

Summary of Commission Decision
of 15 October 2008
relating to a proceeding under Article 81 of the EC Treaty
(Case COMP/39.188 — Bananas)
(Notified under document C(2008) 5955 final)
(Only the English and German versions are authentic)
(2009/C 189/06)

On 15 October 2008, the Commission adopted a decision relating to a proceeding under Article 81 of the EC Treaty. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets. A non-confidential version of the full text of the decision can be found in the authentic languages of the case at the Directorate-General for Competition's website:

<http://ec.europa.eu/competition/antitrust/cases/>

I. INTRODUCTION

1. The decision is addressed to 8 legal entities, belonging to the undertakings Chiquita, Dole and Weichert together with Del Monte which is made jointly and severally liable for the conduct of Weichert, for an infringement of the provisions of Article 81 of the Treaty.
2. The infringement which is the subject of this decision relates to the supply of fresh bananas to the Northern European region of the European Union. For the purpose of the decision 'the Northern European region' comprises Austria, Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands and Sweden.

II. CASE DESCRIPTION

1. Procedure

3. The Commission's investigation started on the basis of an immunity application under the 2002 Leniency Notice made by Chiquita. After Chiquita had submitted additional corporate statements and provided documents, the Commission granted Chiquita conditional immunity from fines in accordance with point 8(a) of the Leniency Notice. Thereafter, Chiquita made a number of further corporate statements and submitted copies of documents.
4. On 2 and 3 June 2005, the Commission carried out inspections under Article 20(4) of Regulation (EC) No 1/2003 at the premises of inter alia Dole, Del Monte and Weichert. Between February 2006 and May 2007 the Commission sent several requests for information under Article 18(2) of Regulation (EC) No 1/2003 to, amongst others, Dole, Del Monte and Weichert. The Commission also requested additional information and documents from Chiquita in accordance with the continuous cooperation obligation of an immunity applicant under the Leniency Notice.

5. The Commission's Statement of Objections of 20 July 2007 was addressed to 17 legal entities.
6. All the parties to which the Statement of Objections was addressed replied to the objections raised by the Commission and participated at an Oral Hearing held from 4 to 6 February 2008.

2. Summary of the infringement

7. The decision concludes that Chiquita, Dole and Weichert engaged in bilateral pre-pricing communications during which they discussed banana price setting factors, that is factors relevant for setting of quotation prices for the upcoming week and discussed or disclosed price trends and/or indications of quotation prices for the up-coming week. Such communications took place before the parties set their quotation prices. These communications are referred to as 'pre-pricing communications'. The decision concludes that there was a consistent pattern of pre-pricing communications, even though they did not necessarily take place every week. Moreover, once they had set their quotation prices on Thursday mornings, the parties bilaterally exchanged these quotation prices or at least had a mechanism in place, which enabled them to bilaterally exchange information about quotation prices set. It is concluded that this exchange of quotation prices enabled the parties to monitor the individual parties' quotation pricing decisions in the light of pre-pricing communications which took place between parties beforehand.
8. The decision concludes that the object of pre-pricing communications was to reduce uncertainty as to the conduct of the parties with respect to the quotation prices to be set by them. These communications gave rise to a concerted practice which concerned the fixing of prices.

9. The decision concludes that the facts described in it demonstrate that the conduct of the parties in relation to the pre-pricing communications was of such nature that it gave rise to the infringement being implemented. They took place before the parties set their quotation prices, repeatedly and over a long period of time. Moreover, there was also a mechanism of exchange of quotation prices in place, which was used by the parties. This exchange of quotation prices after they were set served for monitoring parties' quotation price decisions in the light of pre-pricing communications which took place between parties beforehand.
10. The infringement period retained in the decision is from 1 January 2000 to 31 December 2002 for Dole and Weichert, and from 1 January 2000 to 1 December 2002 for Chiquita. The Commission finds that Del Monte exercised decisive influence over Weichert during the period of Weichert's participation in the infringement.

3. Addressees

11. The present decision is addressed to the following 8 legal entities, belonging to the undertakings Chiquita, Dole and Weichert together with Del Monte which is made jointly and severally liable for the conduct of Weichert:

- Chiquita Brands International Inc.,
- Chiquita International Ltd.,
- Chiquita International Services Group N.V.,
- Chiquita Banana Company B.V.,
- Dole Food Company, Inc.,
- Dole Fresh Fruit Europe OHG,
- Internationale Fruchtimport Gesellschaft Weichert & Co. KG,
- Fresh Del Monte Produce Inc.

