcasting rights involved in this form of entertainment.¹⁰⁷

The *lidia* bulls market (*infra* §2.1) and the bullfighters market (*infra* §2.2) have concentrated the majority of decisions by Spanish competition authorities. Although there was some claim against the promoters managing 30 bullrings for arranging a cartel to fix prices to be paid to bullfighters for their services early on in the experience of the Spanish competition authorities, the case was closed for lack of evidence.¹⁰⁸

2.1. Restraints in the bulls' market

The participation of the most prestigious bull-breeders in a common platform for the sale of broadcasting and image rights on spectacles in which their bulls would be used prompted a complaint by the promoters and bullfighters themselves before the Spanish Defence Competition Court in which the common contract signed by involved bull-breeders with the new entity TOROS E IMAGENES, S.L. was considered to be anticompetitive in part, though it was later individually authorized by the DCC (with a shorter term -1 year- duration).¹⁰⁹ The case is also relevant because it raised the issue of who owned the broadcasting and image rights over the spectacle when several inputs are put together for the show to exist.

On the other hand, regulation limits the potential number of bulls available for bullfighting each year (as described *supra* §1.2.2). In order to be apt for a bullfight, bulls need to be registered in the appropriate registry, but they also need to meet other age and appearance requirements. On the top of that, in 2002 the DCC uncovered several collective decisions and recommendations by all the four cattle breeders associations (AEGRB, ANGL, UCTL and GLU) that hampered competition in the markets for *lidia* bulls and punished them with fines.¹¹⁰

¹⁰⁷ See the interesting reflections made by X DAVERAT, “Tauromachie et immatériel”, *Communication-Commerce Électronique -Revue Mensuelle Lexis-Nexis Jurisclasseur*, Feb. 2014, 17-22.

¹⁰⁸See DCC judgment (sect. 1) of 27 January 1970 (69/69). Apparently there was some evidence that the prices paid to bullfighters were not homogeneous but changed from bullfighter to bullfighter according to the bullring, and the alleged cartelists would represent no more than 5% of the market.

¹⁰⁹ See DCC resolution of 1 March 2000, *Espectáculos Taurinos* (454/99). The DCC was not so concerned with the exclusivity and block transfer of rights to the new entity (the involved bull breeders had a 30% share the bullfight TV broadcast rights market in 1997, and pricing was not homogeneous) but with the common clause according to which open TV broadcasting of bullfights affected by the contracts was limited to two shows per season (one in first category rings and the other one in rings of lower categories). See CLEMENTE, *La tauromaquia a través de sus conflictos* (supra n27) 389-395.

¹¹⁰ Following a complaint filed by ANGL against the UCTL, see DCC resolution of 22 July 1999, *Ganaderías de Lidia* (346/98): UCTL 40 million pesetas; ANGL 5 million pesetas; AEGRB 5 million pesetas and GLU 7 million pesetas. See CLEMENTE, *La tauromaquia a través de sus conflictos* (supra n27) 375-387. Furthermore, UCTL was found to forbid in its statutes of association that any member of UCTL supplied bulls for a bullfight if bulls from other association were part of the spectacle (this was further reinforced through a clause in that sense included in the bulls' sale contract); other rules in the statutes introduced a right of first acquisition among members in case of sale of their livestock production, with heavy sanctions being foreseen in case they were not followed.

Moreover, all of them were found to have drafted separate model sale contracts of *lidia* bulls that were later used by their members in which relevant conditions of the sale were fixed (expenses and compensation to the seller in several circumstances), including a limitation of the broadcasting rights of the event. Some of the clauses were similar in the models used by the different associations. The DCC found that contract models were effectively followed in practice by the members, homogenizing market conditions.

Other complaints concerning the accusations of direct or indirect price-fixing of *lidia* bulls have been rejected,¹¹¹ and one of them despite there was some evidence of prices being fixed (and there was also setting other contractual conditions when bulls are rented, and compensation needed to be paid for injury or death).¹¹²

2.2. Restraints in the bullfighters' market

The relevance of bullfighters participation in the spectacle, and the bargaining power held by some of them, has lead them to introduce clauses or terms on their service agreements limiting the bulls being used in bullfight and claiming their image rights.¹¹³ In principle, these provisions cannot be considered anticompetitive or unlawful *per se*.

