

***Case No COMP/M.7220 - CHIQUITA BRANDS  
INTERNATIONAL/ FYFFES***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) in conjunction with Art 6(2)  
Date: 03/10/2014

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## EUROPEAN COMMISSION

Brussels, 3.10.2014  
C(2014) 7268 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

### **To the notifying parties:**

Dear Sir/Madam,

**Subject: Case M.7220 - Chiquita Brands International/ Fyffes  
Commission decision pursuant to Article 6(1)(b) in conjunction with  
Article 6(2) of Council Regulation No 139/2004<sup>1</sup>**

- (1) On 14 August 2014, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Chiquita Brands International, Inc. ("Chiquita", the United States) and the undertaking Fyffes plc ("Fyffes", Ireland) merge within the meaning of Article 3(1)(a) of the Merger Regulation (the "Transaction"). Chiquita and Fyffes are collectively referred to as the "Notifying Parties".

#### **1. THE NOTIFYING PARTIES AND THE TRANSACTION**

- (2) Chiquita is a US-based global importer and wholesaler of fresh produce, in particular bananas. In the EEA Chiquita's activities also include the supply of pineapples and other fruit, as well as the provision of banana ripening and shipping services to third

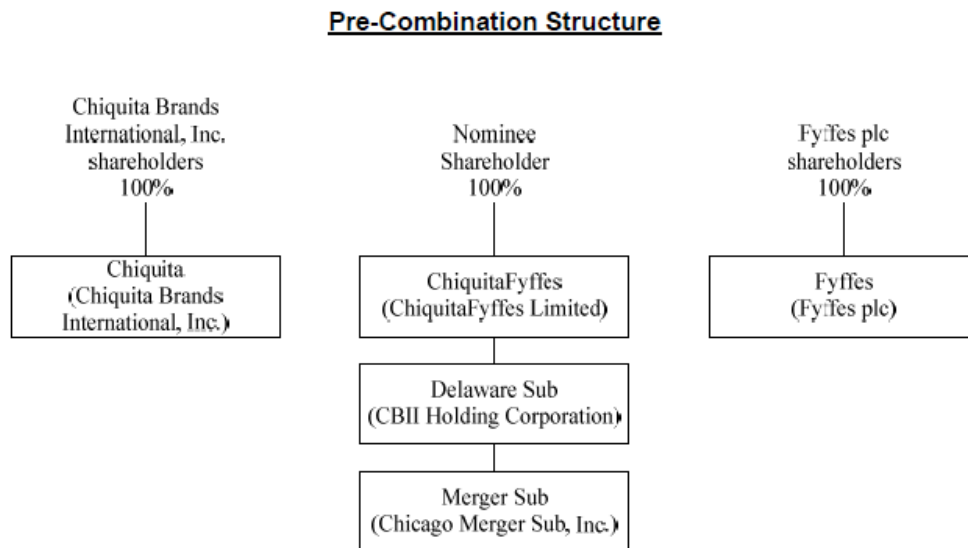
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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

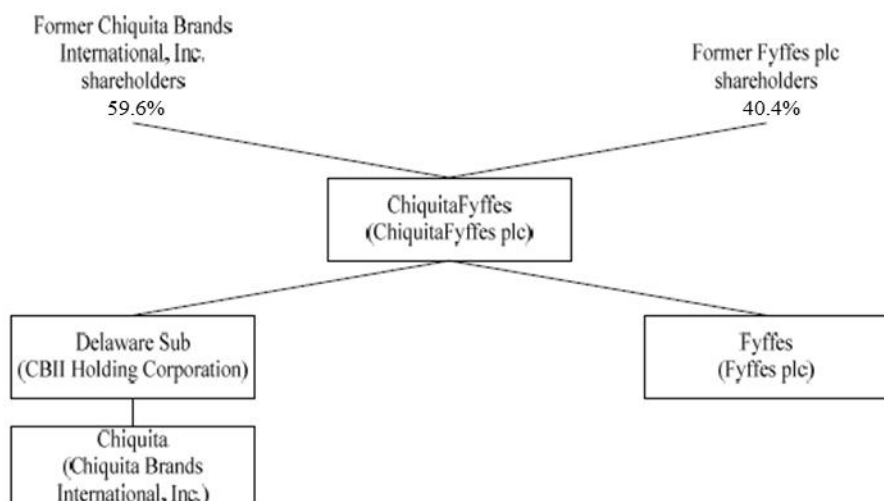
parties. Chiquita is still vertically integrated (in particular it owns banana plantations in the tropics and ripening facilities) but to a lesser extent than in the past. In Europe Chiquita lost significant volumes in the last years and it is now the number two banana company.

- (3) Fyffes is an Irish-based global company active in the procurement, shipping, import and wholesale of bananas. In the EEA Fyffes also supplies other fruit, including pineapples and provides banana ripening and shipping services to third parties. Fyffes has become in the recent years the leader of the European banana market.
- (4) On 10 March 2014 the Notifying Parties entered into an agreement to merge the totality of their operations. Following completion of the Transaction, the entire businesses of Fyffes and Chiquita will be placed under the common control of a new holding company ChiquitaFyffes plc. ("ChiquitaFyffes" also hereinafter referred to as the "Merged Entity"), which was formed in Ireland on 25 February 2014. Current Fyffes shareholders will hold approximately 40.4% and current Chiquita shareholders will hold around 59.6% of ChiquitaFyffes.

**Figure 1: Structure before and after the Transaction**



### Post-Combination Structure



Source: Form CO, as amended by the Commission.

- (5) The Transaction is structured so that two independent existing undertakings transfer entire assets and activities into a newly created holding company and the former shareholders of both Chiquita and Fyffes receive shares in this newly created company. None of the shareholders of Chiquita will have a shareholding greater than 6% in ChiquitaFyffes. The Transaction constitutes therefore a concentration within the meaning of Article 3(1)(a) of the EU Merger Regulation.

## **2. EU DIMENSION**

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million<sup>2</sup> [Chiquita: EUR 2 302 million, Fyffes: EUR 893 million]. In each of Germany<sup>3</sup>, the Netherlands<sup>4</sup> and the UK<sup>5</sup> the combined aggregate turnover of the undertakings concerned is more than EUR 100 million and the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million. The aggregate EU-wide turnover of each of the undertakings concerned is more than EUR 100 million,<sup>6</sup> but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (7) The notified Transaction therefore has an EU dimension within the meaning of Article 1(3) of the EU Merger Regulation.

## **3. APPLICABILITY OF THE EEA AGREEMENT**

- (8) Bananas and pineapples fall outside the scope of the Agreement on the European Economic Area ("EEA Agreement"). Article 8(3)(a) of the EEA Agreement states that products falling within Chapters 1 to 24 of the Harmonised Commodity Description and Coding System are not covered by the EEA Agreement, unless such products are

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<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

<sup>3</sup> Chiquita: EUR [...], Fyffes: EUR [...].

<sup>4</sup> Chiquita: EUR [...], Fyffes: EUR [...].

<sup>5</sup> Chiquita: EUR [...], Fyffes: EUR [...].

<sup>6</sup> Chiquita: EUR [...], Fyffes: EUR [...].

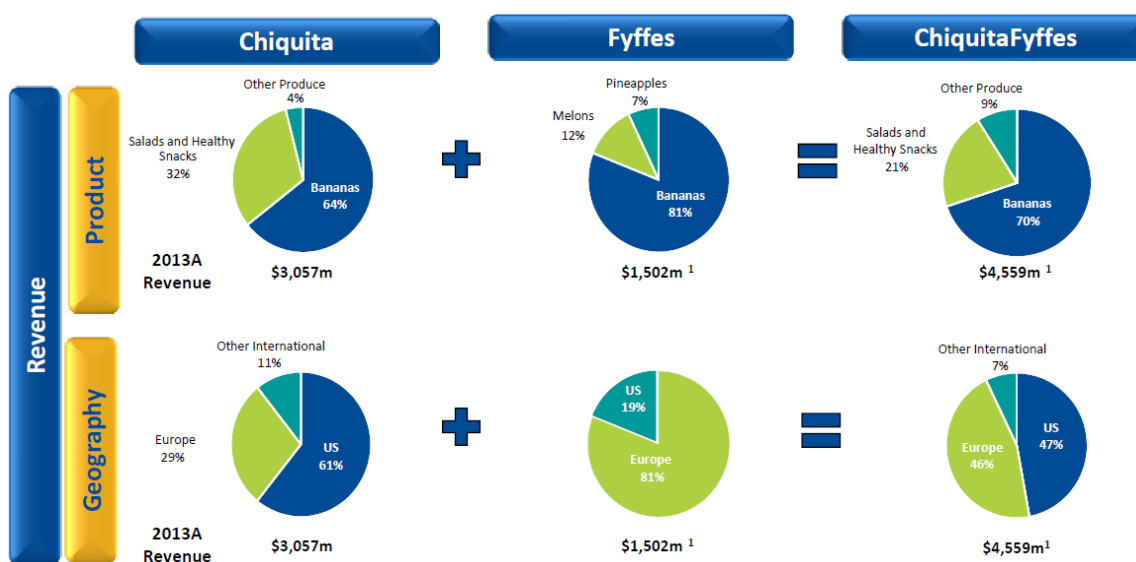
listed in Protocol 3 of said Agreement. Therefore edible fruits, which are listed in Chapter 8 of the Harmonised Commodity Description and Coding System and are not listed in Protocol 3 of the EEA Agreement, are not covered by the EEA Agreement.

- (9) The assessment of the impact of the Transaction in the EFTA States hence falls outside the jurisdiction of the Commission.

#### 4. COMPETITIVE ASSESSMENT

- (10) The Notifying Parties' activities in the EU overlap notably in bananas,<sup>7</sup> but also in pineapples and to a more limited extent in melons, limes and apples. The Notifying Parties submit that their activities in the EEA in relation to the import of melons, limes and apples generate only very low turnover and none of these limited overlap activities gives rise to any affected markets. This section will first look at bananas (section 4.1), and then at pineapples (section 4.2).

**Figure 2: Overview of the Notifying Parties' activities**



Source: Parties' presentation to investors on 10 March 2014.

- (11) The Commission's investigation has consisted notably of the following investigative steps: (i) more than 60 calls with market participants (retailers, wholesalers, competitors,<sup>8</sup> shipping companies, experts), (ii) 6 questionnaires (including the market test – see section 5.3.2) with over 80 replies, (iii) market reconstruction exercise, and (iv) site visit.

#### 4.1. BANANAS

##### 4.1.1. INTRODUCTION TO THE BANANA INDUSTRY

- (12) Bananas consumed in the EU are all of the same Cavendish variety. Bananas are a perennial plant producing fruit all year round. Commercial production of bananas

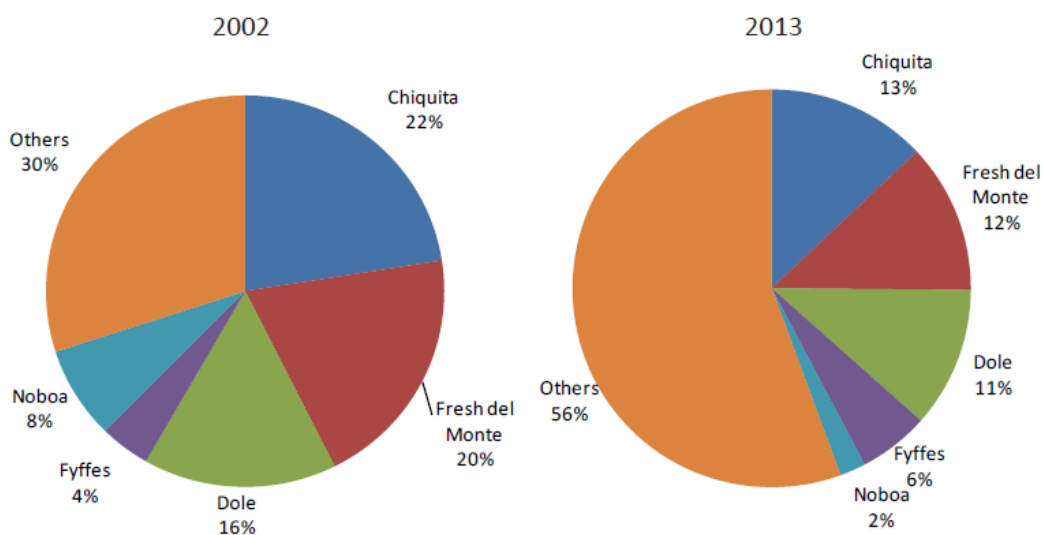
<sup>7</sup> "Sweet" or "fruit" bananas. Cooking bananas (such as plantains) are not considered as the Notifying Parties submit that only Fyffes has limited EU sales of cooking bananas.

<sup>8</sup> These include global banana companies, as well as small and medium size competitors, as described in section 4.1.4.2 below.

requires relatively high and stable levels of temperatures, as well as a regularity of water supplies through precipitations or irrigation.

- (13) The EU is the largest consumer and importer of bananas in the world. In 2013 5.4 million tonnes of bananas were consumed in the EU. Bananas grown in the EU (mostly in Spain and France) accounted for about 11% of the EU consumption. The vast majority of bananas marketed in the EU are thus imported (4.8 million tonnes in 2013). The two groups of exporting countries to the EU are the Most Favoured Nation countries, mainly located in Central and South America (notably Ecuador, Guatemala, Costa Rica, Colombia, Honduras, Mexico, Nicaragua and Panama, with bananas originating in these countries referred to as "dollar" bananas) and the African, Caribbean and Pacific (ACP) countries (notably Belize, Dominican Republic, Windward Islands, Ivory Coast, Cameroon, Ghana and Suriname). Dollar bananas accounted for 69%, and ACP bananas for 19% of EU consumption in 2013.<sup>9</sup>
- (14) In addition to the Notifying Parties, a number of other large scale banana importers are active in the EU. Dole Food Company Inc. ("Dole") and Fresh Del Monte Produce ("Del Monte") are amongst the largest global suppliers of bananas. In addition, there are also EU-based companies which import dollar and ACP bananas. These companies have different levels of vertical integration along the value chain.
- (15) According to FAO,<sup>10</sup> multinational trading companies, and in particular Chiquita, Dole and Del Monte have historically played a major role in the international banana trade, exerting substantial market power in particular on the purchasing side. However, while in the 1980s they controlled almost two thirds of the global banana exports (65.3%), FAO estimates that their share of global exports in 2013 went down to 36.6%.

**Figure 3: FAO estimates<sup>11</sup> of market shares of selected companies in global banana exports, in volume**



Source: FAO.

<sup>9</sup> For more information see [http://ec.europa.eu/agriculture/bananas/index\\_en.htm](http://ec.europa.eu/agriculture/bananas/index_en.htm).

<sup>10</sup> "The changing role of multinational companies in the Global Banana Trade", FAO, 2014.

<sup>11</sup> Due to the lack of precise figures, these are only rough estimates.

- (16) Figure 4 below provides an overview of the banana supply chain, from the grower until the customer, i.e. retailer or wholesaler.

**Figure 4: The banana supply chain**



*Source: Fyffes.*

- (17) At the production level, bananas are grown in plantations of different sizes, from small-scale in some areas, for instance the Windward Islands, to large-scale farms, for instance in Costa Rica. The ownership of farms is diverse: some are in the hands of local growers, others are controlled or owned by cooperatives, local large companies or multinational banana importers. The latter have, over the years, switched to some extent from owning production assets to supplies from independent banana growers, often on the basis of long-term relations with these growers. For instance, Fyffes no longer owns any banana plantations, while Chiquita sources [20-40]% of its requirements from its own farms. Similarly, Del Monte grew approximately 41% of the banana volume it sold in 2013 in company-controlled farms (in Costa Rica, Guatemala, Brazil, Cameroon and the Philippines), and purchased the remainder from independent growers.<sup>12</sup> This strategy allows for flexibility to adapt to the degree of seasonality in demand in the course of the year (demand for bananas is slightly higher in the first half of the year and lower in the second part, notably during the summer period).

**Figure 5: [...]**

[...]

*Source: [...].<sup>13</sup>*

- (18) Bananas are harvested green at the appropriate maturity and transported to packing stations, where they are inspected for quality, and prepared for further shipping in labelled boxes. From there, boxed bananas are dispatched to the port of loading.

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<sup>12</sup> See Del Monte Form 10K, 2013.

<sup>13</sup> [...].

