



Spanish milk-cartel damages claimants seek more than 10% overcharge compensation

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- Three organisations represent 8,000 milk damages plaintiffs
- Claimants interrupted deadline before one-year time lapse
- Expected interests 'significant' for a 2000-2013 cartel

Three organisations representing around 8,000 cattle breeders are preparing actions against dairy processing companies for running a cartel in Spain, with expert reports calculating compensations of more than a 10% overcharge, the claims coordinators told this news service.

The three organisations managing the damages claims are Galician farmers' association Unión Agrarias, which filed the original complaint and was a party during the whole investigation, Spanish legal firm Eskariam – which entered in a collaboration agreement with Unión Agrarias – and law firm Balms Abogados.

In March 2015, the Comisión Nacional de los Mercados y la Competencia (CNMC) issued a decision finding that several milk operators operated a cartel to control the raw milk supply market to the detriment of cattle breeders between 2000 and 2013. However, the appeal court Audiencia Nacional found an unlawful change in one chargesheet and ordered the CNMC to revisit the investigation.

The authority reopened the case and, in July 2019, it imposed a EUR 80.6m fine on eight dairy companies and two industry associations.

The sanctioned entities were firms Calidad Pascual (formerly Grupo Leche Pascual), Central Lechera de Galicia (CELEGA), Corporación Alimentaria Peñasanta (CAPSA), Danone, Grupo Lactalis Iberia, Nestlé España, Industrias Lácteas de Granada (Puleva) and Schreiber Food España (formerly Senoble Ibérica), as well as associations Gremio de Industrias Lácteas de Cataluña (GIL) and Asociación de Empresas Lácteas de Galicia (AELGA).

Rulings on appeals brought by the dairy companies against the competition authority cartel decision are pending.

Unión Agrarias said in July 2020 it was preparing damages claims representing breeders. Eskariam also announced legal actions on behalf of the milk farmers, as did Balms Abogados.

Unión Agrarias and Eskariam announced later they signed an agreement to join forces for clients affected by the milk cartel, only concerning the civil matters of the case to help reinforce the expert reports determining the damage, while the organisations

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Sector: Agriculture
Topics: Cartels & Horizontal Agreements, Private Litigation

Grade: Confirmed

Companies

Schreiber Foods Inc.
Puleva SA
Corporacion Alimentaria Penasanta, S.A.
Grupo Lactalis Iberia SA
Grupo Leche Pascual SA
Danone Espana
Nestle Waters Espana SA
Leche Celta S. L.
Central Lechera Asturiana
Leche Rio
Feiraco Lacteos S.L.
Senagral
Cooperativa Agricola Y Ganadera Pirineo
Industrias Lacteas Asturianas (ILAS)
Asociacion Empresas Lacteas Galicia
Gremio Industrias Lacteas Cataluña
Unión Agrarias - UPA
Balms Group International
Celega S.L.

Agencies

Spanish Competition Authority - Comision Nacional De Los Mercados Y La Competencia (CNMC)
Spanish Commercial Courts - Juzgados De Lo Mercantil

Case Files

Spanish Private Litigation Concerning Milk Supply Cartel (2016)

will administratively deal with the claims of their clients separately.

Most of the claimants are from Galicia, while some are from neighbouring regions of Castile and León, Asturias and Cantabria and there is a small number of plaintiffs from other regions, representatives from the three entities noted.

Unións Agrarias' legal services coordinator Félix Porto said that his organisation is currently dealing with claims from around 5,000 cattle breeders. Eskariam business director Juan Álvarez said that his firm has reached around 2,000 plaintiffs, since other law firms have decided to transfer their claims to Eskariam, and that his organisation is in contact with other potential 2,000 plaintiffs.

Balms Abogados Galicia's partner Juan Ramón Camacho told this news service that his law firm will deal with over 800 claimants. The largest percentage of the plaintiffs come from the Galician province of Lugo, so Balms has a partnership with Lugo-based law firm LucusLex Abogados to manage the claims.

'Playing it safe' on timing

Since the deadline to file a damages action in Spain is somewhat unclear – it depends on judges' interpretation of the applicability of the EU Damages Directive to the case – the three organisation representatives confirmed they decided to “play it safe” by considering that they only have one year since the delivery of the CNMC decision in July 2019, in line with the former Spanish damages regime.

Therefore, they interrupted the statute of limitations before July 2020 by sending “extra-judicial notifications” to the dairy companies, according to the three representatives.

Félix Porto added that, if judges decide that the statute of limitations is longer than one year – the EU Damages Directive establishes a five-year deadline – more plaintiffs could join the action.

Porto and Juan Álvarez, whose organisations are also intervening in the appeal proceedings against the cartel decision, confirmed that all the dairy entities have challenged the CNMC findings before the Audiencia Nacional, except for association GIL.

Without necessarily waiting for the Audiencia Nacional rulings, Porto noted that his organisation may start introducing a few claims “in a couple of months”.

If the appeal court confirms the cartel findings and the dairy companies bring the case to the Supreme Court, Unións Agrarias and Eskariam will lodge their actions without waiting for a top court judgment, the representatives from these organisations added.

Juan Ramón Camacho of Balms Abogados noted that his law firm is waiting longer to introduce claims on behalf of the milk producers, since his intention is to file follow-on rather than standalone suits.

If the dairy processing companies bring the case to the Supreme Court, Camacho explained that his organisation has not yet decided whether to wait for a top court ruling or to start filing suits. That would depend on what happens with the first actions filed by other legal services, he noted.

Both Porto from Unions Agrarias and Álvarez from Eskariam said that their organisations are working on collecting information from their clients and on expert calculations. The overcharge estimation as a result of the infringement will exceed the 10% over the milk price, they noted.

Interest must also be added which, according to both, will be “significant” in a relatively old cartel that took place between 2000 and 2013.

Additionally, Juan Álvarez noted that Eskariam is in contact with law firms working with other milk damages claimants to discuss their expert reports and thus avoiding a large disparity in calculations, as has occurred in the Spanish truck cartel litigation.

Camacho of Balms Abogados said that his organisation has not yet finalised its expert report, but the estimated percentage of the overprice paid will be between 10% and 15%.

A spokesperson from Nestlé España recalled that appeals against the CNMC 2019 decision is still pending without a judgment. The company added that “Nestlé strictly complies with the current legislation and has always maintained a strict respect for competition rules and will continue doing so in the future”.

Calidad Pascual declined to comment. CELEGA, CAPSA, Danone, Lactalis Iberia, Puleva and Schreiber Food España did not reply to requests for comment. AELGA and GIL were not available for comment.

In a June 2021 ruling, a Granada commercial court delivered a ruling on a milk damages case following the 2015 CNMC decision, and ordered three milk processing companies to pay EUR 2m in compensation to a company formed by 17 farmers. Although the court found the claim standalone, it also considered the CNMC decision a “highly authoritative instrument of conviction”.

by Carmen Perales in Brussels

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