

Milk case study for online Damages Directive training

1. Milk is a staple product for both supermarkets and convenience stores. Norland and Sudland are neighbouring member states of the EU. Both have competitive supermarkets complemented by convenience stores which are able to charge premium prices because they offer convenience of local shopping. In both countries these convenience stores are now being challenged by smaller stores being opened by supermarket companies. Norland is a highly urbanised state with most people living in towns which have a mix of large shopping centres with supermarkets and local convenience stores. Sudland is a much larger state than Norland and it has a dairy industry that is more than sufficient for Sudland's own demand so much of Sudland's milk is exported to neighbouring member states.
2. Market conditions have meant low prices for farmers, supermarkets have competed the retail price down to no more than 1.20 euro for four litres in large supermarkets in both states. The supermarkets together have about 80% of the overall market for retail milk in the standard four litre quantities. In both states delivery of fresh milk to homes is a business that now has a very small part of the overall market and the wholesale market for supply of milk to convenience stores in Norland had developed into a duopoly with both players supplying milk at a wholesale price of 1.20 for standard four litre.
3. Norland's convenience stores belong to two associations for marketing purposes: Costright and Realconvenience. The Costright stores sacrificed any margin because of the importance of milk in getting shoppers into their stores who sold milk at 1.20. The Realconvenience stores did not worry about that and sold four litres at 1.80. In Sudland convenience stores sell milk at a range of prices between 1.20 and 1.80 for four litres.
4. In January 2014, Sudmilk, a long established and major dairy product company with a wide range of products, has a 60% market share for delivery of milk to convenience stores in Sudland at an average price of 0.90, acquired a 75% stake in, Norland Milk Co-operative, one of the duopoly undertakings in Norland, and renamed it MilkExpress. MilkExpress had a market share of 30% in supplying convenience stores with their rival Normilknet having the remaining 70%. Notwithstanding the market structure the NCA decided, in consultation with the Commission and with the Sudland Competition Authority that the acquisition itself would not significantly change the competitive situation partly because of the vigorous competition on the supermarket channels.
5. In July 2014 convenience stores began to receive notices of price changes - existing customers were told that the wholesale price of milk would be rising to 1.30 for the standard four litres; convenience stores that then applied to the rival supplier were offered 1.35 and none switched.



6. Fearful of customers going to supermarkets, the Costright stores maintained their 1.20 price whilst the Realconvenience stores increased their price to 1.85 absorbing 0.05 but passing on 0.05 of the wholesale increase.
7. In March 2015 Sudmilk informed the Norland Competition Authority that they had been threatened by Normilknet with a price war and, as a consequence, they had agreed to the arrangement reflected in the July 2014 offers. In June 2015 the NCA raided Normilknet and found documentation that corroborated Sudmilk's accounts of the price increases but there was no documentary evidence of the threatened price war. On the following day MilkExpress lowered their wholesale price to 0.90 matching their normal price in Sudland.
8. Normilknet informed the NCA that, far from Normilknet having threatened Sudmilk, it was Sudmilk with their significant market power in Sudland, that had threatened a price war that would have undermined Normilknet's strong market share and viability. Normilknet had only suggested the price increases to protect their market share whilst enabling Sudmilk to get a good return for their recent investment.
9. In January 2016 the NCA published a decision that, between July 2014 and June 2015, the two undertakings had infringed Article 101 TFEU and the equivalent national competition law. The decision was addressed to Normilknet, to MilkExpress and to its parent Sudmilk.
10. Sudland has a well established competition law bar and a specialist market court that deals with competition law cases. Costright and Realconvenience have both brought collective claims to the Sudland Market Court against Sudmilk.
11. The claims are follow on claims based on the findings made by the NCA in Norland and seek full compensation for the damage caused to the retail members of the two groups.
12. We should discuss the nature of the claim, the information that the court should proportionately seek as part of case management and how any amount of *full compensation* might be estimated and whether it would be sensible to ask a competition authority for help, if so, should it be Norland's or Sudland's and what help might be sensibly provided. Questions that we might explore include:
 - a. Heads of damage in national law and full compensation in EU law
 - b. Relevant accounting data and disclosure;
 - c. Substitution, elasticities and cross elasticities;
 - d. The use of analogies and counter-factual scenarios;
 - e. Loss of turnover and loss of profit;
 - f. Passing on defences;



- g. Plausibility, expert evidence and estimation; and
- h. Interest

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