- (19) During shipping, bananas need to be stored at low temperatures (around 14°C). Traditionally this was done in refrigerated cargo ships (or "conventional reefers"). Nowadays, containerised liner shipping companies also offer significant capacity for transport in refrigerated standard sized containers. The three largest container shipping companies are A.P. Moller–Maersk Group ("Maersk"), MSC - Mediterranean Shipping Company S.A ("MSC") and CMA CGM S.A. ("CMA CGM"). Fyffes currently has an agreement with Maersk, and Chiquita with MSC. Both Notifying Parties also have time charter arrangements to use conventional reefers, which are used to ship [...] % and [...] % of their 2013 volumes, respectively.
- (20) The ocean transport to the European port of destination can take up to 30 days. The main ports in EU for discharge of bananas are Antwerp, Bremerhaven, Hamburg, Rotterdam and Portsmouth in Northern Europe and Lisbon, Salerno and Vado for Southern Europe.
- (21) Imports of green bananas to the EU were previously regulated through a tariff quota (with higher tariffs for dollar bananas) and import licensing regime.<sup>14</sup> As of 1 January 2006 the EU moved to a tariff-only system. Imports have been liberalised by abolishing quantitative restrictions and progressive reductions of import duties for the dollar bananas.<sup>15</sup> Since 1 January 2008 ACP banana suppliers, which have entered into Economic Partnership Agreement, benefit from duty and quota free access to the EU. Banana imports must meet the requirements of the EU Marketing Standards Regulation.<sup>16</sup>
- (22) Upon arrival in ports of destination fruit is discharged by cranes and transported by trucks or feeder ships (in the case of the Nordic countries) to short-term cold storage facilities or directly to the ripening facilities.
- (23) Ripening usually takes place not far from the distribution centres of the customer, since yellow bananas cannot travel too far. Green bananas are stored in temperature controlled ripening chambers, which can be installed in standard warehouses, where ethylene gas is used to progressively ripen the fruit during a period from four to six days. The ripening can be carried out in the facilities of the importer, facilities owned and operated by the retailer, or outsourced to third party service providers. Subsequently, yellow bananas are supplied directly to large retailers or to wholesalers.
- (24) Along the value chain the most substantive proportion of costs is incurred at the sourcing (i.e. procurement of bananas) and shipping levels.<sup>17</sup> Sourcing costs account for around [...] % of the total costs of a yellow banana. Shipping costs account for approximately [...] % of the total costs of a yellow banana and are mainly dependent on the fuel price evolution. Ripening (and packaging, when required by the customer)

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<sup>14</sup> Council Regulation (EEC) No 404/9336 of 13 February 1993 on the common organization of the market in bananas.

<sup>15</sup> Pursuant to the Geneva Agreement on Trade in Bananas, signed in December 2009, the tariffs for Most Favoured Nations bananas are being reduced in eight steps, from the rate of EUR 176/tonne to EUR 114/tonne in 2017 at the earliest (or 2019 at the latest). Bilateral agreements introducing lower tariffs are also in place, for instance with Peru and Colombia since 2013.

<sup>16</sup> Commission Implementing Regulation (EU) N° 1333/2011 of 19 December 2011 laying down marketing standards for bananas, rules on the verification of compliance with those marketing standards and requirements for notifications in the banana sector.

<sup>17</sup> According to the cost data submitted by the Notifying Parties.



also represents a substantial part of the yellow costs (around [...]%)<sup>18</sup>). A significant part of cost variation is also related to currency fluctuations since many of the costs are contracted in the local currency or in dollars, while the sales currency is Euro.

#### **4.1.2. RELEVANT PRODUCT MARKET**

##### **4.1.2.1. Bananas vs. other fruit**

###### The Notifying Parties' arguments

- (25) According to the Notifying Parties bananas form part of the overall market for fresh fruit.
- (26) First, the Notifying Parties argue that retailers and wholesalers purchase and sell a wide range of fruit which reflects the fact that final consumers tend to allocate one single amount of money for the purchase of fresh fruit. Consumers spend this amount flexibly across different fruits depending on prices and the season.
- (27) Second, according to the Notifying Parties no specific or substantial constraints prevent other fruit suppliers from expanding their portfolio of fresh fruit and starting sourcing and supplying bananas, in particular since the EU licence and quota regime was abolished in 2006.

###### Previous decisional practice

- (28) The Commission has in the past considered but ultimately left open a segmentation of fresh fruit between bananas and other fruit at the import/production level on the basis of factors such as: (i) specific regulatory regime applicable to the import of bananas into the EU; and (ii) the need for special installations for ripening bananas.<sup>19</sup>

###### Commission's assessment

- (29) The large majority of retailers that responded to the Commission's questionnaire stated that they would not replace any purchases of bananas with other fruits in case of a 5-10% increase in the price of bananas.<sup>20</sup> Moreover, retailers also confirmed that when they launch a promotion for fruit other than bananas (for instance apples) their sales of bananas do not decrease.<sup>21</sup>
- (30) In this context, one retailer explained that "bananas are a basic product on the shopping list. They are easily purchased by customers, who do not appear to be willing to replace them with other fruit".<sup>22</sup> Other retailers stated that "demand for bananas is relatively independent from demand for other fruits"<sup>23</sup> and "demand for

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<sup>18</sup> The relatively wide range for ripening costs ([...]%) of the yellow costs) results from the fact that these also include the costs of packaging bananas and these costs differ [...] because different retailers have very different packaging requirements.

<sup>19</sup> Case COMP/M.1409 *Fyffes / Capespan* (1999), Case COMP/M.4896 *CVC Capital Partners / Katope International* (2008), Case COMP/M.5199 *De Weide Blik / Atlanta* (2008).

<sup>20</sup> Responses to question 3 of Questionnaire Q1 – Retailers.

<sup>21</sup> Responses to question 4 of Questionnaire Q1 – Retailers.

<sup>22</sup> Minutes of a conference call with a retailer dated 16 May 2014.

<sup>23</sup> Minutes of a conference call with a retailer dated 19 June 2014.

bananas is overall quite steady. In case of promotion for apples, demand for bananas does not move much".<sup>24</sup>

- (31) The main reasons cited by retailers for the low degree of substitutability between bananas and other fruits are the following: (i) banana demand is inelastic, (ii) bananas are a 52-weeks product contrary to most other fruits which tend to be seasonal, and (iii) bananas are the lowest cost fruit.
- (32) Furthermore, the large majority of retailers that responded to the Commission's questionnaire stated that they organize separate tenders for bananas.<sup>25</sup>
- (33) Also competitors mentioned a number of specificities associated with the supply of bananas: (i) lower price variability, (ii) length of the transport from origin to the country of destination, (iii) packaging in plastic bags, (iv) import duties, (v) perishability and the need for regularity in supply, (vi) need for ripening services, (vii) existence of yearly contracts with growers, and (viii) transport and storing in chilled conditions.<sup>26</sup>
- (34) To conclude, on the basis of the replies received during the investigation, the Commission considers that bananas can be defined as a product market distinct from other fresh fruit, from the perspective of both customers and competitors.

#### **4.1.2.2. Ripening stage: green vs. yellow bananas**

- (35) The Commission has investigated whether the relevant product market should potentially be segmented between green and yellow bananas. Green and yellow bananas are separated by a ripening process.

##### The Notifying Parties' arguments

- (36) The Notifying Parties claim that green and yellow bananas should be part of the same relevant product market.
- (37) First, according to the Notifying Parties, there is overcapacity of ripening services. Due to the wide availability of ripening services across all Member States, importers supplying green bananas can easily supply yellow bananas, either by using their own ripening facilities or by outsourcing the ripening to one of the many third party suppliers.
- (38) Second, customers sourcing yellow bananas can easily switch to sourcing green bananas and arrange for ripening services themselves. For this reason, customers can and do switch between purchasing green and yellow bananas.
- (39) Third, and as a consequence of the previous two factors, the Notifying Parties claim that any attempt to increase prices of yellow bananas, relative to green bananas, would be easily defeated by customers switching to purchases of green bananas and arranging ripening themselves or alternatively by suppliers of green bananas expanding into the supply of yellow bananas.

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<sup>24</sup> Minutes of a conference call with a retailer dated 12 June 2014.

<sup>25</sup> Responses to question 5 of Questionnaire Q1 – Retailers.

<sup>26</sup> Responses to question 4 of Questionnaire Q2 – Global Competitors and question 8 of Questionnaire Q3 – Competitors.

### Commission's assessment

- (40) First, a large number of competitors that responded to the Commission's questionnaire own ripening facilities.<sup>27</sup> Moreover, the majority of competitors and retailers that responded to the Commission's questionnaires stated that there is enough ripening capacity and enough independent ripeners available.<sup>28</sup> Even in countries where the number of alternative ripeners available is small, the respondents to the Commission's investigation confirmed that retailers can integrate backwards into the supply of ripening services (which is already the case for instance in Finland), and the average cost for building ripening facilities from scratch was estimated at only EUR 1-2 million.<sup>29</sup>
- (41) Second, the majority of retailers which responded to the Commission's questionnaire perform the ripening themselves or indicate the ripener of their choice to the banana supplier.<sup>30</sup>
- (42) Third, the Notifying Parties in their internal documents [...].<sup>31</sup>
- (43) On the basis of its investigation, and for the purpose of the present Transaction, the Commission concludes that it is not necessary to distinguish separate markets according to the ripening stage. It is sufficient to look at the overall volumes of bananas sold to customers independently of their ripening stage.

#### **4.1.2.3. Origins of bananas**

- (44) Bananas consumed in Europe come from (i) the EU (in particular French Martinique and Guadeloupe, Canarias, Madeira), (ii) ACP countries, and (iii) Most Favoured Nation countries (dollar bananas).

### The Notifying Parties' arguments

- (45) According to the Notifying Parties, dollar bananas compete as part of the same overall market with ACP bananas and bananas produced in the EU, and thus belong to the same relevant product market.
- (46) First, the Notifying Parties claim that bananas for export, including into the EEA, are all Cavendish bananas which are produced by growers across a wide range of countries.
- (47) Second, the Notifying Parties argue that EU import duty differentials between ACP bananas (which benefit from zero duties) and dollar bananas have significantly lowered over the last years and are to continue to be gradually reduced in the future.

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<sup>27</sup> Responses to question 41 of Questionnaire Q2 – Global Competitors and question 46 of Questionnaire Q3 – Competitors.

<sup>28</sup> Responses to question 51 of Questionnaire Q1 – Retailers, question 43 of Questionnaire Q2 – Global Competitors and question 48 of Questionnaire Q3 – Competitors.

<sup>29</sup> Minutes of conference calls with a wholesaler dated 19 June 2014 and with a retailer dated 12 June 2014.

<sup>30</sup> Responses to question 50 of Questionnaire Q1 – Retailers.

<sup>31</sup> See Chiquita internal document, [...].

- (48) Third, the Notifying Parties claim that bananas originating from different countries across the EU, ACP and dollar producing regions are treated by retailers and wholesalers and final consumers as largely interchangeable.

#### Commission's assessment

- (49) On the one hand, the vast majority of retailers which responded to the Commission's questionnaire considered bananas of different geographic origins as substitutable.<sup>32</sup> As one retailer explained "geographic origin is not a determining factor as long as the product itself meets our quality requirements and other specifications".<sup>33</sup> Another retailer explained that "customers do not demand any particular origin. Bananas originating from the various destinations still have the same taste".<sup>34</sup>
- (50) On the other hand, some competitors mentioned that there are preferences in several European markets for dollar bananas (for instance in Nordic countries), while in others there are preferences for EU bananas (for instance in Spain small bananas from the Canary Islands are popular).<sup>35</sup>
- (51) For the majority of competitors that responded to the Commission's questionnaire there are also differences between sourcing bananas in different countries – in particular in terms of freight and duty costs, local production costs (including the existence of reference prices in some of the countries), quality, accessibility and subsidies for European producers.<sup>36</sup>
- (52) The Transaction will have an impact mostly in Northern Europe (excluding France) where EU bananas play no role and ACP bananas play only a limited role in some countries where no competition problems arise (for instance the UK – see section 4.1.4.10). As a result, in the Member States where affected markets arise for the purpose of this Transaction, bananas from different geographic origins are considered as substitutes, with the exception of the Nordic countries where there are almost no non-dollar bananas. Therefore, and for the purpose of the evaluation of the current Transaction it is not relevant to segment the market according to the origin of bananas.

#### **4.1.2.4. Classes of bananas (Class Extra, Class I, Class II)**

- (53) The EU Marketing Standards Regulation sets out the minimum requirements relating to the appearance (e.g. in terms of blemishes), length and grade of the fruit which are applicable to all bananas intended to be supplied to EU consumers. Based on these criteria, the EU Marketing Standards Regulation establishes three different classes: "Class Extra", "Class I" and "Class II" bananas.

#### The Notifying Parties' arguments

- (54) The Notifying Parties submit that different classes of bananas belong to the same overall market.

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<sup>32</sup> Responses to question 6 of Questionnaire Q1 – Retailers.

<sup>33</sup> Responses to questions 6 and 7 of Questionnaire Q1 – Retailers.

<sup>34</sup> Minutes of a conference call with a retailer dated 20 May 2014.

<sup>35</sup> Minutes of conference calls with competitors dated 7 July and 15 July.

<sup>36</sup> Responses to question 6 of Questionnaire Q2 – Global Competitors and question 10 of Questionnaire Q3 – Competitors.

- (55) First, the Notifying Parties argue that the differences between classes mainly relate to the selection and verification processes put in place by growers following the instruction of their customers. This involves a more rigorous selection of the fruit at the packaging stage in order to ensure that the relevant classification standards are met and to ensure consistency across boxes. An importer offering Class I bananas and seeking to offer to supply Class Extra just needs to specify higher standards for the selection and packaging of fruit.
- (56) Second, according to the Notifying Parties, except for discount retail chains, retailers tend to buy all types of bananas.

#### Commission's assessment

- (57) First, while the majority of retailers and competitors that responded to the Commission's questionnaire confirmed that they do not see bananas of different classes as substitutable, this was particularly noted for Class II bananas, which are not considered as substitutable with the remaining two classes.<sup>37</sup>
- (58) Second, the majority of retailers and competitors that responded to the Commission's questionnaires also confirmed that final consumers do not see banana from Class Extra and Class I as substitutable by Class II.<sup>38</sup>
- (59) In Northern Europe, the majority of competitors that responded to the Commission's questionnaire offer both Class Extra and Class I bananas.<sup>39</sup> On the other hand Class II bananas are not sold in significant amounts.<sup>40</sup> Chiquita mainly sells Class Extra bananas (approximately [...]% of their sales). Fyffes is mainly active in Class I bananas (approximately [...]% of their sales). As expressed by a competitor in Germany, "sales for retail are Class I or Extra Class bananas".<sup>41</sup> Several retailers in Finland, Belgium, Denmark, the Netherlands, and the UK confirmed that they do not sell any Class II bananas.<sup>42</sup>
- (60) Therefore, in the light of the above and of all the other available evidence, the Commission considers that for the purpose of the current Transaction, there is no need to distinguish different relevant product markets according to different classes.

#### **4.1.2.5. Fairtrade/organic bananas vs. conventional bananas**

- (61) Bananas can also be categorised according to their certifications: Fairtrade (i.e. bananas meeting ethical, social and environmental standards, as certified by the Fairtrade Foundation), organic (i.e. bananas meeting the criteria specified in the Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products) or conventional (i.e. bananas that are neither Fairtrade

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<sup>37</sup> Responses to question 6 of Questionnaire Q1 – Retailers, question 6 of Questionnaire Q2 – Global Competitors and question 10 of Questionnaire Q3 – Competitors.

<sup>38</sup> Responses to question 7 of Questionnaire Q1 – Retailers, question 8 of Questionnaire Q2 – Global Competitors and question 12 of Questionnaire Q3 – Competitors.

<sup>39</sup> Responses to question 5 of Questionnaire Q3 – Competitors.

<sup>40</sup> Responses to question 5 of Questionnaire Q3 – Competitors.

<sup>41</sup> Minutes of a conference call with a competitor dated 8 July 2014.

<sup>42</sup> Minutes of a conference call with a customer dated 13 June 2014 and responses to question 6 of Questionnaire Q1 – Retailers.

nor organic). Some bananas may also bear the double label Fairtrade/organic. Chiquita bananas are certified by the Rainforest Alliance.<sup>43</sup>

#### The Notifying Parties' arguments

- (62) The Notifying Parties consider that conventional, Fairtrade, organic and double label bananas are all part of the same overall market.
- (63) First, the Notifying Parties argue that while some importers have a strong presence in the Fairtrade and/or organic sub-segment, most of them are active in the supply of bananas to retailers and wholesalers across a number if not all categories.
- (64) Second, according to the Notifying Parties, retailers and wholesalers buy a mix of conventional, Fairtrade, organic, double label bananas which are typically multi-sourced from a number of different suppliers.
- (65) Third, price variations between differently certified bananas typically just reflect objective differences in input prices.

#### Commission's assessment

- (66) First, retailers that responded to the Commission's questionnaire mentioned that they organise separate tenders for Fairtrade bananas and for organic/double label bananas as opposed to conventional bananas.<sup>44</sup>
- (67) Second, the majority of retailers that responded to the Commission's questionnaire stated that conventional bananas are not substitutable with non-conventional bananas (i.e. Fairtrade and/or organic bananas). The results are less conclusive with respect to the substitutability between Fairtrade and organic bananas. Organic bananas are however often double label bananas.<sup>45</sup>
- (68) Third, the majority of retailers that responded to the Commission's questionnaire also mentioned that from the point of view of final consumers conventional bananas are not substitutable with non-conventional bananas.<sup>46</sup> This is however more evident in some countries where Fairtrade and/or organic bananas have a higher weight as is the case in the UK. By contrast, in some countries non-conventional bananas have very limited sales (for instance Fairtrade bananas are "not sold 'south of Belgium'" as expressed by a competitor<sup>47</sup>).
- (69) Fourth, a number of suppliers have mainly specialized in organic and/or Fairtrade bananas, such as Port International GmbH ("T-Port") and AgroFair Benelux B.V. ("AgroFair").
- (70) Fifth, some competitors that responded to the Commission's questionnaire explained that there are differences in producing and importing organic bananas, Fairtrade

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<sup>43</sup> Rainforest Alliance certification is granted to those farms that comply with the ten standards set in place by the Sustainable Agriculture Network (these include among others: ecosystem conservation, wildlife protection, and fair treatment and good working conditions for workers).

<sup>44</sup> Responses to question 5 of Questionnaire Q1 – Retailers.

<sup>45</sup> Responses to question 6 of Questionnaire Q1 – Retailers.

<sup>46</sup> Responses to question 7 of Questionnaire Q1 – Retailers.

