

PART XII: CASE STUDY II: MILK

Speaker: Adam Scott

Link: [JustCompetition – Training Module – Part XII](#)

Let me just talk for a moment about this question of the relationship between decisions by National Competition Authorities and the courts.

In the original draft of the Directive, courts were going to be obliged to apply the decision of any National Competition Authority, whether it was their own National Competition Authority or that of any other Member State.

And that represented the existing position in the German courts.

This caused a constitutional difficulty for the neighbouring country of Denmark.

They wouldn't accept as conclusive a decision of any National Competition Authority, including their own.

And that is why we had to compromise on it being described as prima facie evidence.

Now, even if it's a decision of the European Commission, the court has to have regard to two important matters.

The first is that the decision is binding in relation to addressees of the decision and it is binding in relation to those matters covered in the decision.

In practice, we have found that causes very considerable difficulties.

The first is the difficulty associated with addressees.

If you have a cartel which involved a complex group of multinationals, you do not necessarily address the decision to all the members of the multinational group who were involved in the infringement.

For example, you have Mega Cooperation, a cooperation incorporated in the state of Delaware, in the USA. It has a subsidiary in Germany, which was involved in making the cartel agreement and another subsidiary in Romania, which applied the prices that have been agreed by the subsidiary in Germany.

If the decision was addressed to the company in the state of Delaware and to the German subsidiary, that doesn't bind in an action against the subsidiary in Romania.

That all has to do with rights of defence and res judicata.

What that means is that you may have not just what is called a follow-on action, which is a pure action flowing from the decision of a Competition Authority, but a hybrid action, in which some of the facts, in relation to some of the parties, have been decided by a Competition Authority.

But the same or similar set of facts in relation to other defendants then binds those defendants because they were not addressees.

A further complication arises from the fact that a follow-on action has to be based on the facts found in that decision, and quite often, they would only have looked at part of the – if it's a cartel - cartel behaviour, in geographical and temporal terms.

So, they may have looked at the effect of the cartel in Germany and not in Romania, they may have looked at the effect of the cartel between 1998 and 2003, whereas, in fact, there is evidence that the cartel existed in 1985 and went on to 2005.

So, you have to look very carefully at what is binding evidence on whom.

So, that is really a bit of background.

The limitation misuse, which have already been described, are likely to cause us quite a lot of trouble because you have to follow the rules very carefully and that also raises the question of whether a private action has to be stayed if there is a public enforcement investigation going on.

So that, for example, in our system, a private claim is automatically to the National Competition Authority.

They may come back and say “We are going to investigate this, you should stay all proceedings until we have finished investigating, either closing our investigation or making a finding.”.

Similarly, the Court has to have regard, under the Brussels' Regulation, to parallel proceedings and to ask itself the question ‘Are the proceedings taking place into another Member State?’, so, closely related to the proceedings before me that one of us, under the Brussels' Regulation as recast has to be seized to the matter, and the other action should be stayed.

Quantification. As I say, proof is not necessarily possible. Now, it is worthwhile if you look at the Communication, that is available in all the languages.

So you can read it in English or Romanian... The Paragraphs 8 and 9 – they are quite short and give a very interesting view of the relationship between national law and EU law.

What they recognise is that much of what we are each going to do, it is going to be done under our principles of national law.

That's the equivalence principle but also that we must be effective.

Effectiveness is that applicable, national, legal rules and their interpretation should reflect the difficulties and limits inherent to quantifying harm in competition cases.

In reality, it is impossible to know how market conditions and the interactions between market participants would have evolved in the absence of the infringement.

Lawyers may tell you ‘It's impossible! Therefore, there are no damages.’

No, it may not be possible with certainty, but the task of the judge is to do his or her best to produce a counterfactual, to compare that with what happened and to say if the difference requires compensation.

And that really is the task that is set to us and in this session, we need to ask ourselves how do we do that and what help do we get.

Well, you will see on here that there are three bits of help. The first is that there is a rebuttable presumption of harm in a cartel.

Now, you may say 'Why is there not a rebuttable presumption in the case of abusive of dominant position?'

