

**MERGERS (DAIRY PRODUCTS): THE ARLA CASE**

Subject: Mergers  
National laws

Industry: Dairy products  
(Some implications for other industries)

Parties: Arla Foods amba  
Express Dairies plc

Source: Commission Statement IP/03/820, dated 11 June 2003

*(Note. This case is an illustration of the interaction between Community law and national law in the application of the rules on competition; in this case, under the special rules applicable to mergers. It will be noted that the Commission reserved to itself the right to decide on one of the aspects of the case which the UK had asked to have referred to its own authorities.)*

The Commission has decided to refer part of the proposed merger between Danish-based dairy products company Arla Foods and Britain's Express Dairies to the UK competition authorities, which will further assess the competitive impact in the markets for the supply of processed fresh milk and fresh cream in Britain. The Commission has, at the same time, cleared the operation in respect of the other product and geographical markets.

On 16 April, the Commission received notification of a deal whereby Arla Foods amba would acquire control of Express Dairies plc, two of the four largest dairies in the UK.

The United Kingdom asked the Commission on 15 May to refer the examination of parts of the case to its competition authorities, namely:

- (i) the market for the procurement of raw milk in the UK,
- (ii) the market for the supply of fresh processed milk in Great Britain and
- (iii) the market for the supply of fresh potted cream (non-bulk cream) in the UK.

On these markets the UK argued that the transaction would create significant competition concerns and that they were better placed to deal with these markets. In addition, the UK authorities asked for the market for bottled milk, primarily supplied to milkmen, in certain areas in England, where the transaction might affect competition.

The Commission's preliminary assessment is that the market for the supply of fresh milk as well as fresh non-bulk cream raises potential competition concerns which will be better dealt with by the British competition authorities. The same goes for the supply of bottled milk where the merger could affect competition.

However, the Commission was not able to establish any competition concerns of its own in the market for the procurement of raw milk either on the basis of single or collective dominance. Therefore, the Commission rejected this part of the request and cleared the proposed transaction with regard to the non-referred markets. The Commission took great care to establish that the impact of the merger on the markets subject of a referral request was limited to the UK and, therefore, that the one-stop shop principle provided by the European merger control rules was respected.

Arla is a large dairy co-operative and is present in all standard dairy product markets with production facilities mainly in Denmark, Sweden and the UK; it has sales subsidiaries in most Member States of the European Community, as well as in a number of non-member states. Express is a publicly listed company in the UK, which purchases raw milk and currently uses it to process and supply fresh liquid milk and cream from seven processing dairies in Great Britain. It also produces and sells a number of ancillary products. ■

### **Mergers: the Austrian Electricity Case**

The Commission has approved a link between the Austrian power company Österreichische Elektrizitätswirtschafts-AG (Verbund) and five Austrian regional power suppliers grouped together as EnergieAllianz, subject to conditions and obligations. The initial plan would have created or strengthened dominant positions held by Verbund and EnergieAllianz, especially on the market for the supply of electricity to large customers. But the parties have entered into significant undertakings, which fully resolve the Commission's concerns. One of these undertakings - the sale of Verbund's controlling stake in APC, its distributor for large customers, - will need to be fulfilled before the merger can take place.

The Commission notes that, while the liberalisation of the energy market in Austria already covers all categories of customers and there is no shortage of capacity on the interconnectors with Germany, in geographic terms the relevant product markets do not currently extend beyond Austria's own borders; and there is not sufficient certainty that the situation will change in the near future. This is because foreign competitors in Austria have so far secured market shares of less than 5%, leaving aside some foreign holdings in Austrian regional suppliers. The geographic market is also kept separate by the fact that electricity prices to final consumers (not including through-transmission and other charges) are lower in Austria than in Germany due to established customer relations and to marketing and cost advantages conferred on Austrian companies by their access to domestic production capacity, especially hydroelectric power. These factors also act as barriers to foreign competitors wishing to enter the Austrian market.

Source: Commission Statement IP/03/825, dated 11 June 2003