<sup>47</sup> Minutes of a conference call with a competitor dated 7 July 2014.

bananas and conventional bananas.<sup>48</sup> The main differences in relation to the production of conventional bananas mentioned by competitors were:

- i. for organic bananas: (i) the organic treatment and formalities, (ii) the farm practices, (iii) the need of a third party certification, (iv) the higher risk due to diseases and growing conditions, (v) no use of man-made chemicals, and (vi) the segregation at import level to avoid cross-contamination. It would for instance be very difficult or impossible to produce organic bananas in Costa Rica and Colombia;
- ii. for Fairtrade bananas: (i) the need to pay a fee to the Fairtrade organisation, (ii) producers are different, (iii) Fairtrade bananas are grown on small farms and not on large plantations.

(71) As regards switching, competitors explained that converting to organic production requires changing the production process to organic farming while switching to Fairtrade entails adherence to specified social standards.

(72) As for Rainforest Alliance bananas, the Commission concludes on the basis of the investigation that they are mostly seen as conventional bananas.<sup>49</sup> Chiquita appears to use Rainforest Alliance certification as a means of reinforcing its brand and not as a selling proposition for the Fairtrade/organic tenders. [...].<sup>50</sup>

(73) The Commission considers that on the basis of the replies received during the investigation it is justified to segment the market between (i) conventional bananas and (ii) organic and/or Fairtrade bananas. For the purpose of assessing the present Transaction it is however not necessary to distinguish further between organic and Fairtrade bananas, in particular due to the fact that the differences between these two categories are blurred by the presence of double label bananas.

#### **4.1.2.6. Branded bananas vs. unbranded/private label bananas**

(74) Bananas can be sold under a range of brands: producer brand, importer brand, wholesaler brand, and private label or unbranded bananas. Private labels are characterized as being branded with a retailer's label rather than a supplier's label.

##### The Notifying Parties' arguments

(75) The Notifying Parties consider that both branded and private label bananas are part of the same overall market.

(76) First, the Notifying Parties argue that both branded and private label bananas (i) are grown in the same farms; (ii) are identical products with no material differences; (iii) follow the same supply chain path from the grower to the retailer's shelf; and (iv) are sold in similar packaging formats.

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<sup>48</sup> Responses to question 5 of Questionnaire Q2 – Global Competitors and question 9 of Questionnaire Q3 – Competitors. See also Minutes of a conference call with a competitor dated 30 July 2014.

<sup>49</sup> The majority of retailers that responded to the Commission's questionnaire did not consider them to be substitutable with Fairtrade bananas. Responses to question 6 of Questionnaire Q1 – Retailers.

<sup>50</sup> See internal document of Chiquita, [...].

- (77) Second, the Notifying Parties claim that (i) retailers purchase both branded and private label bananas, (ii) these bananas compete for the same shelf space and (iii) retailers can and do switch between different categories of bananas.
- (78) Third, the Notifying Parties claim that retailers and wholesalers use the same procurement processes when buying branded, private label and unbranded bananas. As a result many banana suppliers offer bananas as requested by the customer on a branded, private label or unbranded basis.
- (79) Fourth, the Notifying Parties argue that the different prices charged by retailers for branded bananas and private label bananas simply reflect the different value attributed by final consumers to the different brands, namely in terms of the perceived quality differential reflected in the brand.

#### Previous decisional practice

- (80) In the past the Commission examined in several cases whether separate markets exist for branded and private label consumer products, although not for fresh produce and in particular for the supply of bananas.<sup>51</sup>
- (81) To assess the existence and degree of competitive interaction between brands and private labels at the upstream level, the Commission analyses whether brands and private labels are, from the perspective of retailers, more complements or substitutes, in other words whether retailers can and will substitute branded products with private labels in case of a small price increase of brands.<sup>52</sup> In particular, the Commission looks at criteria, such as: the stability of private label sales, the extent to which market players producing private label products are different from suppliers of branded products, the price difference between branded and private label products, or the existence of "must-have" brands.<sup>53</sup>

#### Commission's assessment

- (82) First, overall in the EU brands have been losing importance. Notably Chiquita, seen in several countries as the only recognisable brand for fresh produce, lost [20-30]% of its sales volumes in the EEA over the last five years (from around [...] <sup>54</sup> in [...] to [...] in [...]).
- (83) Second, according to the Notifying Parties' internal documents private label bananas exert a considerable competitive pressure on branded bananas. [...] <sup>55</sup>, [...].
- (84) Third, the Commission's analysis also confirmed that branded bananas have been losing significant weight to private label in most of the Member States under examination. According to one retailer "over the last few years even in the retail sector, customers have become less loyal to a brand and more concerned about price. This is evident as final consumers shop around (across a number of different retailers)

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<sup>51</sup> Case COMP/M.4533, *SCA/P&G (European tissue business)* (2007); Case COMP/M.2337 – *Nestlé/Ralston Purina* (2001); Case COMP/M.2097 – *SCA/Metsä Tissue* (2001).

<sup>52</sup> See for instance Case COMP/M.6813 *McCain Foods Group/Lutosa Business* (2013).

<sup>53</sup> Case COMP/M.6813 *McCain Foods Group/Lutosa Business* (2013).

<sup>54</sup> LCE is Large Case Equivalent and corresponds to a box of 18.5-18.75 kg.

<sup>55</sup> See internal document of Chiquita, [...].



and some retailers switch between brands".<sup>56</sup> Another retailer explained that "brands do not matter so much to customers in [name of the country]: customers simply want to buy good quality bananas".<sup>57</sup> Therefore, as one competitor mentioned "there is a trend towards a lesser importance of brands in Europe".<sup>58</sup>

- (85) Fourth, the majority of competitors that responded to the Commission's questionnaire confirmed that they offer both private label and branded bananas.<sup>59</sup> Moreover, the Commission's investigation also allowed to determine that, in general, there is no differentiation in packaging formats of private label versus branded products.
- (86) Fifth, the Commission's investigation revealed that the price paid for premium branded bananas is only 15-25% higher than the price paid for private label bananas,<sup>60</sup> and there is a continuum of non-premium brands whose prices are within the two extremes.
- (87) Sixth, no definitive conclusion can be drawn from the statements on substitutability between branded and private label bananas both in the case of retailers' replies and competitors' replies.<sup>61</sup> In fact, the relevance and value of brands depend on the Member State under analysis. There are differences between Member States as to (i) the general attachment to banana brands and (ii) the brand preferences for individual brands. For instance, a competitor explains that "customers in countries such as Poland, the Czech Republic or the Baltics do not care for brands".<sup>62</sup> To the extent that those elements are applicable, they will be taken into account where relevant in the country analysis in sections 4.1.4.3 to 4.1.4.11. In any case, the large majority of retailers that responded to the Commission's questionnaire do not consider either Chiquita or Fyffes as a "must have" brand.<sup>63</sup>
- (88) In general, in the produce category brands have limited significance. Even so, within the produce segment, bananas appear as a category in which brands have retained some importance and certain brands do command in particular Member States a premium. However, on the basis of the results of the investigation, and for the purpose of the current Transaction, there is no need to distinguish between branded and private label bananas.

#### **4.1.2.7. Different channels to reach final customers and different levels of the value chain**

- (89) Bananas, similarly to other consumer food products and in particular similarly to other fresh produce food products, reach final consumers through two channels:
- i. modern retail (i.e. supermarkets, hypermarkets etc.) and

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<sup>56</sup> Responses to question 8 of Questionnaire Q1 – Retailers.

<sup>57</sup> Minutes of a conference call with a retailer dated 10 June 2014.

<sup>58</sup> Minutes of a conference call with a competitor dated 7 July 2014.

<sup>59</sup> Responses to question 5 of Questionnaire Q3 – Competitors.

<sup>60</sup> Responses to question 22 of Questionnaire Q1 – Retailers.

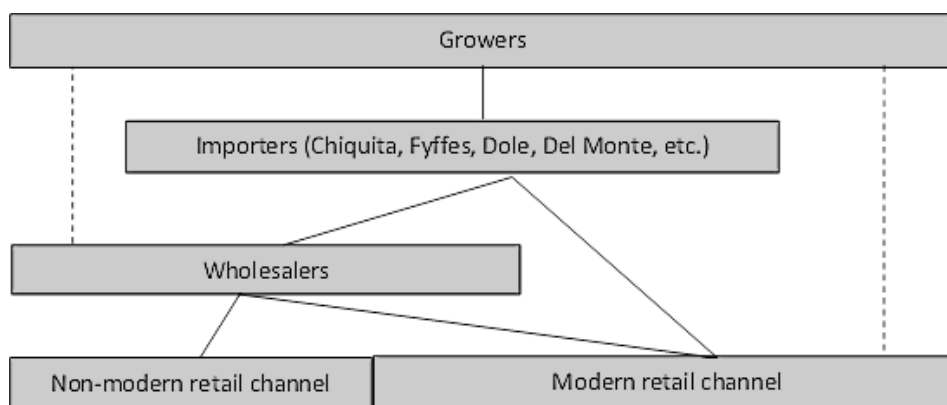
<sup>61</sup> Responses to questions 6, 7 and 8 of Questionnaire Q1 – Retailers, questions 6 and 8 of Questionnaire Q2 – Global Competitors and questions 10 and 12 of Questionnaire Q3 – Competitors.

<sup>62</sup> Minutes of conference call with a competitor dated 12 June 2014.

<sup>63</sup> Responses to questions 29 and 32 of Questionnaire Q1 – Retailers.

- ii. channels other than modern retail (i.e. cash & carry shops, open markets, food service channel, Out Of Home eating, institutional catering, etc.).
- (90) The Notifying Parties, as companies importing large volumes of bananas from the tropics, do not usually sell directly to outlets in channels other than modern retail. Instead they sell bananas to large retailers and wholesalers, which are at different levels of the value chain (as illustrated in Figure 6). Wholesalers then sell bananas to both large retailers in the modern retail channel or further distribute it to the multiple outlets in the non-modern retail channel.

**Figure 6: Banana sales channels**



*Source: Commission.*

#### The Notifying Parties' arguments

- (91) The Notifying Parties argue that the market should include the import and supply of bananas to both retailers and wholesalers.
- (92) First, the Notifying Parties claim that importers do not control, and in many cases do not even know, to which of the channels wholesalers are selling bananas. Therefore the price they charge, the packaging of bananas etc. are the same independently of the channel where bananas are later sold.
- (93) Second, the Notifying Parties claim that as a result of elimination of import licences and quota restrictions, wholesalers which previously sourced bananas from importers can now obtain them directly from source in the tropics and thus a distinction between import and wholesale level would ignore these commercial realities.

#### Previous decisional practice

- (94) In past cases concerning banana supply, the Commission examined, but ultimately left open, whether separate markets exist for: (i) the import/production level, where importers and producer organisation supply fresh fruit to wholesalers and large retailers, and (ii) the wholesale level, where wholesalers supply smaller retailers and food service channel customers, such as restaurants and hospitals.<sup>64</sup> In addition the Commission also considered, albeit for cases not concerning fresh produce, the

<sup>64</sup> Case COMP/M.1409 *Fyffes / Capespan* (1999), COMP/M.4896 *CVC Capital Partners / Katope International* (2008), Case COMP/M.5199 *De Weide Blik / Atlanta* (2008), Case COMP/M.5201 *Total Produce / Haluco / JV* (2008).

existence of separate markets for sales to the retail sector and for sales to the food services sector.<sup>65</sup>

#### Commission's assessment

- (95) The division between (i) import/production and (ii) wholesale level has been confirmed by the Commission's investigation. However it has also shown that wholesalers are now selling also directly to the large retailers and not only to the smaller retailers and food service channel customers, such as restaurants and hospitals.
- (96) The Commission considers that there are certain specificities in supplying customers in the non-modern retail channel.<sup>66</sup> However the Notifying Parties do not directly sell to channels other than modern retail, but instead sell to wholesalers that serve as intermediaries to several of these small outlets. Therefore the Commission will not analyse the effects of the Transaction with respect to the direct sales into non-modern retail channel.
- (97) The distinction between sales to retailers and wholesalers does not seem to be justified on the basis of the Commission's investigation, since banana importers compete for the overall supply of bananas in a given geographic area.
- (98) Specifically, major wholesalers also directly source bananas from the tropics<sup>67</sup> and trade them with other wholesalers at the European ports.<sup>68</sup> As pointed out by one competitor, "the competitors on the wholesale market are fairly the same as the ones of the retail market".<sup>69</sup>
- (99) In addition, there appears to be a feedback effect on prices between the two segments. The majority of retailers mentioned that when negotiating a contract with a banana supplier the main factor they take into account is the price of the wholesale market.<sup>70</sup> When importers sell bananas to a wholesaler in a given geographic area they take into account that the wholesaler will also compete with them for customers of the retail sector and therefore importers set wholesale prices knowing that these also have an effect on the prices charged to customers in the retail sector. Furthermore, unlike packaged consumer goods, importers of bananas are unable to prevent sales by wholesalers directly to large retailers by means of using different packaging for these two groups.

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<sup>65</sup> Case COMP/M.3658, *Orkla/Chips* (2005); Case COMP/M.2302 – *Heinz/CSM* (2001); Case COMP/M.1990 – *Unilever/Bestfoods* (2000).

<sup>66</sup> Modern retail customers (i) are more demanding with respect to brands and product types, (ii) require traceability of their bananas, (iii) give more importance to certification of bananas and (iv) have a higher negotiating power. Additionally, contractual arrangements with modern retail customers are different from those in the other channels: contracts in the modern retail channel are often of annual duration with fixed prices or a fixed price formula while contracts and in particular pricing in the other channels follow a weekly rhythm with stronger seasonal price swings. Responses to question 9 of Questionnaire Q2 – Global Competitors and question 13 of Questionnaire Q3 – Competitors.

<sup>67</sup> Responses to question 29 of Questionnaire Q3 – Competitors.

<sup>68</sup> Replies to the European Commission request for data – Competitors dated 5 August 2014.

<sup>69</sup> Minutes of a conference call with a competitor dated 15 July 2014.

<sup>70</sup> Responses to question 36 of Questionnaire Q1 – Retailers.

(100) On the basis of the above and of all the other available evidence, the Commission considers that for the purpose of the assessment of the Transaction the relevant market corresponds to the import and supply of bananas to retailers and wholesalers.

#### **4.1.2.8. Banana ripening services**

##### The Notifying Parties' arguments

(101) The Notifying Parties identify the provision of banana ripening services to third parties as a separate product market. According to the Notifying Parties this market does not include captive ripening services supplied by the banana importers for the purposes of ripening their own green bananas.

##### Previous decisional practice

(102) The Commission has previously considered, but ultimately left open, whether a separate market exists for banana ripening services to third parties in the light of the specific know-how and investment which are required to be active at this level of the value chain.<sup>71</sup>

##### Commission's assessment

(103) The Commission considers that for the purpose of the Transaction a relevant market for banana ripening services should be defined on the basis of the following reasons.

(104) First, whereas in the past all the major banana suppliers were fully integrated into the ripening business, nowadays many independent providers of ripening services exist. In addition, many importers owning ripening facilities sell banana ripening services to third parties.

(105) Second, the vast majority of competitors that responded to the Commission's questionnaire consider ripening as a complex process requiring specific knowledge and experience.<sup>72</sup>

#### **4.1.2.9. Conclusion**

(106) For the purpose of the assessment of the Transaction, the Commission analyses the markets: (i) for the overall import and supply of bananas to retailers and wholesalers and its potential segmentation on the basis of certification (Fairtrade/organic vs. conventional), (ii) for the supply of banana ripening services.

### **4.1.3. RELEVANT GEOGRAPHIC MARKET**

#### **4.1.3.1. Import and supply of bananas to retailers and wholesalers**

##### The Notifying Parties' arguments

(107) According to the Notifying Parties the relevant geographic scope of the candidate market should be considered as EEA-wide.

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<sup>71</sup> Case COMP/M.5199 *De Weide Blik / Atlanta* (2008).

<sup>72</sup> Responses to question 38 of Questionnaire 2 – Global Competitors and question 45 of Questionnaire Q3 – Competitors.

- (108) First, the Notifying Parties argue that importers sell bananas across EEA. Bananas arrive at various European ports and all parts of the Europe can be easily supplied by sea by importers that bring bananas from banana producing countries. Shipping logistics enable bananas to be discharged flexibly at multiple ports along Europe. Moreover, intra-EEA transport costs are low as a proportion of wholesale prices and do not make it unprofitable to transport bananas over relatively large distances.
- (109) Second, the Notifying Parties claim that banana importers adjust annually, or even within a shorter term, shipping volumes and destinations across the EEA in reaction to changes in demand. Moreover, and given that the difference between the costs of shipping to different European ports is sufficiently low, a 5-10% price increase in one country would be effectively constrained by trade-inflows from other European countries.
- (110) Third, the Notifying Parties argue that ripening centres with free capacity are widely available across all of the EEA and there are no obstacles to the cross-border provision of such services. Thus, access to ripening facilities should not constitute a barrier to entry or expansion for banana importers anywhere in the EEA.
- (111) Fourth the Notifying Parties argue that customers are able to procure bananas from suppliers located anywhere in the EEA. According to the Notifying Parties some customers which are active in a number of Member States choose to source their entire European banana requirements under single multi-territory contracts.
- (112) Fifth, the Notifying Parties argue that customer preferences are wider than national.
- (113) Sixth, the Notifying Parties claim that wholesale prices for green bananas in different Member States tend to move together over time.
- (114) Alternatively the Notifying Parties propose that the Transaction is assessed on the basis of a Northern Europe cluster<sup>73</sup> and a Southern Europe cluster<sup>74</sup>.
- (115) First, the Notifying Parties argue that competitors principally based in Northern Europe are (at least marginally) more effective in competing for customers in the Northern European cluster than competitors which are wholly or predominantly based in Southern Europe.
- (116) Second, the Notifying Parties argue that Northern European and Southern European shipping routes are operated separately from each other and that banana importers prefer to discharge fruit close to the location of the relevant customers' ripening centres or distribution centres.
- (117) Third, the Notifying Parties argue that in Northern Europe customers are mainly retailers whereas their principal customer base in Southern Europe consists mainly of wholesalers.