Well, the key lies in the finding of abuse. It's not illegal to have a dominant position in competition law.

It is illegal to abuse it. And if you have abused it, then, that implies a theory of harm and you can draw deductions from that.

In your national law, there may be circumstances in which the burden of proof goes from one party to another; to some extent that is explained in the Directive and to other extents it will depend on national law.

The Commission The Commission Communication Guidelines - Practical Guide are there to help you. They don't bind the court, but they are there to help.

And as our case law develops so I expect the guidelines to develop too.

And then, there is the help from the National Competition Authority.

The Directive suggests that National Competition Authorities who do have economists, can help courts who don't have economists.

Now, in some Member States, economists can be appointed to the court. In the UK, we are about to try to recruit some more economists because we believe we need some more.

We only have one person in the Tribunal who is trained both as a lawyer and an economist, and he is here and he is retired from judging.

So, now what we do is if we got a case with economics – we've got one at the moment on MasterCard we've got two experienced lawyers and one economist, and he is the Secretary General of our Royal Economics Society - so, he is a very senior economist in the UK.

But if you are not in that situation, you can turn to your National Competition Authority and I have nudged them about this.

So, Estimation. So, what the Directive says is that judges must be empowered to estimate and that is a recognition of the fact that this is not a precise science.

Judges, at the end of the day, have to pluck a plausible number from the air. As I said, there is a presumption about it.

So, if we go on to the Practical Guide, it's not binding, it's meant to be helpful. There will be a developing case law.

We have developing case law already. Your asking yourselves ‘What would have happened otherwise?’, recognising that that has got uncertainties.

So, you create a scenario that seems plausible.

Now, I have to tell you that I would like this done by pendulum arbitration. I think it is best to listen to both parties and to ask yourself the question ‘who has the most plausible argument?’.

But we are a court and so as a court, you can decide that it is neither of them and you are going to make up your own plausible scenario.

You may like bits from what one party has said, you may like bits from what other party has said, but, at the end of the day, if you are the court, rather than a pendulum arbitrator, then it is down to you.

Part of what it is going on in the Directive is the possibility of resolution by consent or alternative dispute resolution and there may be moments when you want to say to the parties ‘The time has come for you to try to talk to each other’ or to go before a mediator.

So, proportionally determined insights, methods and techniques.

Economists may be prepared to do a very, very expensive exercise, in which they do extensive survey data and they produce an econometric model and, at the end of the day, you get a figure which goes all the way from the millions to the cents, but it may not be worth spending all that money.

In the MasterCard case before us at the moment, which involves a great deal of money – this is the supermarkets and the charges for credit cards.

The problem is that the Commission did some work but they did the work only amongst certain retailers and they left out the many, many small retailers.

And so, the economists are arguing what happens if we relook at this model to try to incorporate the smaller retailers – and nobody has actually gone out and surveyed the smaller retailers.

So, you have got this question of theory, empirical research and ‘is the empirical research relevant to what you are talking about?’.

So, what happens if we look at the case? Now, this is where my milk case study comes up.

And the first thing I need to tell you is that there is an error in translation from British to European and I have to confess this up front.

In the UK we have had a struggle with the measurement system introduced by Napoleon.

We are still measuring distances and speeds in miles/hour, rather than kilometers.

And when it comes to buying milk, we still buy milk in pints rather than litres and what I have realised is that I did not translate this right.

just competition

So, I am going to put 4 litres which will be very heavy, rather than 4 pints, which should translate into about 2 litres.

So, I want you to imagine that we are talking about 2 litre containers of milk.

You also, for the purpose of this case study, have to realise that the milk regulation has come in and you are only allowed to sell milk in one size – and that is the 2 litre size.

Milk is a staple product. So, you've got an interesting economic question of 'how far does people's consumption of milk go up and down depending on the price?'

Now, there is a question of where do people buy that milk, because in many European states, you can buy your milk from the supermarket or you can buy your milk from the convenience store.

Now, in my house, the convenience store is 90 seconds walk away. The supermarket is 15 minutes walk away or I can get in the car and drive the car and have to go in the underground car park and cue...

