

**Summary of Commission Decision****of 12 October 2011****relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union****(Case COMP/39.482 — Exotic Fruit (Bananas))***(notified under document C(2011) 7273 final)***(Only the English text is authentic)**

(2012/C 64/09)

**1. INTRODUCTION**

(1) On 12 October 2011, the Commission adopted a decision relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003<sup>(1)</sup>, 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.

**2. CASE DESCRIPTION****2.1. Addressees**

(2) The Decision is addressed to two undertakings, Chiquita Brands International, Inc. (USA), Chiquita Banana Company BV (The Netherlands), Chiquita Italia SpA (Italy) (collectively referred to as 'Chiquita') and FSL Holdings NV (Belgium), Firma Leon Van Parys NV (Belgium), Pacific Fruit Company Italy SpA (Italy) (collectively referred to as 'Pacific').

**2.2. Procedure**

(3) On 8 April 2005 Chiquita applied for immunity from fines under the 2002 Leniency Notice<sup>(2)</sup> which was registered as case 39.188 — Bananas. On 3 May 2005 the Commission granted Chiquita conditional immunity from fines in relation to cartel activities in the sale of bananas and pineapples in the whole EEA. By decision of 15 October 2008 in Case 39.188 — Bananas, Chiquita was granted final immunity from any fines for a bananas cartel relating to the fixing of quotation prices in Northern Europe.

(4) On 26 July 2007 the Commission received copies of documents from the Italian tax police which had been collected in the course of an inspection in the home and the office of an employee of Pacific in the framework of a national investigation. Following this, between 28 and 30 November 2007, the Commission carried out inspections in the offices of major banana importers in Italy and Spain under Article 20 of Regulation (EC) No 1/2003 concerning Southern Europe in case 39.482 — Exotic Fruit.

(5) On 10 December 2009, the Commission adopted a Statement of Objections in this case. Following the access to the file, all addressees of this decision made known to the Commission in writing their views on the objections raised against them and took part in the Oral Hearing held on 18 June 2010. The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 3 and 10 October 2011.

**2.3. Summary of the infringement**

(6) In the period between 28 July 2004 and 8 April 2005 Chiquita and Pacific participated in a single and continuous infringement of Article 101 of the Treaty by which the two undertakings coordinated their price strategy regarding future prices, price levels, price movements and/or price trends and exchanged information on future market conduct regarding prices. The conduct concerned the sale of fresh bananas in Greece, Portugal and Italy.

(7) The body of evidence of the infringement consists both of contemporaneous documentary evidence originating from Pacific and Chiquita's submissions which show continuous collusive arrangements between the parties for the period of the infringement.

(8) Both Chiquita and Pacific are among the largest suppliers of bananas in Europe and form part of large multinational groups. The banana business in Southern Europe is very concentrated and operates in two layers — green (un-ripened) bananas and (yellow) ripened bananas. The size of the banana business in Italy, Portugal and Greece is estimated to have been around EUR 525 million in 2004 and 2005. The cartel has covered around 50 % of the market in Italy, above 30 % in 2004 and around 40 % in 2005 in Portugal, and around 65 % in 2004 and around 60 % in 2005 in Greece. Chiquita and Pacific were almost exclusively selling green bananas to independent ripeners, who in turn sold these bananas yellow about one week later to customers such as supermarkets. Other large banana suppliers in Southern Europe were mostly selling yellow bananas.

<sup>(1)</sup> OJ L 1, 4.1.2003, p. 1.

<sup>(2)</sup> OJ C 45, 19.2.2002, p. 3.

## 2.4. Remedies

### 2.4.1. Basic amount of the fine

- (9) Following the 2006 guidelines on fines <sup>(1)</sup>, the basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of sales in the relevant geographic area in the Union.
- (10) In view of the short duration of the infringement and the fact that it covered parts of two calendar years, the Commission calculated a proxy for annual value of sales (based on the actual value of sales made by the undertakings during the eight months of their participation in the infringement from August 2004 to March 2005) to be used as the basis for the calculation of the basic amount of the fines to be imposed.
- (11) The goods to which the infringement relates in this case are bananas (fresh fruit) both un-ripened (green) and ripened (yellow) bananas. The relevant geographic area covers Greece, Italy and Portugal.
- (12) Considering the nature of the infringement and the geographic scope of the cartel, the percentage for the variable amount and the additional amount ('entry fee') was set at 15 %.
- (13) The cartel could be proven for eight months and 12 days. The variable amount was multiplied with 2/3.

### 2.4.2. Adjustments to the basic amount

- (14) No aggravating circumstances have been found.
- (15) The regulatory regime which applied at the time of the infringement in the Commission Decision in Case 39.188 — Bananas and the one in this case operated according to rules which were to a large extent identical. In view of the circumstances of this case, and in the light of the position taken by the Commission in Case 39.188 — Bananas, a reduction of 20 % was applied to the basic amount of the fines to be imposed on all the undertakings concerned.

### 2.4.3. Application of the 10 % turnover limit

- (16) The final amounts of the fines prior to the application of the Leniency Notice are below 10 % of the worldwide turnovers of both Chiquita and Pacific.

### 2.4.4. Application of the 2002 Leniency Notice: immunity

- (17) As the conduct under investigation in this case was distinct from that in Case 39.188 — Bananas, the original investigation was divided into two cases, namely Case 39.482 — Exotic Fruit and Case 39.188 — Bananas. In this type of situation an immunity applicant has the duty to cooperate in both separate investigations which may originate from the same immunity application, and continue doing so even after obtaining final immunity with regard to the infringement(s) covered by one of the investigations. Since Chiquita has fulfilled the conditions set out in the Leniency Notice, it is granted immunity from any fines that would otherwise have been imposed on it.

## 3. DECISION

- (18) The following undertakings infringed Article 101 of the Treaty from 28 July 2004 until 8 April 2005 by participating in a single and continuous agreement and/or concerted practice regarding the supply of bananas in Italy, Greece and Portugal, which consisted of price fixing:

— Chiquita Brands International, Inc., Chiquita Banana Company BV, Chiquita Italia SpA,

— FSL Holdings NV, Firma Leon Van Parys NV, Pacific Fruit Company Italy SpA.

- (19) The following fines are imposed:

— Chiquita Brands International, Inc., Chiquita Banana Company BV, Chiquita Italia SpA, jointly and severally: EUR 0

— FSL Holdings NV, Firma Leon Van Parys NV, Pacific Fruit Company Italy SpA, jointly and severally: EUR 8 919 000

- (20) The undertakings concerned shall immediately bring to an end the infringement insofar as they have not already done so.

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<sup>(1)</sup> OJ C 210, 1.9.2006, p. 2.