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<sup>73</sup> Comprising of the following countries: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Iceland, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Slovakia, Sweden and the UK.

<sup>74</sup> Comprising of the following countries: Bulgaria, Croatia, Cyprus, Greece, Hungary, Italy, Malta, Portugal, Romania, Slovenia and Spain.

### Previous decisional practice

(118) In its past decisions the Commission has left the exact boundaries of the geographic market open and considered fresh fruit at the import/production level on a national, clusters of countries, and EEA-wide basis. At the wholesale level, the Commission left open whether the market was national or consisted of clusters of countries.<sup>75</sup>

### Commission's assessment

(119) First, the majority of retailers and competitors that responded to the Commission's questionnaires stated that there are differences in the preferences of banana consumers among different Member States.<sup>76</sup>

(120) Retailers mentioned differences in the quality demanded, namely that "the expectations for quality of the product seem to vary between different markets" and "different customers in different regions have different requirements".<sup>77</sup> Moreover, one retailer explained that "In the UK, consumers prefer medium- to small- size bananas. [...] In Germany, Scandinavia and Poland, consumers have a preference for bigger bananas".<sup>78</sup> One competitor also explained that "The Global GAP certification is required in Northern Europe retail only, not for Eastern Europe or the Mediterranean".<sup>79</sup>

(121) Retailers also mention differences in the preferences for the origin of bananas: "Scandinavia is mainly using the so called dollar-bananas from Mid/South-America, UK is using plenty bananas from Windward-Islands and Africa"<sup>80</sup>, and "France is a different market in that respect, since it has some historical connections with ACP countries and customers prefer ACP bananas there"<sup>81</sup>. Three competitors also stated that Spanish customers have a preference for bananas from the Canary Islands.<sup>82</sup>

(122) Cross-country differences in the value that final consumers attach to brands were also mentioned.<sup>83</sup> One competitor explained that "brand preferences vary from country to country. Chiquita is well known in both Holland and Germany. By contrast, customers in countries such as Poland, the Czech Republic or the Baltics do not care for brands".<sup>84</sup> As a result also the premium that the Chiquita brand can command varies by country.

(123) There are also different preferences for certified bananas. In some countries there seems to be a clear preference for Fairtrade bananas, while in other countries this type of bananas is almost not present: "In Denmark, organic/Fairtrade bananas are much more popular than in Norway. In Sweden, the situation for organic/Fairtrade is similar

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<sup>75</sup> COMP/M.4896 *CVC Capital Partners / Katope International* (2008), Case COMP/M.5199 *De Weide Blik / Atlanta* (2008), Case COMP/M.5201 *Total Produce / Haluco / JV* (2008).

<sup>76</sup> Responses to question 13 of Questionnaire Q1 – Retailers, questions 20 and 24 of Questionnaire Q2 – Global Competitors and questions 22 and 26 of Questionnaire Q3 – Competitors.

<sup>77</sup> Responses to question 13 of Questionnaire Q1 – Retailers.

<sup>78</sup> Minutes of a conference call with a competitor dated 7 July 2014.

<sup>79</sup> Minutes of a conference call with a competitor dated 8 July 2014.

<sup>80</sup> Responses to question 13 of Questionnaire Q1 – Retailers.

<sup>81</sup> Minutes of a conference call with a retailer dated 16 June 2014.

<sup>82</sup> Minutes of conference calls with competitors dated 7, 9 and 15 July 2014.

<sup>83</sup> Responses to question 42 of Questionnaire Q1 – Retailers.

<sup>84</sup> Minutes of a conference call with a competitor dated 22 June 2014.

to Denmark but there is a bigger share of organic bananas"<sup>85</sup>, "the UK market is more focused on Fairtrade bananas, with some retailers selling 100% Fairtrade. In Ireland, Fairtrade is not so relevant"<sup>86</sup>.

- (124) In addition, there are also differences in the preferences for the packaging of bananas: "Every country in Europe is different. In Belgium and Germany, bananas are sold by the kilo. In Denmark, they are sold by the piece".<sup>87</sup>
- (125) Second, the nature of customers (retailer or wholesaler) varies significantly across countries. In Northern Europe most of the Notifying Parties' customers are retailers, whereas in Eastern and Southern Europe banana importers sell their bananas mostly to wholesalers, which then distribute these volumes to retailers or outlets in the non-modern retail channel. Retail market structures also vary significantly between countries. In some countries (like Belgium and Finland) they are very concentrated, while in other countries they are more fragmented (like Italy and Poland). The importance and presence of discount stores also varies across countries.
- (126) Third, the majority of retailers that responded to the market investigation also stated that there are differences in prices among countries, despite the fact that the bananas are often imported through the same ports.<sup>88</sup> These price differences result in part from the perishable nature of bananas, which cannot be stored for long periods and thus the potential for cross-border arbitrage is very limited. Retailers explained that "there are differences in the market conditions (such as for instance the scope of logistics network, availability of ripening facilities) and consequently in prices for bananas in various countries in which it operates"<sup>89</sup> and that for instance "in Eastern Europe prices normally are at a lower level"<sup>90</sup>.
- (127) According to the data submitted by the Notifying Parties concerning price evolution in different Member States, although it appears that prices in some Member States move in a similar way to a certain extent, which could be the result of strong common cost or demand factors, it is evident that considerable price differences exist between Member States.

**Figure 7: [...]**

[...]

Source: [...].

- (128) The majority of retailers which have activities in several countries reported that they negotiate prices at a national level.<sup>91</sup> One competitor confirmed that "customers can be transnational but do not buy their bananas in a global way, or to a limited extent. Thus [name of competitor] views banana markets as national".<sup>92</sup> Another competitor stated

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85 Minutes of a conference call with a competitor dated 19 June 2014.

86 Minutes of a conference call with a competitor dated 17 July 2014.

87 Minutes of a conference call with a competitor dated 8 July 2014.

88 Responses to question 14 of Questionnaire Q1 – Retailers, questions 19 and 23 of Questionnaire Q2 – Global Competitors and questions 21 and 25 of Questionnaire Q3 – Competitors.

89 Minutes of a conference call with a retailer dated 16 May 2014.

90 Responses to question 14 of Questionnaire Q1 – Retailers.

91 Responses to question 11 of Questionnaire Q1 – Retailers.

92 Minutes of a conference call with a competitor dated 30 July 2014.

that "each country must be looked at separately, since retailers buy on a country basis".<sup>93</sup>

- (129) Fourth, although many competitors that responded to the market investigation stated that they do not need to have sales force in a given country to be able to sell bananas there, they tend to have different pricing strategies per country.<sup>94</sup> One competitor mentions that it "prefers working on a market by market basis. This is because national markets are very different from one another [...] and each country is a market in itself. [name of competitor] tries to have a sales unit in each country, due to the cultural differences, eating habits of consumers and to the language barriers".<sup>95</sup> Moreover, there are several small banana suppliers that are mainly present in their country of origin.
- (130) Fifth, the competitors' replies to the Commission's questionnaire did not suggest that expansion or entry would be a timely reaction to a 5-10% permanent increase in price of bananas in a given country.<sup>96</sup> Competitors reported that a few months would be needed in order to evaluate the business case for expansion or entry and for setting up the necessary commercial relationship (notably with shipping companies and providers of ripening services). One competitor explained that "[name of competitor] could theoretically start supplying a potential new supplier straightaway. But it would need time to expand".<sup>97</sup> Therefore, since in this case suppliers are not able to switch production to the relevant products and market them in the short term supply-side substitutability will not be considered at the stage of market definition, but only when potential competition is taken into account.<sup>98</sup>
- (131) In the light of the arguments described, the geographic scope of the market for the supply of bananas is not EEA-wide. The evidence collected in the course of the Commission's investigation points towards national markets. The competitive assessment is thus based on a national dimension.<sup>99</sup> However, the Commission's investigation also highlighted the need to take into account regional competitive dynamics resulting from the shipping routes, notably at the Northern European level.

#### **4.1.3.2. Banana ripening services**

##### The Notifying Parties' arguments

- (132) The Notifying Parties agree with the Commission's assessment in previous merger cases that customers purchase these services in their own country and in close neighbouring areas. According to the Notifying Parties, the market for contract ripening is at least national in scope, albeit with significant cross-border trade flows.

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<sup>93</sup> Minutes of a conference call with a competitor dated 25 June 2014.

<sup>94</sup> Responses to question 15 of Questionnaire Q2 – Global Competitors and question 20 of Questionnaire Q3 – Competitors.

<sup>95</sup> Minutes of conference call with a competitor dated 9 July 2014.

<sup>96</sup> Responses to question 14 of Questionnaire Q2 – Global Competitors and question 17 of Questionnaire Q3 – Competitors.

<sup>97</sup> Minutes of conference call with a competitor dated 9 September 2014.

<sup>98</sup> See "Commission Notice on the definition of relevant market for the purposes of Community competition law" (OJ C372, 09.12.1997, p.5-13), paragraphs 20-23.

<sup>99</sup> It is however noted that for instance for the Baltic countries, the similar competitive dynamics and degree of cross-border activity will be taken into account. See section 4.1.4.11.



### Previous decisional practice

(133) In a previous decision the market investigation indicated that customers purchase ripening services in their own country or at most in close neighbouring areas.<sup>100</sup> The Commission however left open the exact geographic scope.

### Commission's assessment

(134) The Commission considers, on the basis of the replies to the market investigation, that ripening needs to take place in dedicated facilities close to the customers because transport of yellow bananas is time sensitive and costly. One wholesaler confirmed this by stating that it "needs bananas from ripening centres that are close".<sup>101</sup> Some degree of cross-border ripening was indicated to take place, for instance between Denmark and Germany and between Belgium and the Netherlands.

#### **4.1.3.3. Conclusion**

(135) For the purpose of the assessment of the current Transaction, the Commission considers, on the basis of the above and of all the other available evidence, that the geographic dimension of the markets for the import and supply of bananas to retailers and wholesalers to be national. In the case of the markets for banana ripening services, the Commission considers the relevant geographic dimension to be at least national. However for banana ripening services the exact geographic market definitions can be left open as no serious doubts arise under any plausible market definition.

#### **4.1.4. ASSESSMENT OF POTENTIAL NON-COORDINATED EFFECTS**

##### **4.1.4.1. Competition along the banana supply chain**

###### The Notifying Parties' arguments

(136) The Notifying Parties argue that the environment in which they currently operate is characterised by the absence of any significant barriers to entry or expansion primarily due to the abolition of the EU licensing and quota regime and the development of containerised shipping. As a result, according to the Notifying Parties, vertical integration no longer bestows the banana companies with a competitive advantage.

(137) More specifically, at the growing level, supply of bananas exceeds demand and there is a significant number of banana growers of different sizes and types. This allows banana importers to adopt various sourcing strategies with some of them owning banana farms, others buying bananas from growers on a long-term or on a spot basis, and yet others combining these two approaches. The Notifying Parties note that their respective sourcing strategies – which are different from each other and complementary in terms of geographic location of the sourcing countries – reflect the variety of sources at the growing level. Fyffes no longer owns any banana farms [...]. Chiquita obtains [20-40]% of its banana procurement from owned and leased plantations [...].

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<sup>100</sup> Case COMP/M.5199 *De Weide Blik / Atlanta* (2008).

<sup>101</sup> Minutes of conference call with a wholesaler dated 10 September 2014.

- (138) As regards shipping, the Notifying Parties claim that a number of shipping companies - such as Maersk, MSC, CMA-CGM, Hamburg Süd Group ("Hamburg Süd") and Hapag-Lloyd AG ("Hapag-Lloyd") for containerised liner services and Seatrade Reefer Chartering N.V. ("Seatrade"), NYKCool AB ("NYKCool") and Cosiarma SpA ("Cosiarma") for liner reefer services - offer services between Central and South America and Europe, serving a large number of ports and with shipping schedules adapted to different needs. Following the evolution in shipping logistics, the Notifying Parties themselves moved away from owning reefer vessels and over the past five years have increased the share of containerised liner services for their transport of bananas to Europe (up to [...] % in 2013 for Fyffes and up to [...] % in 2013 for Chiquita).
- (139) With respect to intra-EEA transport, the Notifying Parties argue that it is mostly arranged by the customers or ripeners which pick bananas Free on Truck (FOT) at the ports of discharge. In cases where banana importers undertake the intra-EEA transport, they use third party trucking services providers, which are readily available. The Notifying Parties also submit that there is no shortage of storage facilities, should there be a need to store bananas in refrigerated conditions before they are transported further.
- (140) Finally regarding the last stage of the supply chain, the ripening, the Notifying Parties argue that it is relatively easy to build or expand and operate a ripening facility. This is evidenced by the fact that in some Member States retailers (for instance Edeka in Germany) have decided to invest in in-house ripening facilities. Additionally the Notifying Parties claim that there is overcapacity in the supply of ripening across the EU.
- (141) The Notifying Parties argue that each level of the supply chain is a genuinely level playing field, which implies that both Chiquita and Fyffes have to face competition from other banana importers (of various sizes), customers (wholesalers and retailers which can source directly in the tropics) and also growers which established their marketing presence in the EU.
- (142) Furthermore the Notifying Parties argue that their retailers enjoy significant buyer power. They arrange procurement and tender processes to extract the most competitive conditions, they multi-source, easily and frequently switch volumes between banana suppliers, they are ready to sponsor alternative suppliers' growth and/or to start direct sourcing in the tropics. Also the wholesale customers, according to the Notifying Parties, switch easily, run informal tenders, multi-source and direct source bananas in the tropics.

### Commission's assessment

- (143) As it was mentioned in paragraph (131) above, the geographic market in this case is national in scope. The Notifying Parties have either limited or non-overlapping activities in Southern Europe, while the Member States with most significant overlaps and highest combined market shares after the Transaction are located in Northern Europe and include: Belgium, Denmark, Finland, Germany, Ireland, Latvia, Lithuania, the Netherlands, Poland, Sweden and the UK. The only affected Member State located in Southern Europe is Italy. Furthermore, it appears that smaller and medium size competitors focus their activities either on the Member States located in Northern or in Southern Europe, which could also result from the fact that there are separate shipping routes to these two parts of Europe. For the purpose of the present Decision the main focus of the competitive assessment will be placed on Northern Europe.
- (144) The analysis below concentrates on the different levels of the banana supply chain, through which bananas are carried in order to reach retail and wholesale customers located in particular Member States in Northern Europe. It is aimed at verifying the Notifying Parties' claims as to the competition and contestability at each of these levels.

#### *Production and procurement of bananas*

- (145) In the course of the Commission's investigation, competitors confirmed the current availability of sources for banana procurement in the tropics: "In Ecuador, there is a huge availability for direct-sourcing. Similarly in Central America, it is possible to find growers"<sup>102</sup>, "[name of competitor] could find alternative growers of bananas"<sup>103</sup>, "In America, the dynamic is very different: there are many large independent growers. The market is less dominated by multinationals than it is in Asia/Pacific"<sup>104</sup>. The large majority of competitors never experienced a refusal to supply from a grower.<sup>105</sup> Finally an industry expert notes that "there is no 'race for land' in bananas. Land is not scarce and there is room for expanding capacity [...] Productivity is also low and could be raised in dollar zone countries, for instance Ecuador."<sup>106</sup>
- (146) It should be noted that some of the competitors expressed concerns as regards the combined position of the Notifying Parties for sourcing bananas in particular countries in the tropics, for instance in Colombia.<sup>107</sup> However these concerns do not appear to be justified on the basis of the data concerning the Notifying Parties export volumes from principal banana exporting countries presented in Table 1 below. In particular, in Colombia the Notifying Parties jointly cover only [20-30]% of total bananas exported by this country. Furthermore the Notifying Parties' sourcing activities in the principal banana exporting countries are complementary, with the overlap reaching at most [5-10]% [...]. Finally, in the largest exporting country, i.e. Ecuador, the Notifying Parties cover only [5-10]% of the total banana production.

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<sup>102</sup> Minutes of a conference call with a competitor dated 15 July 2014.

<sup>103</sup> Minutes of conference call with a competitor dated 17 July 2014.

<sup>104</sup> Minutes of a conference call with a competitor dated 23 May 2014.

<sup>105</sup> Responses to question 33 of Questionnaire Q3 – Competitors.

<sup>106</sup> Minutes of a conference call with an expert dated 21 May 2014.

<sup>107</sup> Minutes of conference call with a competitor dated 25 June 2014.