So, how much differential in the price of milk does it take for me to stop walking 90 seconds and go 15 minutes walk to buy my milk?

What happens at breakfast time when my wife says to me 'there is not enough milk for my cereal and my coffee'?

Now, my local convenience store upped and upped the price of milk until they got to this stage where people wanted to walk 15 minutes to the supermarket.

Now, they broke the price of milk down. Now, why?

Partly because, if they can get somebody into the shop to buy the milk, then, they may buy other things while they are in the shop.

So, what we are talking about here is some fundamental economic concepts.

First, substitution. There are various forms of substitution in economics.

My wife is not going to be pleased if I come back from the shop and say 'well, milk was very expensive, why not put white wine on your cereal?' or 'well, milk was very expensive, so, I bought some orangeade and you can put that in your coffee'.

So, in terms of milk, how much substitution? I could buy soya milk or almond milk or goat's milk or sheep's milk.

But the reality is that, in many ways, for cow's milk, people want cow's milk – semi-skimmed, full-skimmed, not skimmed at all and so on.

But, for the moment we'll just talk milk.

So, if I talk about Europe generally, the price of milk has been going down, milk flows freely between Member States.

So, a lot of milk flows, for example, from Denmark into Germany, between England and Scotland.



just competition

So, there is quite a lot of movement of milk and in the supermarkets the price has been forced down.

The supermarkets watch each other very carefully.

We have had a big case about supermarkets and we can see how closely they watch each other.

In Britain, we have also had a cartel case about dairy products and what the supermarkets have been doing about the price of cheese.

Now, I do not know about Romania, but in our countries, convenience stores tend to be in groups.

And here, in this case study, we have got two different sorts of convenience store: the cost-right convenience stores and the real convenience ones.

And the cost-right ones have sacrificed the margin because they believe if they can get people into their shop, the people will spend money on other things – so, not worth raising the price of the milk.

On the other hand, the real convenience stores raised the price of milk because they believe that when people are desperate for milk – me at breakfast time, wife pressing me, want milk on cereal and coffee, milk has to be available quickly, - they can charge more money for convenience and make a profit.

So, look at the market shares, we've got one party with 60% market share and the other party with 30% market share.

18:46.74/ Reference of the takeover to the Competition Authority – and it is allowed because it does not change the number of competitors.

Then, suddenly, in July 2014, the price goes up. So, what do they do?

Well, cost-right maintain their price but lose their margin and real convenience increase their price, but they do not entirely pass it on to their customers.

Now, that passing on is quite important. In our current supermarket case, the question arises 'how far did the supermarkets pass on the cost of paying for the credit cards to their customers, bearing in mind that all the supermarkets were being charged the same?'

And you have to ask yourself that question.

So, then, you have a leniency application.

Now, we have heard about leniency applications before and leniency applications under the Directive have certain consequences.

We are not going to go into those now. You will find other materials about leniency applications on the website.

But they went before the Competition Authority and said that they have been threatened – this is Sud milk, so they have been threatened by Nor milk.

There was a raid and you get some evidence from the raid, but not complete evidence from the raid.



just competition

Some cartels are very kind – they leave emails around saying – I think of one particular case – ‘we’d better not ask the lawyers because this is a cartel’.

That is not entitled to legal privilege – that email. You’ll see that they lower their price.

Now, that is important because we have now got time bands of this infringement – and, in this case, they are nice and clear: it starts in July and it goes on until March.

Then you go to the other party and the other party has a different story.

Now, this is not uncommon. So, there is a decision. So, you have got a decision and the decision is addressed to these three parties.

Now, under the Directive, there is joint and several liability: you can sue one cartel member for damage caused by any cartel member.

That can then be... We are not going to cover this today.

But you can have contribution proceedings between the parties to work out who pays what.

And there are certain provisions in the Directive about protections for the leniency applicant and when they do not apply.

So, in this particular country, there is a specialised competition law bar and a specialist market court.

Now, this has raised an interesting question in Europe about how many judges are trained in competition law and how many judges hear competition law cases.