4. Remedies

Basic amount of the fine

12. The basic amount of the fine is determined as a proportion of the value of the sales of the relevant product made by each undertaking in the relevant geographic area during the last full business year of the infringement ('variable amount'), multiplied by the number of years of the infringement, plus an additional amount, also calculated as a proportion of the value of sales, in order to deter a horizontal concerted practice which concerned the fixing of prices ('entry fee').

13. The infringement consisted of a horizontal concerted practice which concerned the fixing of prices. The criteria to be taken into account in order to set out proportions of the value of sales are the nature of the infringement (in this case horizontal price coordination), the combined market share of the undertakings participating in the infringement and the geographic scope (the Northern European region of the EU).
14. Taking into account that the infringement lasted for 3 years for Dole and Weichert and for 2 years and 11 months for Chiquita, the variable amount is multiplied by 3.
15. According to Point 25 of the 2006 Guidelines on fines an additional amount of 15 % of the value of sales is imposed on the addressees.

Adjustments to the basic amount

16. No aggravating circumstances have been found.
17. The Commission takes into account the fact that during the relevant period the banana sector was subject to a very specific regulatory regime, in favour of all the parties, as a mitigating circumstance as well as that the coordination related to quotation prices.
18. The Commission takes into account as a mitigating circumstance that it cannot be proven that Weichert was aware of or ought reasonably to have foreseen the communications between Chiquita and Dole taking place before the setting of quotation prices.
19. In application of Point 30 of the 2006 Guidelines on fines the Commission does not apply any specific increase for deterrence in this case to any of the addressees.

Application of the 10 % turnover limit

20. No reduction of fines is made as a result of the 10 % worldwide turnover limit provided for in Article 23(2) of Regulation (EC) No 1/2003.

Application of the 2002 Leniency Notice: reduction of fines

21. Chiquita was the first undertaking to inform the Commission about a secret cartel concerning sales of bananas. Chiquita applied for immunity under the terms of the Leniency Notice. As the information provided by Chiquita enabled the Commission to adopt a decision to carry out inspections pursuant to Article 20(4) of Regulation (EC) No 1/2003, Chiquita was granted conditional immunity from fines pursuant to point 8(a) of the Leniency Notice.

22. According to the evidence in the Commission's possession, Chiquita terminated its involvement in the infringement at the latest at the time at which it first submitted evidence to the Commission. Furthermore, there is no evidence that Chiquita exerted pressure on other addressees to join the cartel arrangements. Finally, the Commission is of the opinion that Chiquita has fulfilled the requirements of point 11(a) of the Leniency Notice. Chiquita is granted immunity from any fines that would otherwise have been imposed on it.

III. DECISION

23. The following undertakings infringed Article 81 of the EC Treaty by participating in a concerted practice by which they coordinated quotation prices for bananas:

- (a) Chiquita Brands International Inc. from 1 January 2000 until 1 December 2002;
- (b) Chiquita International Ltd. from 1 January 2000 until 1 December 2002;
- (c) Chiquita International Services Group N.V. from 1 January 2000 until 1 December 2002;
- (d) Chiquita Banana Company B.V. from 1 January 2000 until 1 December 2002;
- (e) Dole Food Company, Inc. from 1 January 2000 until 31 December 2002;
- (f) Dole Fresh Fruit Europe OHG from 1 January 2000 until 31 December 2002;

(g) Internationale Fruchtimport Gesellschaft Weichert & Co. KG from 1 January 2000 until 31 December 2002;

(h) Fresh Del Monte Produce Inc. from 1 January 2000 until 31 December 2002.

The infringement covered the following Member States: Austria, Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands and Sweden.

24. For the infringement described above, the following fines are imposed:

- (a) Chiquita Brands International Inc., Chiquita International Ltd., Chiquita International Services Group N.V. and Chiquita Banana Company B.V., jointly and severally a fine of EUR 0;
- (b) Dole Food Company, Inc. and Dole Fresh Fruit Europe OHG, jointly and severally a fine of EUR 45 600 000;
- (c) Internationale Fruchtimport Gesellschaft Weichert & Co. KG, jointly and severally liable with Fresh Del Monte Produce Inc., a fine of EUR 14 700 000.

25. The undertakings listed above shall immediately bring to an end the infringement insofar as they have not already done so. They shall refrain from repeating any act or conduct as described above and from any act or conduct having the same or similar object or effect.