**Table 1: Notifying Parties' export volumes from main banana exporting countries**

Country	Volume of bananas exported ('000 LCEs)	Volume of bananas sourced by Fyffes ('000 LCEs)	Volume of bananas sourced by Chiquita ('000 LCEs)	Combined estimated share of total bananas produced (in %)
<b>Ecuador</b>	269 303	[...]	[...]	<[0-5] + [5-10] = [5-10]
<b>Costa Rica</b>	109 654	[...]	[...]	[5-10] + [20-30] = [30-40]
<b>Colombia</b>	99 184	[...]	[...]	[20-30] + [0-5] = [20-30]
<b>Guatemala</b>	103 827	[...]	[...]	[0-5] + [20-30] = [20-30]
<b>Honduras</b>	48 724	[...]	[...]	<[0-5] + [20-30] = [20-30]
<b>Ivory Coast</b>	18 346	[...]	[...]	[10-20] + [0-5] = [10-20]
<b>Dom. Republic</b>	16 065	[...]	[...]	[10-20] + [0-5] = [10-20]
<b>Cameroon</b>	13 324	[...]	[...]	[5-10] + [0-5] = [5-10]
<b>Mexico</b>	16 622	[...]	[...]	[0-5] + [50-60] = [50-60]
<b>Panama</b>	13 243	[...]	[...]	[0-5] + [80-90] = [80-90]
<b>Peru</b>	6 692	[...]	[...]	[0-5] + [0-5] = [5-10]
<b>Belize</b>	5 368	[...]	[...]	[90-100] + [0-5] = [90-100]
<b>Suriname</b>	4 492	[...]	[...]	<[0-5] + [0-5] = <[0-5]
<b>Ghana</b>	3 032	[...]	[...]	[5-10] + [0-5] = [5-10]
<b>Brazil</b>	5 173	[...]	[...]	[5-10] + [0-5] = [5-10]
<b>Mozambique</b>	2 700	[...]	[...]	<[0-5] + [0-5] =< [0-5]
<b>Nicaragua</b>	503	[...]	[...]	[90-100]

Source: Form CO.

(147) The arguments of the Notifying Parties concerning various sourcing strategies of competitors were also confirmed by the Commission on the basis of the replies to its investigation, with one of the smaller competitors stating that it "does not own any banana plantation. Instead, it has long-term relationships with independent, medium-sized growers in Colombia and Ecuador"<sup>108</sup>, "[name of competitor]'s philosophy is to maintain its relationships with its growers. For Ecuadorian bananas, [name of competitor] benefits from experience, history, good quality, availability of many suppliers".<sup>109</sup>

<sup>108</sup> Minutes of conference call with a competitor dated 8 July 2014.

<sup>109</sup> Minutes of conference call with a competitor dated 20 June 2014.

- (148) The majority of competitors that responded to the Commission's questionnaires considered that after the Transaction the rivals of the Notifying Parties will still have access in the tropics to bananas in sufficient volumes and of required quality, in particular due to the fact that there is ample number of growers.<sup>110</sup> A large competitor noted: "Post-merger, production in the sourcing country will not be concentrated so much that [name of competitor] will not be able to find growers".<sup>111</sup> Smaller competitors stated that they have long-lasting relations with the growers and these will not be affected by the Transaction.<sup>112</sup>
- (149) As to the growers, they claimed that there are constraints for increasing their production capacity, however the limitations they mention (cost of land, increased production costs, access to credits) appear to concern costs and as such can be eliminated should demand for bananas rise sufficiently. Furthermore the growers prefer to engage in contractual relationships with more customers in order to diversify risk,<sup>113</sup> which implies that they are less willing to accept potential exclusivity clauses in contracts and it is less likely that they would choose to be lined to only one banana importer.

*Shipping and transport of bananas*

- (150) With respect to shipping, it appears that the majority of small and medium size competitors predominantly use containerised liner shipping.<sup>114</sup> Those competitors also admitted that the introduction of refrigerated containers has facilitated their ability to transport smaller volumes of bananas (with one of the competitors stating clearly that they can now move whatever volume they wish and are not dependent on anyone else but the shipping lines) and contributed to more flexibility (for instance in terms of being able to serve more ports), but they did not confirm that it has led to lower transport costs.<sup>115</sup> Shipping companies stated that there are no barriers for them to increase capacity to transport bananas into Northern Europe and they confirmed that currently there is overcapacity with respect to reefer containers.<sup>116</sup>
- (151) Competitors appear to be divided on the comparison between reefer vessels and refrigerated containers, with some of them appreciating rather the reefer vessels (which offer shorter transit time and - according to some - better quality) and others preferring refrigerated containers (due to their greater flexibility and ease of handling).<sup>117</sup> Furthermore there are smaller competitors which use solely refrigerated containers for their entire banana volumes,<sup>118</sup> while others use almost exclusively reefer vessels,<sup>119</sup> which implies that both modes of transport must have their own advantages. It should also be noted that the modern reefer vessels tend to carry

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<sup>110</sup> Responses to questions 27 and 28 of Questionnaire Q2 – Global Competitors and question 84.1 of Questionnaire Q3 – Competitors.

<sup>111</sup> Minutes of a conference call with a competitor dated 30 July 2014.

<sup>112</sup> Minutes of a conference call with a competitor dated 17 July 2014.

<sup>113</sup> Responses to question 11 of Questionnaire Q4 – Growers.

<sup>114</sup> Responses to question 36 of Questionnaire Q3 – Competitors.

<sup>115</sup> Responses to question 41 of Questionnaire Q3 – Competitors.

<sup>116</sup> Responses to questions 9 and 10 of Questionnaire Q5 – Shipping companies.

<sup>117</sup> Responses to question 38 of Questionnaire Q3 – Competitors.

<sup>118</sup> Responses to question 35 of Questionnaire Q2 – Global competitors.

<sup>119</sup> Minutes of a conference call with a competitor dated 17 July 2014.

containers on the deck (in addition to pallets below the deck) which blurs the differences between these two modes of transport even further.

- (152) While it appears that Maersk (providing shipping services to Fyffes) and MSC (providing shipping services to Chiquita) are particularly strong as regards transport of bananas from the tropics to Northern Europe, the Commission's investigation has not shown that they have a decisive competitive advantage over other providers of shipping services, in particular in terms of cost structure or capacity.<sup>120</sup> As a result banana importers of various sizes should be able to choose between two different transport modes (reefer vessels, refrigerated containers) and a variety of providers.
- (153) However it should be noted that some competitors considered that the Transaction might lead to less availability of shipping services and this may constitute a barrier to entry/expansion in the supply of bananas for Northern Europe.<sup>121</sup> They noted in particular that due to their high combined volumes the Notifying Parties will "have the first call on the space" and might "influence whom the shipping companies can carry for on particular routes".<sup>122</sup> Also the majority of shipping companies confirmed that the negotiating power of the Notifying Parties will increase as a result of the Transaction.<sup>123</sup> These concerns will be analysed further in sections 4.1.4.5, 4.1.4.7, 4.1.4.11 and 4.1.4.12 below.
- (154) Finally, the Commission's considers, on the basis of the replies to the market investigation, that the arguments of the Notifying Parties as to the availability of inland transport services are founded.<sup>124</sup>

#### *Ripening of bananas*

- (155) In the course of the Commission's investigation, competitors indicated that – at the EU-wide level – there is enough ripening capacity and enough independent ripeners. Also only a minority stated that access to ripening facilities might constitute a barrier to the supply of bananas.<sup>125</sup> It appears that while ripening as such is a process which requires certain knowledge and experience,<sup>126</sup> investing in expanding ripening capacity does not entail significant cost or require a long time. One of the competitors estimated the cost of building a new ripening room and adding it to an existing facility at EUR 100 000 and the time needed would be 6 months.<sup>127</sup> Moreover, according to market participants the average cost for building ripening facilities from scratch was estimated only at EUR 1-2 million.<sup>128</sup>
- (156) However, it also results clearly from the Commission's investigation that ripening services are to be provided close to the distribution centres of the clients, because if yellow bananas are transported over long distances, their shelf-life shortens and their

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<sup>120</sup> Minutes of a conference call with a shipping company dated 12 September 2014.

<sup>121</sup> Responses to question 85.1 of Questionnaire Q3 – Competitors.

<sup>122</sup> Responses to question 85.1 of Questionnaire Q3 – Competitors.

<sup>123</sup> Responses to question 20 of Questionnaire Q5 – Shipping companies.

<sup>124</sup> Responses to question 49.1 of Questionnaire Q3 – Competitors.

<sup>125</sup> Responses to question 48.1 of Questionnaire Q3 – Competitors.

<sup>126</sup> Responses to question 39 of Questionnaire Q2 – Global Competitors and question 45 of Questionnaire Q3 – Competitors.

<sup>127</sup> Response to question 47.2.1 of Questionnaire Q3 – Competitors.

<sup>128</sup> Minutes of conference calls with a wholesaler dated 19 June 2014 and with a retailer dated 12 June 2014.

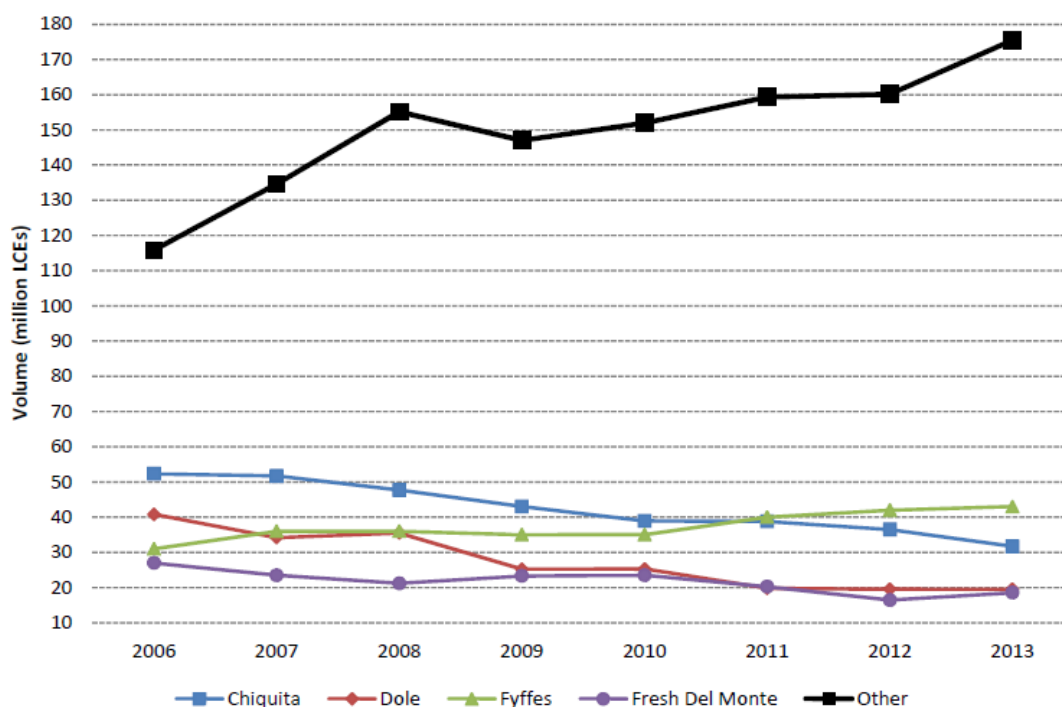
quality suffers.<sup>129</sup> Therefore, the issue of access to ripening facilities will be analysed in more detail below on a country-by-country level.

#### 4.1.4.2. Competitive landscape for imports into Northern Europe

##### The Notifying Parties' arguments

(157) According to the Notifying Parties, due to the contestability of the market in which they operate, they face strong competition from: (i) established global fruit importers (such as Dole and Del Monte), (ii) other large importers into the EU (such as Grupo Noboa S.A. – "Noboa" or Compagnie Fruitière) and (iii) medium and smaller sized players who can easily increase their import volumes and expand into new territories. Figure 8 below shows that the players other than the global importers have been steadily strengthening their position, with their share of banana imports into the EEA increasing since 2006.

**Figure 8: EEA banana imports 2006-2013, in volume**



Source: Form CO.

(158) The Notifying Parties also note that they face competition from the growers, which establish their marketing presence in the EU and reach directly, in particular to retailers.

##### Commission's assessment

(159) The competitors themselves admit that after 2006 there has been an increase in the number of players in the market and prices have dropped due to larger volumes

<sup>129</sup> Minutes of conference call with a retailer, dated 19 June 2014 and with competitors dated 3 June 2014 and 18 June 2014.

available.<sup>130</sup> It was also noted that post 2006 growers are more willing to deal with smaller banana importers.<sup>131</sup>

- (160) Market reconstruction has shown that the Notifying Parties' volumes of bananas landed in Northern European ports<sup>132</sup> correspond to around [30-40]% of the total volume of bananas landed in this region (Fyffes: [10-20]%, Chiquita: [10-20]%). The remaining volumes were imported by several other companies, including large global importers, smaller importers, growers and retailers.<sup>133</sup> As presented in Table 2 below, in addition to the Notifying Parties, Dole, Tesco plc. ("Tesco"), Noboa and Del Monte all bring more than 10 million of LCEs per year into Northern Europe. They are followed by 13 companies which import more than 1 million LCEs per year. Finally there is a group of smaller players, bringing less than 1 million of LCEs per year. Activities of these players, with respect to bananas, will be described below.
- (161) Del Monte is a global banana importer selling directly to retailers and wholesalers throughout Northern Europe (in particular in Belgium, Germany, Ireland the Netherlands, the UK and in the Nordic countries). It owns banana farms and ripening facilities.
- (162) Dole is a global supplier of bananas for wholesalers and retailers. It both owns banana farms (in particular in Ecuador) and purchases bananas from independent growers. In Northern Europe Dole owns ripening facilities in Sweden, Germany and in Austria.
- (163) Noboa imports bananas from Ecuador and sells them mostly to retailers and – to a smaller extent – to wholesalers. Currently it is active throughout Northern Europe with the exception of Finland, Sweden and the UK. Its business model entails selling green bananas and it is not involved in ripening or distribution.
- (164) Since 2010 Tesco sources its entire needs for conventional bananas directly in the tropics, in particular in Costa Rica, Colombia and Ecuador. It also works with independent ripeners.<sup>134</sup>
- (165) Compagnie Fruitière is the main supplier of African bananas, but also of bananas from Costa Rica, the Dominican Republic, Colombia and Ecuador. In Northern Europe it is mainly active in the UK, Germany and the Nordics. It also supplies retailers in Ireland, even though it has no physical presence there. In June 2014 the group Compagnie Fruitière acquired back the stake that Dole held in Dole Fresh UK Limited.
- (166) de Groot Fresh Group BV ("de Groot") is a banana importer and ripener active mostly in Belgium and the Netherlands, where it has ripening facilities. It has expanded into direct sourcing only three years ago, in order to meet the requests of its retail customers.

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130 Responses to question 83 of Questionnaire Q3 – Competitors.

131 Response to question 83.1.1 of Questionnaire Q3 – Competitors.

132 Northern European ports include the ports located in Belgium, Finland, Germany, Ireland, the Netherlands, Norway, Sweden and the UK.

133 Replies to the European Commission request for data – Competitors dated 5 August 2014.

134 In general bananas brought to Northern Europe by Tesco and other retailers are captive and thus not available for the remaining retailers and wholesalers. However the existence of such direct imports by a retailer does exercise a competitive constraint on the other banana importers, since the retailer can switch between direct sourcing volumes and volumes purchased from a banana importer.



- (167) Global Fruit Company Ltd. ("Global Fruit Company") is an Irish importer and ripener of bananas, sourcing bananas both from the tropics and from importers in the EU.
- (168) Total Produce Nordic AB/Everfresh trades bananas in Denmark and Sweden under the name Interbanan. For the analysis of Total Produce see par. (210) below.
- (169) M&W Mack is a division of Fresca Group and it supplies Fairtrade bananas to the UK retailer Sainsbury's. Another division of Fresca Group – Primafruit, supplies bananas to Waitrose. Fresca Group also provides bananas to the wholesalers in the UK. In addition to the bananas from Central America it also sources bananas in Africa (Ghana and Ivory Coast).
- (170) WM Morrisons plc. ("Morrisons") is a UK retailer, which sources bananas in the tropics in cooperation with its strategic partner – Global Pacific Produce. It purchases fruit from independent growers in Ecuador, Costa Rica, Colombia and the Dominican Republic. Global Pacific Produce also co-owns (jointly with Morrisons) a ripening facility in the UK.

T-Port is a Germany-based supplier of bananas, particularly strong as regards organic and Fairtrade bananas. In Northern Europe it is active in Belgium, Finland, Germany, the Netherlands and in the Nordic countries.

- (171) Winfresh (UK) Ltd. ("Winfresh") is an importer, ripener and distributor of bananas into the EU, in particular into the UK. Its principal sourcing countries include Caribbean, Dominican Republic, Windward Islands, Ghana and Ecuador. Jointly with Fyffes Winfresh owns a shareholding in Geest Line Limited, a shipping company engaged in transporting bananas and other produce from Caribbean to Europe.
- (172) Among the other, smaller banana importers the following appear to be the most significant in Northern Europe:
- a) Anaco & Greeve International BV ("Anaco Greeve") is an importer and ripener of bananas active mainly in Germany, the Netherlands and Belgium, but also in the UK and in Denmark. The parent company of Anaco Greeve is Total Produce.
  - b) Aquifruit & greens BC ("Aquifruit") is an importer and ripener of bananas active in the Netherlands, Germany and the UK.
  - c) Banacol Marketing Group ("Banacol") is a Colombian grower and exporter of bananas. It has been mentioned as a supplier by customers and competitors in the Netherlands<sup>135</sup> and in Finland.<sup>136</sup> However in spring 2014 the German competition authority cleared the acquisition of Banacol by Dole.
  - d) N. Smyth & Co. Ltd ("N. Smyth") is an Irish importer and ripener of bananas.

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<sup>135</sup> Minutes of a conference call with a competitor dated 3 June 2014.

<sup>136</sup> Minutes of a conference call with a customer dated 10 June 2014.