In one Member State, 1,000 judges have been trained, but only 3 judges hear competition law cases.

When the European Commission conducted a survey on the training of judges, I think 187 German judges replied and only 8 British judges replied.

And people said to me “Why so few British judges?”. Well, answer: because in England and Wales, very few judges are allowed to do competition law cases.

You cannot produce, go and do a competition law case in a local court.

It has to come in England and Wales to the Chancellors’ Division – that is a group of 18 judges – or to the Competition Appeal Tribunal.

In Scotland, you can go to anyone of 50 different courts and about 150 different judges, most of whom know nothing about competition law – one judge does actually.

So, you have to decide: do you go before him or do you go before another court to find a judge who really doesn’t know what he is talking about.

So, interesting question.

And, one of the things that we are going to see how it develops in Europe is how far do we develop specialist lawyers and how far do we develop specialist judges.



So, basic economics: Substitution.

You have to ask yourself 'if I am not going to buy milk in the supermarket, I buy milk in a convenience store' – in this country that we are talking about, those are your options.

No house to house delivery of milk. Just those two options. Is there a substitution for milk?

Are there other things: sheep's milk, goat's milk?

Or are they actually so much more expensive that people are not naturally going to switch unless the price of milk goes up a great deal.

24:12.75/ And you have to ask yourself 'what point does the price of cow's milk get so high that people switch to sheep's, goat's or whatever?'

Price elasticities. Now, this is a little bit of economics.

What a price elasticity says is: if the price goes up by 10%, what happens to demand?

If the elasticity is 1 and the price goes up by 10%, then demand falls by 10%.

And if you are to get from what actually happened to the estimated counterfactual scenario, then understanding elasticities is quite important.

In a case like this, what is called cross-elasticities matter – and what that says is if the price in one place is 1.20 and the price in another place is 60 p higher and that then changes, how many people go from the convenience store to the supermarket?

And, sometimes, you will have evidence of cross-elasticity and sometimes, you won't.

But you have to think about cross-elasticity as you go along. So, that is differential price cross-elasticity.

So, we go on to 3. Use of analogies and counter-factual scenarios.

In England and Scotland, when we had the milk problems – the milk cartel in Scotland –, you could tell very clearly two things about milk in Scotland: one was that the company Robert Wiseman was immensely profitable compared to dairies in England and the other was that the price of milk in Scotland, from convenience stores, was considerably higher than it was in England.

There is no barrier to milk going across the border and this gives rise to an immediate question 'why?', and an immediate counterfactual.

Well, look at the prices in England and the profitability in England and say 'if England is a competitive market, and in Scotland there was market sharing, so, a non-competitive market', then you have got a pretty good counterfactual with which to start.

And here, you've got neighbouring countries and it would be quite natural to take a comparator of a neighbouring country.

Of course, you've got to think about differences in markets and whether the input costs are the same.

But here, that would be a good comparator.

You can also look at different time periods: the time period before the cartel, the time period during the cartel, the time period after the cartel.

And if you look at the Commission's Practical Guide, you will see nice graphs on how you do that, on how you look at that and how you take into account that during that period, things may have changed: it might have been summer time during the cartel, winter time outside and you look at patterns of how prices have changed normally during the year, because some products are seasonal, and you compare different years and so on.

Maybe the European Commission introduced a subsidy for milk.

So, you have to consider that as well. So, then, you've got to say 'well, what are we looking at, in terms of the damage?'

Well, in the case of cost-right, they didn't change their price.

So, there, you are looking at the loss profit from having to pay more to the cartel.

But what about real convenience?

They were paying more, but they increased their price – they passed on half of the increase to their customers.

Now, here, you've got to ask yourself more questions:

(1) 'What did it cost them to pay more for the milk and what would it have cost them, had there not been a cartel?'

'How much of that cost did they pass on?', 'How much did they bear themselves?'

But in both cases, you may have to ask yourself 'What happened to their overall income because of what happened?'

Now, here, you can get evidence from the till rows.

How many people just came in and bought milk and how many people came in, bought milk, and also bought the newspaper and some chocolates because they were right by the till and an Easter egg?

