

**Form of order sought**

- annul Articles 1, 2, 3 and 4 of Commission decision C(2008) 5955 final of 15 October 2008 in Case COMP/39.188 — Bananas insofar as it pertains to it;
- alternatively, to substantially reduce the fine imposed on the applicant pursuant to Article 2c of that decision;
- alternatively, to annul Articles 1 and 3 of that decision so far as they pertain to it;
- order the Commission to pay the costs.

**Pleas in law and main arguments**

By means of this application, the applicant seeks annulment pursuant to Article 230 EC of the Commission Decision C(2008) 5955 final of 15 October 2008 (Case COMP/39.188 — Bananas) relating to a proceeding under Article 81(1) EC which held it jointly and severally liable for the conduct of Internationale Fruchthandels Gesellschaft Weichert & Co. The Commission held that Weichert had infringed Article 81 EC by participating in a concerted practice of coordination of quotation prices for bananas imported to the eight Member States of the Northern European region of the Community. Alternatively, it seeks the amendment of Article 2(c) of the Decision in so far as it imposes a fine on the applicant.

In support of its claims, the applicant puts forward eight pleas, presented in four parts.

In the first part, the applicant puts forward the pleas in support of its claim for annulment of the decision to hold it jointly and severally liable for the conduct of Weichert.

First, it submits that the Commission misapplied Article 81(1) EC and Article 23(2)(a) of Regulation No 1/2003 <sup>(1)</sup> in finding the applicant jointly and severally liable for Weichert's conduct on the basis of a distribution agreement and its indirect interest in Weichert as a limited partner (*Kommanditist*), neither of which (alone or in combination) gave the applicant decisive influence over Weichert.

Second, the applicant argues that the Commission infringed Article 253 EC by failing to provide reasons for attributing liability to the applicant, a company that had no direct relationship with Weichert.

Third, it contends that the Commission violated the applicant's right of defence by refusing to disclose relevant evidence.

The secondary and alternative pleas are put forward by the applicant in support of its claim of annulment of the contested decision in so far as it relates to both the applicant and Weichert. In this part of its application, the applicant raises fourth and fifth plea.

The fourth plea relates to a misapplication of Article 81 EC by reason of the fact that the Commission concluded that Weichert

had engaged in a concerted practice with the object of restricting competition.

The fifth plea relates to a breach of the applicant's rights of defence in that it was not granted the right to be heard as a result of a fundamental shift in the Commission's case between the statement of objections and the decision.

In the third part of its application (also in the alternative), the applicant puts forward the precautionary pleas in support of its claim seeking the reduction of the fine imposed jointly and severally on the applicant and Weichert. This part comprises sixth and seventh pleas.

By its sixth plea, the applicant argues that the Commission committed a manifest error of assessment in determining the level of the fine by failing to properly assess gravity.

The seventh plea relates to a violation of Article 23 of Regulation No 1/2003 and of legitimate expectations by the reason of the fact that the Commission failed to take account of Weichert's cooperation in the investigation.

The fourth part of the application seeks the annulment of Articles 1 and 3 of the decision in respect of the applicant on the basis of the eight pleas stating that those Articles involve a misapplication of Article 81 EC, a violation of Article 7 of Regulation No 1/2003 and a violation of Article 253 EC.

<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, p. 1.

**Action brought on 24 December 2008 — Dole Food and Dole Germany v Commission****(Case T-588/08)**

(2009/C 44/114)

*Language of the case: English***Parties**

*Applicants:* Dole Food Company, Inc. (Wilmington, United States) and Dole Germany OHG (Hamburg, Germany) (represented by: J.-F. Bellis, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

- annul the contested decision;
- annul or reduce the amount of the fine imposed;
- order the Commission to bear the costs.

**Pleas in law and main arguments**

By means of this application, the applicants seek annulment pursuant to Article 230 EC of the Commission Decision C(2008) 5955 final of 15 October 2008 (Case COMP/39.188 — Bananas) relating to a proceeding under Article 81(1) EC which held them liable for participating in a concerted practice of coordination of quotation prices for bananas imported to the eight Member States of the Northern European region of the Community. They also seek the annulment or the reduction of the fine imposed on them.

In support of their claims, the applicants put forward two pleas.

First, the applicants submit that the Commission erred in determining that the conduct at issue was a restriction of competition by object under Article 81 EC. The applicants contend that in fact, the conduct at issue consisted exclusively in occasional bilateral communications between banana importers involving general market gossip and did not form part of a broader price-fixing or market-sharing cartel and was thus not a restriction of competition by object. These communications took place prior to the setting of quotation prices that is at a stage far removed from the negotiation of actual prices with customers. Further the applicants state that these communications were not, and could not be, to restrict competition in the banana market since quotation prices are not actual prices and do not form the basis for the negotiation of actual prices of green bananas.

Second, the applicants claim that the fine imposed on them was unjustified because the basic amount of the fine is based on the value of sales of goods to which the alleged infringement does not relate. Further, the applicants argue that the fine was also disproportionate because the basic amount of the fine was wrongly set on the premise that the conduct concerned price-fixing.

**Order of the Court of First Instance of 17 December 2008 — Plant and Others v Commission****(Case T-324/07)** <sup>(1)</sup>

(2009/C 44/115)

*Language of the case: English*

The President of the Sixth Chamber has ordered that the case be removed from the register.

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<sup>(1)</sup> OJ C 247, 20.10.2007.

**Order of the Court of First Instance of 18 December 2008 — Insight Direct USA v OHIM — Net Insight (Insight)****(Case T-489/07)** <sup>(1)</sup>

(2009/C 44/116)

*Language of the case: English*

The President of the Sixth Chamber has ordered that the case be removed from the register.

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<sup>(1)</sup> OJ C 64, 8.3.2008.

**Order of the Court of First Instance of 19 December 2008 — iTouch International v OHIM — Touchnet Information Systems (iTouch)****(Case T-347/08)** <sup>(1)</sup>

(2009/C 44/117)

*Language of the case: English*

The President of the Sixth Chamber has ordered that the case be removed from the register.

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<sup>(1)</sup> OJ C 272, 25.10.2008.