**Table 2: Imports into Northern European ports, 2013 Volumes (in M LCEs)**

Fyffes	[30-40]M
Chiquita	[20-30]M
Del Monte	[10-20]M
Dole	[10-20]M
Noboa	[10-20]M
Tesco UK	[10-20]M
AFC	[1-10]M
Anton Dürbeck	[1-10]M
Cobana	[1-10]M
Compagnie Fruitière	[1-10]M
De Groot	[1-10]M
Global Fruit Company Limited	[1-10]M
Interbanan	[1-10]M
Mack (Fresca Group)	[1-10]M
Morrisons	[1-10]M
T-Port	[1-10]M
Uniban	[1-10]M
Univeg	[1-10]M
Winfresh	[1-10]M
Anaco Greeve	[0-1]M
Banacol	[0-1]M
Banafood (Aquifruit)	[0-1]M
Banalat SIA	[0-1]M
COOP Trading	[0-1]M
N. Smyth	[0-1]M
Peviani Group	[0-1]M
SIMBA SPA (Orsero)	[0-1]M
Superunie	[0-1]M

Source: Market reconstruction.

(173) It results from the Commission's investigation that almost all of these players are active in other fruit and vegetables, with bananas accounting for 4-60% of their sales.<sup>137</sup> As a result, they can offer their clients a variety of fresh produce, achieving economies of scale for logistics. Furthermore they are not solely dependent on their sales of bananas, which as perishable product can be subject to some volatility, and can diversify their risk due to their sales of other produce. A large majority of the competitors is already active in more than one country, with most of them having sales offices in each of the countries where they are present.<sup>138</sup> All the competitors that responded to the Commission's questionnaire already provide Class I bananas and the majority provides Class Extra, organic and Fairtrade bananas.<sup>139</sup> Therefore with respect to the selection of bananas they offer, these small and medium size suppliers can be considered as comparable alternatives with the larger importers.

<sup>137</sup> Responses to question 2 of Questionnaire Q3 – Competitors.

<sup>138</sup> Responses to question 7 of Questionnaire Q3 – Competitors.

<sup>139</sup> Responses to question 5 of Questionnaire Q3 – Competitors.

- (174) On the basis of its investigation, the Commission considers that small and medium size players in the banana market decide to source bananas directly in the tropics in addition to buying them from the large banana importers in order to diversify the risk, to gain experience in importing, to obtain better prices, to have better control over the logistics chain and to respond to the needs of retailers.<sup>140</sup> Potential barriers to starting or increasing direct sourcing identified by small and medium size players include: (i) having sufficient volumes, and (ii) the need to accept risks of direct imports (in particular being responsible for the quality of the product) or increased costs (for instance of staff in the tropics).<sup>141</sup> However these do not appear to be specific features of the market which give incumbent firms advantages over potential competitors,<sup>142</sup> but rather reflect the current differences in size between the Notifying Parties and their smaller competitors.
- (175) In fact few of the competitors of the Notifying Parties clearly stated that they view the Transaction as an opportunity to win new contracts with customers wanting to diversify their sources of supply.<sup>143</sup>
- (176) Market reconstruction has shown that medium and small size competitors and wholesalers (those who do not source their entire production in the tropics) usually purchase bananas from multiple importers and they do so in order to spread the risk, ensure variety or to obtain better prices.<sup>144</sup> Only a small minority of competitors experienced refusal to provide quotation from banana importers.<sup>145</sup> Although those players sourcing bananas from importers do value long-term relationships with these importers, as this ensures stability of supply and quality,<sup>146</sup> they also state that they could change their supplier relatively quickly and without incurring significant cost.<sup>147</sup>
- (177) The competitors confirmed the Notifying Parties' claim that growers are becoming more sophisticated and do contact customers directly in the EU and offer their supply, circumventing the intermediation of banana companies, a practice which is often triggered by the self-sourcing initiatives of retailers.<sup>148</sup> Also wholesalers have admitted that they are being approached by the growers, for instance during the annual industry fair in Berlin.<sup>149</sup> Also those growers which responded to the Commission's questionnaire confirmed that in the next three years they intend to increase the volumes they export directly to the EU.<sup>150</sup>
- (178) Since no credible and justified concerns as regards access to growers were identified, in particular no capacity constraints or barriers resulting from the long-term or exclusivity contracts between the global banana importers and growers in the tropics, it appears that nothing could prevent the small and medium size competitors from

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<sup>140</sup> Responses to question 29.3 of Questionnaire Q3 – Competitors.

<sup>141</sup> Responses to question 29.2.1 of Questionnaire Q3 – Competitors.

<sup>142</sup> See *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings*, par. 70.

<sup>143</sup> Minutes of conference calls with competitors dated 7 July, 8 July and 15 July 2014.

<sup>144</sup> Responses to question 64 of Questionnaire Q3 – Competitors.

<sup>145</sup> Responses to question 65.1 of Questionnaire Q3 – Competitors.

<sup>146</sup> Responses to question 81.1 of Questionnaire Q3 – Competitors.

<sup>147</sup> Responses to question 67 of Questionnaire Q3 – Competitors.

<sup>148</sup> Responses to question 34 of Questionnaire Q3 – Competitors and minutes of a conference call with a competitor dated 30 July 2014.

<sup>149</sup> Minutes of conference calls with wholesalers dated 18 and 19 June 2014.

<sup>150</sup> Responses to question 15 of Questionnaire Q4 – Growers.

increasing the volumes of their direct sourcing, should they find such a strategy profitable.

- (179) However some of the competitors stated that the increased bargaining power of the Notifying Parties, resulting from their combined volumes, may enable them to restrict access to shipping services for their competitors. This could take the form of exclusivity clauses (preventing access to certain ports, in particular those located at the end of more peripheral shipping routes) or other indirect means incentivising shipping companies to offer less advantageous conditions to Notifying Parties' competitors, thus raising their costs.
- (180) The significant bargaining position of the Notifying Parties after the Transaction has been confirmed in the course of market reconstruction – their joint share of imports into Northern European ports is approximately three times higher than the share of the next player. As a result the abovementioned concerns appear prima facie credible. The contestability of the shipping level of the supply chain will thus depend on whether access to the shipping services is ensured and not hindered by potential exclusivity or similar clauses in contracts between the Notifying Parties and providers of shipping services.

#### **4.1.4.3. Belgium**

##### The Notifying Parties' arguments

- (181) The Notifying Parties submit that the Transaction will not significantly impede effective competition in the markets for the import and supply of bananas and for banana ripening services in Belgium.
- (182) First, the Notifying Parties argue that there is a large number of banana suppliers in Belgium, namely the large international importers - Dole, Del Monte and Noboa, as well as other importers such as AFC, AgroFair, Univeg, and Banacol, which are all effective competitors. In addition, any banana supplier in Northern Europe, particularly in the Netherlands and Germany, can easily expand its supplies to this area since Belgium is one of the main entry points for bananas into Northern Europe.
- (183) Second, the Notifying Parties claim that private label bananas have been increasing in Belgium (as a consequence of the growth of discount stores) and the importance of Chiquita brand has significantly diminished. According to the Notifying Parties, retailers have intensified competition amongst all suppliers and as a result Chiquita lost significant volumes in Belgium. Moreover, retailers in Belgium multi-source and switch volumes and suppliers on a frequent basis.
- (184) Third, the Notifying Parties argue that they are distant competitors in this territory. [...].
- (185) Regarding banana ripening services, Fyffes does not have any ripening capacity in Belgium. Chiquita has ripening capacity in Belgium through its wholly owned subsidiary, Spiers, and provides some banana ripening services to third parties. In addition, the Notifying Parties estimate a level of overcapacity for banana ripening services of at least 50%, overall in Belgium. Finally, besides the large number of third party ripeners which are able to provide ripening services in Belgium, the Notifying Parties argue that it is common for cross-border ripening to occur across Belgium, Germany and the Netherlands.

### Commission's assessment

- (186) The total size of the market for the supply of bananas in Belgium can be estimated at about 5.1 million LCEs in 2013. The modern retail channel represents 75% of these sales. Fairtrade/organic bananas still have a marginal weight in Belgium, representing only 3% of the total bananas sold in 2013. Amongst conventional bananas, although branded bananas have been losing weight in Belgium (from 95% in 2011 to 89% in 2013), they still represent the large majority of sales.
- (187) In 2013, the Notifying Parties had a combined market share in Belgium of [70-80]%<sup>151</sup> for all types of bananas, with an overlap of [30-40]%. The picture is similar in the market for the supply of conventional bananas. In the market for the supply of Fairtrade/organic bananas there is no overlap since Chiquita only sells conventional bananas in Belgium.

**Table 3: Market shares of Notifying Parties in Belgium, 2011-2013, in volume<sup>152</sup>**

		<b>Fyffes</b>	<b>Chiquita</b>	<b>Combined</b>
<b>2011</b>	All types of bananas	[20-30]%	[40-50]%	[70-80]%
	<i>Conventional</i>	[20-30]%	[40-50]%	[70-80]%
	<i>Fairtrade / organic</i>	[0-5]%	[0-5]%	[0-5]%
<b>2012</b>	All types of bananas	[20-30]%	[40-50]%	[70-80]%
	<i>Conventional</i>	[20-30]%	[50-60]%	[70-80]%
	<i>Fairtrade / organic</i>	[0-5]%	[0-5]%	[0-5]%
<b>2013</b>	All types of bananas	[30-40]%	[40-50]%	[70-80]%
	<i>Conventional</i>	[30-40]%	[40-50]%	[70-80]%
	<i>Fairtrade / organic</i>	[0-5]%	[0-5]%	[0-5]%

Source: Estimates of the Notifying Parties.

- (188) In the last years, Fyffes' market share has remained stable, between [20-30]% and [30-40]% since 2009. By contrast, Chiquita gained [...] that allowed it to increase its market share in conventional bananas from [40-50]% in 2011 to [50-60]% in 2012. However, in the following year it lost again its position (returning to [40-50]% market share). In 2014 both of the Notifying Parties lost [...] volumes to their competitors. Fyffes lost [...] and therefore its market share in the overall market decreased to [20-30]%. Chiquita lost [...] and its market share decreased to [30-40]%. In 2014, the Notifying Parties' combined market share in the overall market in Belgium/Luxemburg is [50-60]%.

<sup>151</sup> The sales of the Notifying Parties in Belgium also include their sales to customers in Luxembourg.

<sup>152</sup> According to the Notifying Parties due to the high degree of price complexity and lack of price transparency reliable revenue-based market shares are difficult to estimate. Therefore throughout this Decision volume-based market shares are used. However the Notifying Parties state that there is no evidence to suggest that revenue-based market sizes are likely to provide a picture of the industry materially different from that obtained from volume figures. Both Chiquita and Fyffes provided their estimates of market size and their estimates of market shares. However throughout this Decision the estimates of Fyffes are used since they were closer to the data obtained in the course of market reconstruction and due to the fact that Chiquita was not able to provide estimates for some of the potential market segmentations.

- (189) This volatility in the evolution of market shares constitutes an evidence of the potential contestability of market positions in Belgium. If a banana supplier loses/gains one contract for the supply of a given customer its market share decreases/increases by a significant amount.
- (190) The Commission, on the basis of its investigation, also confirmed that Fyffes is not an essential brand for retailers in Belgium, but Chiquita has traditionally been an important brand. However, with supermarkets turning to private label as a response to increasing price competition in the retail sector, Chiquita is no longer able to achieve the premium that it once could obtain for its bananas. As a result, the Chiquita brand is of diminishing importance and Chiquita has been losing significant volumes in Belgium. As one retailer from Belgium explained "Chiquita has been a reference for customers and a leader in Belgium for many years, but this position is changing. The quality premium of Chiquita is not obvious anymore".<sup>153</sup>
- (191) According to the Notifying Parties estimations, there are at least 3 significant competitors in Belgium: Noboa is the main competitor with 20-30% market share, followed by Univeg and AFC with 5-10%. The Commission's investigation did not confirm the strength of Noboa in Belgium, as estimated by the Notifying Parties. However, it confirmed the presence of several competitors, including the large banana importers Dole, Del Monte and Noboa, as well as smaller companies like AFC, T-Port and Univeg.<sup>154</sup>

**Table 4: Market shares of main competitors in Belgium, 2011-2013, in volume**

Competitors	2013	2012	2011
Fyffes	[30-40]%	[20-30]%	[20-30]%
Chiquita	[40-50]%	[40-50]%	[40-50]%
Noboa	20-30%	NA	NA
Univeg	5-10%	NA	NA
AFC	5-10%	NA	NA

*Source: Estimates of the Notifying Parties.*

- (192) In Belgium there are 4 main retailers (Delhaize, Colruyt, Spar and Carrefour) which control 85% of the retail stores. None of these retailers self-sources bananas, but they tend to multi-source from several banana suppliers within a given year. According to one retailer, multi-sourcing "is a guarantee to get good quality if one supplier has bad quality".<sup>155</sup>

**Figure 9: [...]**

[...]

*Source: [...].*

- (193) Retailers confirmed that there are enough alternatives available in Belgium,<sup>156</sup> and that more suppliers may enter or expand in Belgium. According to one retailer, some fruit

<sup>153</sup> Minutes of conference call with a retailer dated 16 June 2014.

<sup>154</sup> Replies to the European Commission request for data – Competitors dated 5 August 2014.

<sup>155</sup> Responses to question 19.2 of Questionnaire Q1 – Retailers.

<sup>156</sup> Responses to question 18 of Questionnaire Q1 – Retailers.



traders (e.g. Univeg) would potentially also be able to grow in size and gain further experience, which will make them more credible.<sup>157</sup> Moreover, there are no potential restrictions on access to shipping services in Belgium. Given the large volumes of bananas that arrive to Belgium there are several shipping companies landing in Antwerp and it is unlikely that any shipping company would be interested in entering into an agreement with an exclusivity clause for this port. Therefore retailers do not foresee any impact on price resulting from the Transaction.<sup>158</sup>

- (194) As for non-modern retail channels, the Commission's investigation confirmed that several competitors are also active in supplying bananas to the channels other than non-modern retail, directly or via wholesalers. A wholesaler mentioned that it "asks for offers from 5-6 suppliers".<sup>159</sup>
- (195) The Commission concludes, on the basis of its investigation, that customers in Belgium have a variety of banana suppliers to choose from. It is unlikely that these suppliers would face any potential restriction. Moreover, retailers seem to be taking advantage of the competition between these suppliers already and are multi-sourcing to ensure they obtain best offers.
- (196) As concerns banana ripening services, there is no overlap between the Notifying Parties in Belgium. Chiquita is the only of the Notifying Parties owning banana ripening facilities in Belgium and there are several other companies offering banana ripening services, including competitors and independent ripeners. Chiquita market share in terms of ripening capacity is at most [20-30]%.

**Table 5: Capacity for ripening services in Belgium in LCEs per week**

<b>Competitors</b>	<b>Capacity</b>
Chiquita	[...]
Alva	[...]
Univeg	[...]
Van Damme	[...]
Groep	[...]
Kooy	[...]
Raze	[...]
Pons	[...]
Denaeghel	[...]
Vanhuysse	[...]
<b>Total</b>	<b>[...]</b>

*Source: Estimates of the Notifying Parties.*

- (197) In conclusion, the Transaction does not raise serious doubts (i) as regards the market for the import and supply of bananas to retailers and wholesaler (and its possible segmentations) and (ii) as regards the market for banana ripening services, in Belgium.

<sup>157</sup> Minutes of conference call with a retailer dated 16 June 2014.

<sup>158</sup> Responses to question 55 of Questionnaire Q1 – Retailers.

<sup>159</sup> Minutes of conference call with a wholesaler dated 16 June 2014.

#### 4.1.4.4. Denmark

##### The Notifying Parties' arguments

- (198) The Notifying Parties submits that the Transaction will not significantly impede effective competition in the markets for the import and supply of bananas and for banana ripening services in Denmark.
- (199) First, the Notifying Parties state that since mid-2010 Chiquita is not present in Denmark, [...]. On the other hand, Fyffes market presence in Denmark [...].
- (200) Second, the Notifying Parties argue that there are many credible suppliers already active in Denmark, such as AFC, Dole, Dürbeck, Del Monte, Cobana and Noboa.
- (201) Third, the Notifying Parties note that access to ports in Denmark is easy, either by feeder vessels from Bremerhaven or by truck from Germany or Sweden.
- (202) As concerns ripening services, the Notifying Parties state that they do not have ripening facilities in Denmark.

##### Commission's assessment

- (203) The total size of the market for the supply of bananas in Denmark is estimated to amount to about 4.9 million LCEs in 2013. The modern retail channel represents 80% of these sales. Fairtrade/organic bananas have already some weight in Denmark, representing 14% of the total bananas sold in 2013, growing from 10% in 2011. Amongst conventional bananas, branded bananas have been significantly losing weight in Denmark, from 100% in 2011 to 87% in 2013.
- (204) In the past three years there was no overlap between the Parties in Denmark, since Chiquita is not present there since mid-2010. In 2009 and 2010 Chiquita accounted for [10-20]% and [10-20]% of the market respectively. However Chiquita could still be considered as an alternative supplier in Denmark and therefore as a result of the Transaction a potential competitor is eliminated.