You know... What was going on in reality and how far did these changes impact the overall income of the shops?

And, to some extent, you will get evidence on that, and to some extent, you will have to work that out for yourself.

So, you may get expert evidence and then you have to look at the time period and ask yourself 'How do you apply interest?'

Now, in these days there are very low interest rates and, in some countries, negative interest bank rates and that is an interesting question, and your national law may well tell you 'what interest rate

you apply?’ – and there has recently been the study right across the European Union, on how Member States are doing that.

What is important is that you have to think about it and to ask yourself the question ‘What is the right interest rate to apply?’.

So, where does one look for help? Practical Guide – we have already mentioned it.

Economists. Sometimes the parties will produce economists, sometimes the court may appoint an economist, either as a judge or as a special advisor.

So, for example, there is another jurisdiction, when I am on call as a special assessor to the court – so, if the judge feels that he is getting out of his depth, he can ask me to go and sit with him and help him.

And sometimes, you can turn to the National Competition Authority.

Most companies have accounts. Be careful! Accounts are accounts, they are not economics.

And we have companies who come before us and they say ‘We were done tremendous damage, just look at our accounts – we are deep in loss’.

And when you look at the accounts, you discover that one of the reasons they are deep in loss, is that the family shareholders have paid themselves an enormous dividend and the directors have taken enormous fees.

And you have to ask yourself the question

‘Is the reason for the loss the damage caused by the cartel or the damage caused by the way the family have managed the business?’.

And if you want to look at a case like that, look at our Cardiff Bus case, at arguments about what caused the damage, when a company is put out of business.

So, be careful of accounts and accountants.

But they may be the place you have to look for detail and you may want to look at the management accounts, you may want to look at what was going on with the pricing behaviour and the quantification.

You may want to look at the accounts of the supply contracts, you may want to look at – you know – what was actually going on and that is often where the quantities are.

So, you’ve got to ask yourself ‘Where is the information readily available and what information am I going to have to produce a plausible answer for?’.

Now, part of the difficulty: ‘where costs are variable’ and ‘where costs are fixed’.

If you are a small shop, it is very unlikely, that even if milk goes down in sales, you are going to sack the stuff, because you have hardly got any stuff.

just competition

You cannot make the shop smaller, you've got to go on paying the rent and the taxes and the heating bill and the water bill – they are fixed costs, you cannot get rid of those.

The cost of the milk coming in varies, but other costs don't vary.

So, you have to consider that. You can look at parallel cases sometimes and you can use your common sense.

The Practical Guide gives you various ways of looking at things.

Now, I do not want to go into a lot of mathematics or algebra today.

The economists can help you with mathematics and algebra, and sometimes they will confuse you completely.

I have to tell you, if they cannot make you understand what they are talking about, then, I would be reluctant to trust them.

There were moments when economists have come before me with wonderful models and I have said 'but that does not actually work in real life – just look at the circumstances of real life'.

Do not be afraid to put the actual situation to economists and ask them whether their theory actually describes life as it is.

Regression analysis. Again, here, you are dealing with what variable matters and what other variables are going on.

We have already talked about the time of the year.

Sometimes, the reason why consumption goes up or consumption goes down has nothing much to do with the behaviour of the cartel, and everything to do with whether it rained.

And sometimes, you will have to look at the normal effects of rainfall or cold or warm on consumption and not just the effect of the cartel.

And regression analysis can help you to determine which variable was affecting the way in which demand developed.

Simulation. Again, you can do simulations, you can look at behaviour and put...

But that all requires assumptions. And you have to ask yourself 'How do I deal with these assumptions?'.

In our MasterCard case, as I said, the Commission had done a survey, but it only looked in certain sizes of retailers, and the argument amongst the economists was

'What assumptions do I make about the smaller retails, bearing in mind that the survey data was on larger retails?'.

So, simulation – you can do that.



just competition

Now, in the case of supermarkets, in my recent supermarket case, I asked each witness, how much quantitative modelling did they do in their supermarket, in terms of pricing.

Only one supermarket was doing quantitative modelling, the others were all...