On the other hand, despite contractual agreement regarding their image or intellectual property rights is possible, although initially any potential intellectual property rights that bullfighters may hold over their interpretation are -according to Spanish Law- presumed to be transferred to the promoter (article 110 of Copyright Act)¹¹⁴ economic compensation being necessary.¹¹⁵ Indeed, the most recent case decided by the Spanish National Competition Commission (NCC) was started in 2012 concerning precisely an scheme devised by the ten top matadors and a sports marketing consultancy -All Sports Media 66 S.L. (ASM)- for joint selling their broadcasting rights. According to the contracts signed with ASM, this firm would

¹¹¹ See DCC resolution (sect. 2) of 29 January 1985 (210/63), in which a “subsidy” award system was designed (but never went into practice) by one of the bull breeders associations (UCTL) to promote de celebration of bullfights and to remedy the excesses of bulls owned by members of the UCTL.

¹¹² See DCC resolution of 16 February 2003, 559/03, *Reses Bravas Aragón* (559/03), though the case was closed by claimants' desist, and the DCC did not find any public interest worth of protection.

¹¹³ See HURTADO GONZÁLEZ, *Toreros y Derecho* (supra n29) 137-138. In the past, it seemed to be frequent the contract clause not to appear in the same show with other bullfighters that had not taken the alternative in Madrid, see SHUBERT, *Death and Money in the afternoon* (supra n6) 57.

¹¹⁴ “If the performance is done in fulfillment of a contract of employment or services lease, it means, unless otherwise agreed, that the employer acquires exclusive rights to authorize reproduction and public communication hereto provided and which can be deducted from the nature and object of the contract.”

¹¹⁵ In general, concerning also a hypothetical claim of image rights by bullfighters (rejecting it soundly) see HURTADO, *Toros y Derecho* (supra n29) 190, 193-194 and 196-197 (“En definitiva, que el derecho a la propia imagen del torero no impide al empresario la exhibición contextual de su actuación por televisión, siendo necesaria para excluirla, limitarla o condicionarla, estipulación expresa en tal sentido, en contrato o en convenio, se haga figurar en sentido positivo o negativo, directo o indirecto y con los términos o denominaciones que sean”).

be responsible for joint marketing their broadcasting rights in the spectacles organized in the main Spanish bullrings. The revenues thereby collected by ASM would be distributed to the bullfighters even if they did not fought in an specific show. Any bullfighting promoter that wanted to engage any of the bullfighters represented by ASM would have to pay en bloc for all the bullfighters that it represented. Logically, the NCC deemed that the bullfighters vertical agreements with ASM implied a horizontal agreement among them that could restrict competition in breach of EU and national competition law. The relevance of the potential restraint in several bullfighting related markets (primarily broadcasting) would no be negligible as promoters always need to engage some of the star bullfighters for their shows to be successful and TV broadcasting revenues are crucial for the profitability of their business. The proceedings initiated by the NCC were closed in 2013 through a settlement with ASM and the bullfighters involved in which ASM undertook to change the agency agreements with bullfighters excluding the joint selling of broadcasting rights in the future.¹¹⁶

CONCLUSIONS

Regulation and public intervention strongly shape and affect how the bullfighting industry operates. History shows that competition conditions in bullfighting markets are heavily curtailed by detailed and strict rules, grounded in tradition and cultural reasons, concerning the inputs used in the spectacle and the players' performance in the bullring, leaving little room for innovation.

On the other hand, the vigorous involvement of local public powers in the organization of bullfighting spectacles (through ownership of bullrings and subsidies to promoters) and public subsidies to breeders through the Common Agricultural Policy, construct a framework in which the role of markets forces is further weakened. One could even doubt if bullfighting would survive without so much public support.

Finally, although the context described could seem to provide little room for anticompetitive behavior by players in this industry, case law of the Spanish Competition authorities has found similar multilateral restraints found in other industries.

¹¹⁶ See NCC resolution of 22 March 2013 *All Sports Media 66* (S/0418/12). On the monitoring of the fulfilment of the remedy by the National Markets and Competition Commission (NMCC) see Order of 27 February 2014, *All Sports Media 66* (VATC/0418/12).

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