**Table 6: Market shares of Notifying Parties in Denmark, 2011-2013, in volume**

		<b>Fyffes</b>	<b>Chiquita</b>	<b>Combined</b>
<b>2011</b>	All types of bananas	[30-40]%	[0-5]%	[30-40]%
	<i>Conventional</i>	[30-40]%	[0-5]%	[30-40]%
	<i>Fairtrade / organic</i>	[20-30]%	[0-5]%	[20-30]%
<b>2012</b>	All types of bananas	[50-60]%	[0-5]%	[50-60]%
	<i>Conventional</i>	[50-60]%	[0-5]%	[50-60]%
	<i>Fairtrade / organic</i>	[10-20]%	[0-5]%	[10-20]%
<b>2013</b>	All types of bananas	[50-60]%	[0-5]%	[50-60]%
	<i>Conventional</i>	[50-60]%	[0-5]%	[50-60]%
	<i>Fairtrade / organic</i>	[10-20]%	[0-5]%	[10-20]%

Source: Estimates of the Notifying Parties.



(205) The Commission, on the basis of the replies to its investigation, confirmed the presence of the following players in Denmark:<sup>160</sup> Del Monte (with a significantly higher share than estimated by the Notifying Parties); Dole, AFC (albeit with a lower market share than estimated by the Notifying Parties) and Noboa (albeit with a market share lower than estimated by the Notifying Parties). In addition also Compagnie Fruitière is present in Denmark. Coop Trading is a joint sourcing company of Coop Denmark, Coop Norge and the Finnish SOK.

**Table 7: Market shares of main competitors in Denmark, 2011-2013, in volume**

Competitors	2013	2012	2011
Fyffes	[50-60]%	[50-60]%	[30-40]%
Chiquita	[0-5]%	[0-5]%	[0-5]%
Coop Trading	10-15%	NA	NA
AFC	5-10%	5-10%	5-10%
Dole	5-10%	5-10%	NA
Del Monte	5-10%	5-10%	NA
Noboa	5-10%	5-10%	NA

*Source: Estimates of the Notifying Parties.*

(206) In addition, retailers mention the following companies as potential suppliers in Denmark: AgroFair (importer and distributor of Fairtrade bananas based in the Netherlands), HHK (Hirsholmen Handels Kompagni, which sources from various small growers in Costa Rica and Ecuador) and Univeg.<sup>161</sup>

(207) Customers in Denmark report that changing a supplier is a delicate process. However, they consider this option every year and are ready to support a new supplier by first awarding small volumes to allow it to gain experience and, provided that the new suppliers' conduct is satisfactory, the volumes can be increased.<sup>162</sup> Another retailer stated that it multi-sources already in order to "create a dynamic supply and competition" and added further that sourcing only from one banana supplier "is too risky and the supplier will get too comfortable and less likely to be innovative and creative".<sup>163</sup>

(208) One of the retailers in Denmark mentioned that it is concerned by the effects of the Transaction in particular because "Chiquita brand is perceived as unique and non-replicable".<sup>164</sup> However this issue is not merger specific, since the position of Chiquita brand will not be affected as a result of this Transaction. No other concerns with respect to the impact of the Transaction in Denmark were expressed by the customers.

(209) The Commission considers, on the basis of its investigation, that customers in Denmark currently have a variety of banana suppliers to choose from, provided that these suppliers face no restriction on access to shipping. They seem to be taking advantage of the competition between these suppliers already and are multi-sourcing to ensure they obtain best offers.

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<sup>160</sup> Replies to the European Commission request for data – Competitors dated 5 August 2014.

<sup>161</sup> Responses to question 18 of Questionnaire Q1 – Retailers.

<sup>162</sup> Minutes of conference calls with retailers dated 19 June and 3 September 2014.

<sup>163</sup> Responses to question 19.3 of Questionnaire Q1 – Retailers.

<sup>164</sup> Responses to question 55 of Questionnaire Q1 – Retailers.

(210) Regarding banana ripening services, there are only two providers in Denmark and one of them (having significantly larger capacity) is Total Produce, i.e. a company created when Fyffes demerged its general produce and distribution business in 2006. [Information about the links between Fyffes and Total Produce]. These various links might potentially diminish the incentives of Total Produce to act entirely independently from Fyffes. As a result, although formally Fyffes does not own any banana ripening facilities in Denmark, it might have influence over the facilities operated by Total Produce.

**Table 8: Capacity for ripening services in Denmark in LCEs per week**

Competitors	Capacity
Total Produce	[...]
H&P Frugtimport	[...]
<b>Total</b>	[...]

*Source: Estimates of the Notifying Parties*

(211) However, there is no overlap in ripening services in Denmark since Chiquita does not own any ripening facility, and thus the incentives of the Merged Entity do not change after the Transaction.

(212) Moreover, one of the competitors, which supplies only green bananas, even though it stated that finding a banana ripener in Denmark is difficult, admitted that it managed to find one.<sup>165</sup> Also customers in Denmark mentioned alternative facilities in Sweden and Northern Germany (in particular those owned by Univeg), where they could have their bananas ripened. Chiquita, at the time when it was still active in Denmark, was using its ripening facilities in Sweden (Helsingborg) to ripen bananas for Danish customers.

(213) In conclusion, the Commission considers that, on the basis of the above and of the information available to it, and provided that access to shipping services is ensured (see section 5), no serious doubts arise as regards the market for the import and supply of bananas to retailers and wholesalers (and its possible segmentations) in Denmark. The Transaction does not raise serious doubts as regards the market for banana ripening services in Denmark.

#### 4.1.4.5. Finland

##### The Notifying Parties' arguments

(214) The Notifying Parties submits that the Transaction will not significantly impede effective competition in the markets for the import and supply of bananas and for banana ripening services in Finland.

(215) First, the Notifying Parties note that the majority of their sales in Finland are to retailers and that the retail sector in Finland is highly concentrated, with Inex and Kesko controlling 80% of food retail sales. These two retailers also belong to cross-border buying alliances (Inex to Coop Trading and Kesko to ICA Group).

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<sup>165</sup> Minutes of a conference call with a competitor dated 7 July 2014.

- (216) Second, according to the Notifying Parties, the strong bargaining position of retailers in Finland is evidenced by the fact that they increasingly use private label for bananas, direct their tenders to a large number of banana suppliers to increase competition and frequently switch between the different suppliers. These alternative suppliers for Finland include, in view of the Notifying Parties, Dole, Banacol and Del Monte.
- (217) Third, the Notifying Parties consider that there are no barriers to entry in Finland, since the bananas can be brought by feeder vessels from Germany ([...]) or by truck for instance from Sweden ([...]).
- (218) As to banana ripening, the Notifying Parties do not have any facilities in Finland.

Commission's assessment

- (219) The total size of the market for the supply of bananas in Finland is estimated at about 4.2 million LCEs in 2013. The modern retail channel represents 90% of these sales. Fairtrade/organic bananas have some weight in Finland, representing 12% of the total bananas sold in 2013, growing from an estimated 9% in 2011. Amongst conventional bananas, the majority of sales correspond to private label bananas (55% in 2013). This results from a strong growth in the last two years, from no private label in 2011.
- (220) The Notifying Parties have a combined market share in Finland of [60-70]% for all types of bananas, with an overlap of [20-30]%. On the basis of segmentation between conventional and Fairtrade/organic bananas the combined market share equals [60-70]% in the former category, while in the latter there is almost no overlap between the Parties, since Chiquita supplies only negligible amounts of Fairtrade/organic bananas in Finland.

**Table 9: Market shares of Notifying Parties in Finland, 2011-2013, in volume**

		<b>Fyffes</b>	<b>Chiquita</b>	<b>Combined</b>
<b>2011</b>	All types of bananas	[0-5]%	[50-60]%	[50-60]%
	<i>Conventional</i>	[0-5]%	[50-60]%	[50-60]%
	<i>Fairtrade / organic</i>	[0-5]%	[0-5]%	[0-5]%
<b>2012</b>	All types of bananas	[20-30]%	[30-40]%	[60-70]%
	<i>Conventional</i>	[20-30]%	[40-50]%	[70-80]%
	<i>Fairtrade / organic</i>	[0-5]%	[0-5]%	[0-5]%
<b>2013</b>	All types of bananas	[40-50]%	[20-30]%	[60-70]%
	<i>Conventional</i>	[40-50]%	[20-30]%	[60-70]%
	<i>Fairtrade / organic</i>	[30-40]%	[0-5]%	[30-40]%

Source: Estimates of the Notifying Parties.

- (221) Fyffes' share of the total market for bananas in Finland in 2009 to 2011 was below [0-5]%. It has increased its presence in Finland in 2012, [...]. This resulted in an increase of Fyffes market share from [0-5]% in 2011 to [20-30]% in 2012. Since then its share has almost doubled and in 2013 amounted to [40-50]%, in particular due to an increase in the share of Fairtrade/organic bananas (from [0-5]% in 2012 to [30-40]% in 2013). On the other hand Chiquita has been losing market share in Finland from [60-70]% in 2009 to [20-30]% in 2013.



(222) The competitive landscape in the banana market in Finland appears to be dominated by the global banana importers, with T-Port as a fringe competitor. Market reconstruction<sup>166</sup> has confirmed that the following players are active in Finland, in addition to the Parties: Dole/Banacol <sup>167</sup> (with a higher market share than estimated by the Notifying Parties) and Del Monte. T-Port's market share is lower than estimated by the Notifying Parties.

**Table 10: Market shares of main competitors in Finland, 2011-2013, in volume**

Competitors	2013	2012	2011
Fyffes	[40-50]%	[20-30]%	[0-5]%
Chiquita	[20-30]%	[30-40]%	[50-60]%
Dole	20-30%	NA	20-25%
T-Port	5-15%	NA	5-15%
Del Monte	5-10%	NA	5-10%

Source: Estimates of the Notifying Parties.

(223) Customers in Finland expressed concerns as to the impact of the Transaction, with one of them stating that it will lead to decreased competition in the market and thus increased prices.<sup>168</sup> A retailer noted that "[t]here used to be more banana suppliers in Finland. Now, it seems there are only two big banana companies, which is not a healthy situation competition-wise. [name of the retailer] is afraid ChiquitaFyffes could potentially influence prices".<sup>169</sup> As to the wholesale customers one of them stated that "the proposed merger will have a negative impact in the market. Over the past 3 years Chiquita and Fyffes were competing with each other in Finland, which led to lower prices and now this effect will be gone".<sup>170</sup> However this wholesaler declared that it would search for new suppliers. Another wholesale customer reported that there will still be enough alternatives in the market.<sup>171</sup>

(224) It thus appears that the retail and – to a lesser extent – also wholesale customers in Finland are concerned about the loss of one of the main banana suppliers and the impact such a change might have on prices.

(225) However, at the same time a Finish retailer stated that, Dole and Fyffes are the biggest banana suppliers in Finland while Noboa, Del Monte but also AgroFair are less significant players, "they cannot be excluded as potential suppliers".<sup>172</sup> Moreover, when asked to list their potential suppliers, retailers mentioned the following companies: Noboa, AgroFair, Univeg, Grupo Wong (an Ecuadorian grower selling bananas under Favorita brand), Biofrusan (a German importer of bananas principally from the Dominican Republic) and HKK. Retailers also stated that they received quotations from all of these potential alternative suppliers in the course of past three

<sup>166</sup> Replies to the European Commission request for data – Competitors dated 5 August 2014.

<sup>167</sup> According to a Finnish customer in 2013 Banacol closed its offices in Europe and handed the volumes to Dole, since then Dole is in charge of marketing Banacol bananas – minutes of a conference call with a retailer dated 10 June 2014.

<sup>168</sup> Response to question 55.1 of Questionnaire Q1 – Retailers.

<sup>169</sup> Minutes of a conference call with a retailer dated 10 June 2014.

<sup>170</sup> Minutes of a conference call with a wholesaler dated 19 June 2014.

<sup>171</sup> Minutes of a conference call with a wholesaler dated 17 September 2014.

<sup>172</sup> Responses to question 30 of Questionnaire Q1 – Retailers.

years.<sup>173</sup> This suggests that the pool of available alternatives is larger and includes players which are currently not active in Finland. It should be noted that a retailer in Finland stated that "It is quite common to try to find new suppliers which are not active so far on our market",<sup>174</sup> while another added "We are also open for all new entrants and encourage the tender participants to give offers by telling that we are ready to switch supplier when relevant".<sup>175</sup>

- (226) One of the retailers claimed that it would have difficulties accepting Noboa as a supplier, since they do not have the required certifications as regards Corporate Social Responsibility (CSR).<sup>176</sup> While it is true that some of these certifications appear not to be available for a player active in Ecuador, alternative certifications could still be obtained. In fact a retailer in another Nordic country stated that it has recently received updated information from Noboa about their CSR certificates and its quality managers are currently assessing these.<sup>177</sup>
- (227) It should be also noted that, in addition to the global players, a smaller banana importer supplies more limited volumes in Finland in order to gain knowledge of the market.<sup>178</sup> Its volumes are currently not significant but it aims at establishing presence in Finland and growing further. This player does not see barriers to its expansion in the Nordics in general, views the Transaction as an opportunity to expand and notes that after the Transaction has been announced it has received requests for quotation from customers.<sup>179</sup> The presence of smaller importers of bananas was also mentioned by the retailers in the Finnish market: "[there are] many small brands which some other companies are ripening mainly for Lidl here in Finland".<sup>180</sup>
- (228) From the historic analysis of the evolution of market shares of the Notifying Parties in Finland it appears that Fyffes has to some extent been gaining market share at the expense of Chiquita. It should however be noted that the decline in Chiquita's market share coincides with the increase in the volumes of private label bananas in Finland. In that respect a customer stated "Sales volume of Chiquita branded bananas have decreased since 2011 and their position is not anymore inevitable. For private label or other conventional bananas we have also other supplier alternatives".<sup>181</sup>
- (229) The relatively strong position of retailers in the Finnish market (where two main players control almost 80% of the retail market) is confirmed by the fact that they claim they might be ready to start direct-sourcing for bananas, since they have enough capacity, knowledge and experience to do so, provided that such a strategy would bring added value for them.<sup>182</sup> Furthermore the fact that private label bananas are so strong in Finland and that this evolution in the market took place relatively recently (i.e. between 2011 and 2012) suggests that retailers are able and ready to apply strategies aimed at decreasing their dependence on global banana companies and their

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173 Responses to question 20 of Questionnaire Q1 – Retailers.

174 Response to question 11 of Questionnaire Q1 – Retailers.

175 Responses to question 48 of Questionnaire Q1 – Retailers.

176 Minutes of a conference call with a retailer dated 3 September 2014.

177 Minutes of a conference call with a retailer dated 12 September 2014.

178 Minutes of a conference call with a competitor dated 9 September 2014.

179 Minutes of a conference call with a competitor dated 9 September 2014.

180 Response to question 34 of Questionnaire Q1 – Retailers.

181 Response to question 28 of Questionnaire Q1 – Retailers.

182 Responses to question 46 of Questionnaire Q1 – Retailers.

brands. In fact one of the Finnish retailers states that "In Finland the private label is growing at the expense of the Chiquita brand."<sup>183</sup>

- (230) However, in addition to the concerns resulting from a limitation in the number of players active in Finland, retailers also expressed concerns regarding access to the shipping services. A retailer stated that since Finland is a "relatively small country [...] not all banana companies are able to access ports and be successful".<sup>184</sup> In particular access to shipping is mentioned as a potential barrier to expand activities in Finland.<sup>185</sup> Another retailer stated that it "is worried that ChiquitaFyffes will have the leverage to push Maersk to get a new agreement with them and block other players".<sup>186</sup>
- (231) As explained by a retailer, "there is no exclusivity for the port of Helsinki. Other shipping companies, such as MSC and Hamburg Sued, serve Helsinki. But Maersk's service is faster and has good connection and loading logistics with the feeders. Shipping cost influences significantly the price differences between banana suppliers".<sup>187</sup> Therefore the concern is that the Merged Entity could "push other competitors out of the Finnish market" by limiting or foreclosing access to the shipping services.
- (232) Also smaller banana suppliers note that the Finnish market is difficult in terms of logistics (shipping),<sup>188</sup> due to the fact that this country is located at the end of a peripheral shipping route and at the same time it does not require large volumes of bananas. Thus, if the Merged Entity obtains exclusivity with a shipping company for an existing shipping line to Finland, given that alternative providers of shipping services might be less willing to establish additional shipping lines to Finland in view of the limited remaining banana volumes involved, competitors of the Merged Entity could possibly be subject to a cost disadvantage.
- (233) This is also valid for Fairtrade and organic bananas, despite Chiquita having no sales in this segment. In fact, since banana importers contract with shipping companies the transport of volumes of bananas in a liner service, independently of them being non-conventional or conventional bananas, the market influence of a banana importer vis-à-vis shipping companies depends on the total amount of bananas transported.
- (234) As concerns banana ripening services, the two main retailers in Finland both own banana ripening facilities and purchase green bananas. They state that this gives them flexibility to adjust to the supply and demand for bananas and is cost efficient.<sup>189</sup> The remaining capacity is in the hands of wholesalers.

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183 Responses to question 33 of Questionnaire Q1 – Retailers.

184 Minutes of a conference call with a retailer dated 13 June 2014.

185 Minutes of a conference call with a retailer dated 3 September 2014.

186 Minutes of a conference call with a retailer dated 10 June 2014.

187 Minutes of a conference call with a retailer dated 3 September 2014.

188 Minutes of a conference call with a competitor dated 9 September 2014.

189 Responses to question 50 of Questionnaire Q1 – Retailers.

**Table 11: Capacity for ripening services in Finland in LCEs per week**

Competitors	Capacity
Kesko	[...]
SOK	[...]
Satotukku	[...]
Veikko Laine	[...]
Tuko	[...]
<b>Total</b>	[...]