Well, it was not quite like that, it was 'But what are the others charging?'.

'We will just nip around and see what our competitors are charging and then we will adjust our prices'.

Now, that was a case where part of the problem was that the suppliers were saying to the supermarkets

'Well, if on Thursday you raised your prices, don't you worry because... prices might go up in your competitors on the same day'.

And also, there – and this is back to accounts – what was discovered was that what was on the invoice pricing wasn't the whole story.

It turned out that there were a whole lot of things going on off invoice.

And so, you've got to be careful with the evidence, to discover whether what appears on the face of the record is actually what is going on, or something else was going on behind the scenes.

And quite often, the emails will reveal what was going on behind the scenes because people aren't careful enough.

Overcharge, passing on and volume effects. So...

Overcharge – that is when the price goes up and maybe passed through to consumers.

So, sometimes, the entire damage has been done to the consumers, in terms of a price change, but a volume effect has hit the retailer.

So, they've put up the price and, therefore, their volumes fell and they are entitled to recover for the loss of that volume, even though they cannot recover the price they passed through.

Exclusion. This case study does not involve inclusion, but you have to think about what happens in exclusion.

Comparators. Sometimes – and this is a case you can look at before, during, after the cartel.

Sometimes, it is very clear what has been happening in the behaviour.

In our tobacco case, you could see the changes taking place.

That was a case where we had supermarkets and convenience stores and one of their defences was 'We were so bad at this; we were not terribly good at implementing the cartel'.

And sometimes, you will have a defence like that and then you've got to look at the detail and ask yourself 'Were they implementing the cartel or weren't they implementing the cartel?'.



just competition

In our tobacco case again, the suppliers of tobacco said that they would only – they weren't price fixing, they were merely providing clerical assistance to the supermarkets by providing them with a large spreadsheet with all the products on one side and all the prices and that was only clerical assistance, it was not price fixing.

Ask yourself what is going on – these are time sequences and you can look at what happened to the prices over time and what is the evidence of the cartel.

Data from other geographic markets. In this case you've got a neighbouring geographic market and you can ask yourself 'Were the prices moving similarly or were they moving differently?'

Data from other product markets.

Sometimes, you will have a situation in which, for example, the price fixing is going on in white wine, but red wine is unaffected.

And you can ask yourself 'Why?'. And sometimes, you've got a combination of these different things.

Counterfactuals.

So, what you are trying to do, sometimes with the help of the parties and sometimes with them trying to complicate matters, is you are trying to come up with a straightforward 'What would have happened if these parties had not misbehaved?'

Don't allow the parties to make this impossible. Don't allow the parties to make this complicated.

There is a presumption of harm in a cartel. You are entitled to say 'This is what I think would have happened'.

If you are extremely wrong, you would probably be taken to appeal.

But, have a go! Use the evidence, recognise it is incomplete, be courageous, go for it!

Plausibility. From your very early age, I have to tell you, you have known whether the story that mommy and daddy were telling you, was plausible or not.

It is one of the first things that children learn – it is to tell the difference between a plausible story and a non-plausible story.

You don't have to be a judge to tell this. You are a human being. Plausibility is built in to who we are.

This is not... There is nothing esoteric about this – you can look into the situation and ask yourself 'Is this plausible?'

And if the parties are giving you a story which is implausible – 'It was pure chance that the prices all went up on Thursday' – they may be right.

There are times when they are right. But sometimes, they're not. And use actual comparators.

Do not be frightened to say 'Well, the nearest comparator is the neighbouring country and this is what happened in the neighbouring country'.



Passing on defence. The Directive tells you that the burden of proof passes to the defendant.

In this case, it is very clear. In some cases, it won't be so clear. The burden on indirect purchases is conditional – and I am not going to go into detail.

If this happens to you, the parties will take you through the Directive and explain where you should be and that tells you where to go and have a look.

Interest. We've talked about it. And it can be a large component, particularly if there are inflationary times.

At the moment, we are not in a great inflationary time, but...

Multilevel claims. You may be in a case where a collective action is brought on behalf of consumers, as well as an action by the retailers.

