

Summary of Commission Decision

of 25 June 2014

(Case AT.39965 — Mushrooms)

(notified under document C(2014) 4227 final)

(Only the English text is authentic)

(2014/C 453/11)

On 25 June 2014, the Commission adopted a decision relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 ⁽¹⁾, 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.

1. INTRODUCTION

- (1) The Decision relates to a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement concerning mushrooms sold in cans and jars ('canned mushrooms'). The anticompetitive conduct concerned by the present proceedings relates to the private label sales (MDD, HD and MPP) ⁽²⁾ of canned mushrooms via tender procedures to retailers and the food service channel ⁽³⁾. The Decision is addressed to the following entities: (i) Bonduelle SCA, Bonduelle SAS and Bonduelle Conserve International SAS (Bonduelle); (ii) C4C Holding B.V., Lutèce Holding B.V. and Lutèce B.V. (Lutèce) and (iii) Pfeffer Holding B.V. and Prochamp B.V. (Prochamp).

2. CASE DESCRIPTION

2.1. Procedure

- (2) Following the immunity application by Lutèce in December 2011, the Commission carried out unannounced inspections in February 2012 at the premises of various producers of canned mushrooms. As of April 2012 the Commission sent several requests for information to the parties. In September 2012, Prochamp applied for a reduction of fines.
- (3) On 9 April 2013, the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against the addressees of the Decision and another party with a view to engaging in settlement discussions with them. Subsequently Bonduelle, Lutèce and Prochamp submitted to the Commission their formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 ⁽⁴⁾.
- (4) On 15 May 2014, the Commission adopted a Statement of Objections addressed to Bonduelle, Lutèce and Prochamp. All these parties confirmed that it reflected the contents of their submissions and that they therefore remained committed to following the settlement procedure. The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 20 June 2014 and the Commission adopted the Decision on 25 June 2014.

2.2. Addressees and duration

- (5) The addressees of the Decision have participated in a cartel and/or bear liability for it, infringing therefore Article 101 of the Treaty and Article 53 of the EEA Agreement, during the periods indicated below:

Entity	Duration
Bonduelle SCA Bonduelle SAS Bonduelle Conserve International SAS	1 September 2010 – 28 February 2012

⁽¹⁾ OJ L 1, 4.1.2003, p. 1.

⁽²⁾ MDD stands for 'Marque des Distributeurs', 'HD' for 'Hard Discounts' and MPP stands for 'Marque Premier Prix'.

⁽³⁾ The retail channel includes sales to supermarkets, hypermarkets and hard discounters.

The food service channel includes sales to food wholesalers and processors.

Sales of fresh and frozen mushrooms are not concerned.

Sales of canned mushrooms that are not channelled through tender procedures, such as the sales of parties own brands, are also not concerned.

The business to business channel (i.e. industrial customers which use canned mushrooms as an ingredient for the products they sell to the retailers or the foodservice) is also not part of the infringement.

⁽⁴⁾ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18).

Entity	Duration
C4C Holding B.V. Lutèce Holding B.V. Lutèce B.V.	1 September 2010 – 22 December 2011
Peffer Holding B.V. Prochamp B.V.	1 September 2010 – 28 February 2012

2.3. Summary of the infringement

- (6) The Decision concerns a cartel, the ultimate aim of which was to stabilise the market shares for the cartelized product and stop the decline of prices. Summarized, the cartel was a non-aggression pact with a compensation scheme in case of customer transfer and application of minimum prices which had been agreed beforehand. To achieve this aim the cartel members exchanged confidential information on tenders, set minimum prices, agreed on volume targets and allocated customers.
- (7) The cartel members held numerous regular multilateral meetings and occasionally some of the cartel members had additional contacts on bilateral basis and secrecy was applied to the cartel arrangements. The implementation of the cartel was carried out thoroughly not only by the exchange of prices to be offered in tenders and disclosure of individual customers in follow-up meetings but also by having a mechanism in place to compensate transfers of customers between competitors and thus stabilise market shares for private label sales.
- (8) The geographic scope of the infringement, as regards all the settling parties, was EEA-wide during the entire period of their participation. The cartel contacts started at least on 1 September 2010 with regular multilateral meetings between the cartel participants. These cartel contacts lasted until 28 February 2012 (22 December 2011 for Lutèce).

2.4. Remedies

- (9) The Decision applies the 2006 Guidelines on Fines⁽¹⁾. With the exception of Lutèce, the Decision imposes fines on all the entities listed under point (5) above.

2.4.1. Basic amount of the fine

- (10) In setting the fines, the Commission took into account the undertakings' sales of canned mushrooms (as defined in paragraph 1) in the EEA in the last year prior to the end of the cartel, the fact that price coordination and market sharing arrangements are amongst the most harmful restrictions of competition, the duration of the cartel and an additional amount to deter undertakings from entering into price coordination practices.

2.4.2. Adjustments to the basic amount

- (11) The Commission did not apply any aggravating or mitigating circumstances.

2.4.3. Application of the 10 % turnover limit

- (12) The adjusted basic amounts of the fine for both Lutèce and Prochamp exceed 10 % of their total turnover in 2013. Therefore, the fine for both companies is capped at 10 % of their respective total turnover.

2.4.4. Application of the 2006 Leniency Notice: reduction of fines

- (13) The Commission granted Lutèce full immunity from fines and Prochamp a 30 % reduction of fines.

2.4.5. Adaptation – Point 37 of the Guidelines on Fines

- (14) In view of the specific circumstances of this case, the Commission exercised its discretion in accordance with point 37 of the 2006 Fines Guidelines and reduced the fine of Prochamp by 10 % to ensure an appropriate level of deterrence without being disproportionate.

2.4.6. Application of the Settlement Notice

- (15) As a result of the application of the Settlement Notice, the amount of the fines imposed on all addressees was reduced by 10 %.

⁽¹⁾ OJ C 210, 1.9.2006, p. 2.

3. CONCLUSION

(16) The following fines were imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003:

- (a) Bonduelle SCA, Bonduelle SAS and Bonduelle Conserve International SAS, jointly and severally: EUR 30 204 000;
 - (b) C4C Holding B.V., Lutèce Holding B.V. and Lutèce B.V., jointly and severally: EUR 0;
 - (c) Peffer Holding B.V. and Prochamp B.V., jointly and severally: EUR 2 021 000.
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