And you may have to think through how you handle that.

In a sense, that's helpful because you've got everybody in front of you and you can work out how the damage should be apportioned between the two.

I was part of a collective action in California and when I claimed my damages against British Airways for having fuel surcharges,

I was told I couldn't have my damages because my travel agent had already claimed them.

My travel agent probably made a lot of money from people not realising that they were making claims.

Now, that was a passing on case when they failed to do a passing on defence to say

'But you passed on all these charges to your customers'.

If they'd looked at the documentation, they would have seen lots of documents with ticket prices which said 'fuel surcharge'.

And I eventually recovered my money from the travel agent, but many people would not have done.

So, actions from the same infringements.

Courts have got to be alert to the fact that you may have cases going on in different levels and different jurisdictions and you have to ask yourself how do these relate to each other, to ensure there is no under-recovery or over-recovery.

So, public information on public enforcement is important.

Contribution. So, this is a case where we've got three parties. The action has been brought against one party.

And, at the end of the day, there may be an argument about which party pays how much to whom.

Sometimes, you will have a matrix of actions – many claimants, many defendants.

just competition

Sometimes, you will have an action brought by many claimants against one defendant.

Sometimes, you will have a very complicated matrix and you have to manage that.

And having done some of these complicated questions, your problem is what happens when some parts of the matrix start settling.

And you have to work out who has settled what.

And if it involves more than one court, you may find yourself needing to communicate with the judge from the other court, to work out which bits of this action are still alive and which bits of this action have been settled.

Now, this is the awful reality and it can become quite complicated.

In my... action, part of the action was taking place in the USA, where it had been consolidated in front of a single judge – he wasn't always quite clear in what he was deciding.

And that was a case in which we admitted the American trial lawyers to come and appeal before us to try to explain to us what was going on in America.

And you may want to admit lawyers from a neighbouring Member State to come and explain to you what is going on in the parallel proceedings.

But, at the end of the day, contribution is how you work out which cartel members end up paying how much.

What is important in the Directive is that that does not impact on full compensation for the claimants, provided somebody is still solvent.

And you have to look at immunity recipients as well.

Consensual Resolution. This is a slide which is almost blank because this is what happens when the parties have sorted out.

Now, in our law, if it is a collective action, that has to be brought back to us for approval.

We have a collective settlement procedure, which is then binding on those who do not opt out of it.

In other words, parties have to decide: are they going with the settlement or do they want to carry on with their actions.

Again, you may have to sort that sort of thing out but it helps a great deal because then, you do not have to do any of this quantification – they have done it for you.

But you may have to show that it is reasonable.

Judgments. You make the award – it has got to be enforced, you've got to ensure they actually pay, you've got to inform the Commission of what has happened and you've got to deal with costs.

That is a matter of national law so, I am not going to discuss it. You would be much better on saying how you deal with costs in Romania than I am.



just competition

So, going on to the next slide. Effectiveness and Equivalence. This is back to the basic principles.

So, hopefully, somebody is working a way on your national rules so, by the time we get to this... the end of this year, Romania and the UK and all the other Member States will have national rules which enable us all to do this.

And they have to ensure that it is not accessibly difficult or practically impossible to exercise the right to compensation.

So, I do not know how many of you have read the case study.

I also do not know how quickly any of you are going to receive a claim.

What I hope we have done, both today and, more importantly, on the online resources, is to put in place a variety of materials which help you to tune into the sorts of questions you need to ask yourself when that claim arrives at your court.

In our case, it often arrives in many boxes full of paper.

And you have to grapple with the paper and ask yourself

‘What questions am I asking of all this paper?’ and ‘Is this enough paper or do I want some more?’.

So, over to you, to discuss this part and then we will discuss the whole program and how we make it more helpful to you and those right the way around the European Union.

So, think, not just of yourselves in Romania, or us in the UK, but the small countries, like Malta and Luxembourg and the big countries, like Germany with many judges, the countries like Scotland with many courts and many judges, the countries where it is specialist, like Portugal.

What sort of help can we give each other?

And what questions have we raised in your minds?