*Source: Estimates of the Notifying Parties.*

- (235) Customers confirmed that in Finland access to banana ripening facilities does not constitute a barrier to enter the market because retailers have their own ripening facilities.<sup>190</sup>
- (236) On the basis of its investigation, the Commission concludes that the concerns raised, in particular by the retail clients, as to the limited number of alternative banana suppliers do not appear to be entirely justified. However it should be noted that these alternative suppliers are able to act as a competitive constraint on the Merged Entity, provided that their access to shipping services is not restricted or foreclosed.
- (237) In particular due to the fact that the Finnish ports are placed at the end of a more peripheral shipping route, the concerns regarding equal access to shipping services seem warranted. The experience of Cork, as described in section 4.1.4.7 below, where Fyffes having large volumes was able to secure an exclusivity clause in a contract with a shipping company, preventing its competitors from directly accessing the Irish market, suggests that with sufficient negotiating power post Transaction the Merged Entity might be able to secure similar clauses with respect to other Northern European ports, in particular in Finland. [...],<sup>191</sup> [...].
- (238) In conclusion, the Commission considers, on the basis of the above and of the information available to it, that the Transaction raises serious doubts as regards the market for the import and supply of bananas to retailers and wholesalers (and its possible segmentations) in Finland, due to the risk that the Merged Entity, as a result of its the accrued market influence vis-à-vis shipping companies, limits access to shipping services for its competitors thus excluding or substantially reducing the sources of supply in Finland. The Transaction does not raise serious doubts as regards the market for banana ripening services in Finland.

#### **4.1.4.6. Germany**

##### The Notifying Parties' arguments

- (239) The Notifying Parties submit that the Transaction will not significantly impede effective competition in the markets for the import and supply of bananas and for ripening services in Germany.

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<sup>190</sup> Minutes of conference calls with retailers dated 19 June, 3 and 4 September 2014.

<sup>191</sup> Minutes of a conference call with a retailer dated 3 September 2014.

- (240) First, the Notifying Parties note that the German retail landscape is concentrated: five retailers account for 70% of all retail food sales (Edeka, Rewe, Aldi Lidl and Metro). Moreover, hard discounters are key players, accounting for about 30% of sales. The Notifying Parties submit that all retailers have been forced to react to those aggressive pricing strategies, and shifted towards private label, including for bananas.
- (241) Second, annual tenders (or in the case of Aldi, quarterly tenders) are very competitive. Alternative suppliers include notably Dole, Del Monte, Noboa, as well as regional players such as AFC, Dürbeck, Cobana, T-Port and Univeg. Notably, AFC became the main supplier to Lidl in 2012.
- (242) Third, the Notifying Parties also submit that retailers tend to multi-source and switch between suppliers. There are retailers and wholesalers doing direct sourcing in Germany. This is also used as a disciplining tool in negotiations with banana suppliers.
- (243) As for banana ripening, the Notifying Parties submit that retailers indicate which ripener must be used. The retailer Edeka has its own ripening facilities. The Notifying Parties also note that there is overcapacity (18-27%) for ripening in Germany, and there is some cross-border ripening, for instance in the Netherlands and Poland. Finally, Chiquita has divested its stake in a ripening company - Atlanta AG to Univeg in 2008 and does not own banana ripening capacity.

#### Commission's assessment

- (244) The total size of the German market for bananas is estimated at more than 50 million LCEs in 2013. The modern retail channel represents 90% of these sales. The Notifying Parties estimate that about 7 million LCEs sold in Germany in 2013 were Fairtrade and/or organic bananas (14% of the total), growing from 5 million LCEs in 2011. The Notifying Parties estimate that 91% of the conventional bananas sold were branded bananas.
- (245) In 2013, the Notifying Parties had a combined market share in Germany of [20-30]% for all types of bananas. Chiquita is currently not active in Fairtrade/organic bananas in Germany.



**Table 12: Market shares of Notifying Parties in Germany, 2011-2013, in volume**

		Fyffes	Chiquita	Combined
2011	All types of bananas	[10-20]%	[10-20]%	[20-30]%
	<i>Conventional</i>	[10-20]%	[20-30]%	[30-40]%
	<i>Fairtrade / organic</i>	[5-10]%	[0-5]%	[5-10]%
2012	All types of bananas	[10-20]%	[10-20]%	[30-40]%
	<i>Conventional</i>	[10-20]%	[20-30]%	[30-40]%
	<i>Fairtrade / organic</i>	[0-5]%	[0-5]%	[0-5]%
2013	All types of bananas	[10-20]%	[10-20]%	[20-30]%
	<i>Conventional</i>	[10-20]%	[10-20]%	[30-40]%
	<i>Fairtrade / organic</i>	[5-10]%	[0-5]%	[5-10]%

Source: Estimates of the Notifying Parties.

- (246) The market share of the Notifying Parties has been relatively stable over the last five years (in 2009, Fyffes: [10-20]%, Chiquita: [10-20]%, combined: [20-30]%), with Fyffes gaining shares and Chiquita losing shares over the period.
- (247) According to the Commission's investigation the Chiquita brand appeared to be well known,<sup>192</sup> but retailers have several lines of bananas in their offering. The retailer Edeka offers its own private label.
- (248) In addition, German retail market is indeed consolidated around 4 strong retailers, Aldi, Lidl, REWE and Edeka (or 5 with Metro). The Commission confirmed the perception that retailers have a strong buyer power. For instance, a competitor stated that "Retailers can dictate their conditions. [...] They are the key driving force in this market".<sup>193</sup> Moreover, the Commission confirmed that retailers in Germany tend to multisource within a given year.

**Figure 10: [...]**

[...]

Source: [...].

- (249) The Commission, on the basis of the replies to its investigation, also confirmed the presence of several competitors active in Germany.<sup>194</sup> A competitor classified those players into two groups: "Big multinational players: Fyffes, Chiquita, Dole, Del Monte; Smaller players: such as T-Port, Univeg, AFC, Noboa, Citronex", but specified that the two groups "compete on an equal footing".<sup>195</sup> Noboa has a significant presence in Germany. AFC is notably supplying Lidl, although in terms of market perception Lidl is in fact seen as "direct sourcing".<sup>196</sup> Cobana is also active in sourcing fruits from overseas. Other players include for instance Compagnie Fruitière

<sup>192</sup> Minutes of conference calls with competitors dated 12, 25 June 2014 and 17 July 2014 and with a retailer dated 16 May 2014.

<sup>193</sup> Minutes of a conference call with a competitor dated 17 July 2014.

<sup>194</sup> Replies to the European Commission request for data – Competitors dated 5 August 2014.

<sup>195</sup> Minutes of a conference call with a competitor dated 17 July 2014.

<sup>196</sup> Minutes of a conference call with a competitor dated 3 June 2014.

and de Groot. The market reconstruction for 2013 gave results relatively close to the Notifying Parties' estimates of competitors' market shares below.

**Table 13: Market shares of main competitors in Germany, 2011-2013, in volume**

Competitors	2013	2012	2011
Fyffes	[10-20]%	[10-20]%	[10-20]%
Chiquita	[10-20]%	[10-20]%	[10-20]%
AFC	10-15%	10-15%	0-5%
Dole	10-15%	10-15%	15-20%
Noboa	5-10%	15-20%	5-10%
Del Monte	5-10%	0-5%	5-10%
Cobana	10-15%	5-10%	10-15%
T-Port	5-10%	5-10%	0-5%
Duerbeck	0-5%	0-5%	5-10%
Univeg	0-5%	0-5%	NA
Biofrusan	0-5%	0-5%	0-5%

*Source: Estimates of the Notifying Parties.*

- (250) Overall, German retailers which responded to the Commission's questionnaire stated that there are enough alternative suppliers available.<sup>197</sup> Moreover, there are no potential restrictions on access to shipping services in Germany. Given the large volumes of bananas that arrive to Germany there are several shipping companies landing in Hamburg and Bremerhaven and it is unlikely that any shipping company would be interested in entering into an agreement with an exclusivity clause for these ports. No impact on price is expected to result from the Transaction.<sup>198</sup>
- (251) As for channels other than non-modern retail, a competitor noted that "overall, the wholesale market in Germany is decreasing"; another that "the wholesale market has become obsolete".<sup>199</sup> It also appears that several competitors are active in supplying bananas to the channels other than non-modern retail.
- (252) The Commission thus concludes, on the basis of its investigation, that customers in Germany have a variety of banana suppliers to choose from. It is unlikely that these suppliers would face any potential restriction. Retailers seem to be taking advantage of the competition between these suppliers already and are multi-sourcing to ensure they obtain best offers.
- (253) As for banana ripening, there is no overlap between the Notifying Parties in Germany. Fyffes has capacity in Hamburg (Weichert), and owns a 33% stake in van Wylick (together amounting to a ripening capacity of at most 16% of the market). Chiquita has a long-term contract [...]. The fact that there is overcapacity in the German

<sup>197</sup> Responses to questions 18 and 56 of Questionnaire Q1 – Retailers.

<sup>198</sup> Responses to question 55 of Questionnaire Q1 – Retailers.

<sup>199</sup> Minutes of conference calls with competitors dated 8 and 17 July 2014.

ripening market was mentioned in the Commission's investigation.<sup>200</sup> There is also some degree of cross ripening with neighbouring areas.<sup>201</sup>

**Table 14: Capacity for ripening services in Germany in LCEs per week**

Competitors	Capacity
Univeg	[...]
Cobana	[...]
Del Monte	[...]
Edeka	[...]
van Wylick	[...]
Fyffes	[...]
Other players incl. Dole, AFC, etc	[...]
<b>Total</b>	<b>[...]</b>

*Source: Estimates of the Notifying Parties, Minutes of conference call with a competitor.*

- (254) Retailers who responded to the Commission's questionnaire indicated that there are sufficient alternative banana ripeners.<sup>202</sup> Most respondent competitors similarly stated that there is no entry barrier related with access to banana ripening facilities.<sup>203</sup>
- (255) In conclusion, the Commission considers, on the basis of the above and of the information available to it, that the Transaction does not raise serious doubts (i) as regards the market for the imports and supply of bananas to retailers and wholesalers (and its possible segmentations) and (ii) as regards the market for banana ripening services, in Germany.

#### 4.1.4.7. Ireland

##### The Notifying Parties' arguments

- (256) The Notifying Parties submit that the Transaction will not significantly impede effective competition in the markets for the import and supply of bananas and for ripening services in Ireland.
- (257) First, the Notifying Parties argue that Chiquita has no operational presence in Ireland. Chiquita only has [...], and its total banana volumes sold into Ireland account for only [5-10]% of total banana volumes in Ireland in 2013. The post-merger increment is therefore marginal.
- (258) Second, the Notifying Parties argue that there are a number of importers and wholesaler competitors active in the territory such as Del Monte, Keelings, Global Fruit and N. Smyth. All these are able to supply any customer in Ireland. In addition, all companies which are currently active in UK are able to easily expand operations to

<sup>200</sup> Minutes of a conference call with a retailer dated 16 May 2014.

<sup>201</sup> See for instance Minutes of a conference call with a competitor dated 17 July 2014.

<sup>202</sup> Responses to question 51 of Questionnaire Q1 – Retailers.

<sup>203</sup> Responses to question 48 of Questionnaire Q3 – Competitors, and question 42 of Questionnaire Q2 – Global competitors. See also Minutes of a conference call with a competitor dated 7 July 2014.

supply Ireland since there is no material cost difference between discharging bananas in Cork or discharging in the UK and transporting bananas to Ireland.

- (259) Third, the Notifying Parties argue that it is possible for both retailers and wholesalers to direct source, as it is currently the case for Tesco which direct sources all of its volumes to Ireland using the Maersk containerised liner service. Retailers are also able to multi-source (e.g. Lidl sources from both N. Smyth and Global Fruit).
- (260) Fourth, the Notifying Parties argue that they are particularly distant competitors in Ireland. Fyffes sales are mainly to retailers which account for [...]% of Fyffes sales in Ireland. Chiquita on the other hand has [...] in Ireland, [...].
- (261) Fifth, the Notifying Parties argue that shipping logistics do not create barriers to entry into Ireland [...].
- (262) Regarding banana ripening services, the Notifying Parties state that Chiquita does not have any banana ripening facility in Ireland, and therefore there is no overlap in this country. Additionally, there is 52% overcapacity in banana ripening overall in Ireland, with a number of third party ripeners available.

#### Commission's assessment

- (263) The total size of the market for the supply of bananas in Ireland can be estimated at about 3.5 million LCEs in 2013. The modern retail channel represents 80% of these sales. Fairtrade/organic bananas still have a small weight in Ireland, representing only 5% of the total bananas sold in 2013. Among conventional bananas, branded bananas have been losing weight in Ireland (from 88% in 2011 to 82% in 2013), but they still represent the large majority of sales.
- (264) The Notifying Parties have a combined market share in Ireland of [60-70]% for all types of bananas, with an overlap of [5-10]%. The context is similar in the market for the supply of conventional bananas. As concerns Fairtrade/organic bananas there is no overlap since Chiquita only sells conventional bananas in Ireland.

**Table 15: Market shares of Notifying Parties in Ireland, 2011-2013, in volume**

		<b>Fyffes</b>	<b>Chiquita</b>	<b>Combined</b>
<b>2011</b>	All types of bananas	[50-60]%	[0-5]%	[60-70]%
	<i>Conventional</i>	[50-60]%	[0-5]%	[60-70]%
	<i>Fairtrade / organic</i>	[40-50]%	[0-5]%	[40-50]%
<b>2012</b>	All types of bananas	[60-70]%	[5-10]%	[60-70]%
	<i>Conventional</i>	[60-70]%	[5-10]%	[60-70]%
	<i>Fairtrade / organic</i>	[30-40]%	[0-5]%	[30-40]%
<b>2013</b>	All types of bananas	[60-70]%	[5-10]%	[60-70]%
	<i>Conventional</i>	[60-70]%	[5-10]%	[60-70]%
	<i>Fairtrade / organic</i>	[60-70]%	[0-5]%	[60-70]%

Source: Estimates of the Notifying Parties.

- (265) In the last three years the Notifying Parties' combined market share raised from [60-70]% in 2011 to [60-70]% in 2013 as both Chiquita and Fyffes were able to increase their sales volumes. Chiquita's sales in Ireland have been volatile, going



down for instance from [10-20]% in 2010 to [0-5]% in 2011. The Commission confirmed that overall there was no substantial loss or gain of a contract in Ireland. Therefore, and contrary to other Member States, the evidence points to a higher stability of contracts for the supply of bananas in Ireland. This is also reflected in a considerably higher and more stable pattern of prices in Ireland compared to all other EU countries (see Figure 7).

- (266) The Commission considers, on the basis of its investigation, that the explanation for this stability may be that no large banana importer is directly active in Ireland besides Fyffes. The Notifying Parties competitors are small importers (like N. Smyth) or wholesalers re-selling bananas from the large importers (like Global Fruit and Keelings). Each of these players has an estimated market share above 5% and is present in both the modern retail and non-modern retail channel. In particular, Keelings, [...], also direct sources from the tropics to a limited extent and procures bananas from importers other than Chiquita.

**Table 16: Market shares of the main competitors in Ireland, 2011-2013, in volume**

Competitors	2013	2012	2011
<b>Fyffes</b>	<b>[60-70]%</b>	<b>[60-70]%</b>	<b>[50-60]%</b>
<b>Chiquita</b>	<b>[5-10]%</b>	<b>[5-10]%</b>	<b>[0-5]%</b>
Tesco	15-25%	15-25%	15-25%
N.Smyth	5-10%	5-10%	5-10%
Global Fruit	5-15%	5-15%	5-15%
Keelings	5-10%	5-10%	5-10%

*Source: Estimates of the Notifying Parties.*

- (267) Ireland is traditionally Fyffes' "home" market and the only country where the Fyffes brand carries a premium. On the contrary, Chiquita brand has always been less valued in Ireland and this is reflected in its smaller position. [...]. A wholesaler confirmed that "the brand of Chiquita is also recognizable. However, customers are not ready to pay a premium for such branded bananas".<sup>204</sup>
- (268) The situation regarding brands has however been changing in the most recent years, with the growing importance of private label. According to one competitor in Ireland "customers do not care for banana brands. However, there is a preference for Fyffes bananas, in particular among the smaller retailers, thanks to Fyffes' marketing strategy. Thus Fyffes may sometimes cash a premium for its brand".<sup>205</sup>
- (269) The retail landscape in Ireland is characterized by the presence of 6 main retailers. The biggest one Tesco (representing 20-30% of the market) is doing self-sourcing from the tropics, and therefore is not directly affected by the Transaction. The remaining retailers are mostly buying from Fyffes. Multi-sourcing is not very common in Ireland given that the market is relatively small. The only real example of multi-sourcing is Lidl that, appears to be buying bananas from the [...].

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<sup>204</sup> Minutes of conference call with a competitor dated 6 June 2014.

<sup>205</sup> Minutes of conference call with a wholesaler dated 10 September 2014.

**Figure 11: [...]**

[...]

Source: [...]

- (270) During the Commission's investigation retailers and wholesalers stated that there are not many players selling bananas in Ireland, although the majority of them do not anticipate a negative impact of the Transaction on price given the small position of Chiquita in Ireland.<sup>206</sup>
- (271) The only concern presented by market players in Ireland relates to the existence of an exclusivity clause in the contract between Fyffes and Maersk [...].
- (272) As a consequence of these clauses, and given that no other shipping company lands in Cork as a result of the limited remaining banana volumes involved, competitors need to land their bananas in Antwerp, Rotterdam, the UK or Northern France. According to competitors, this delays the delivery of bananas into Ireland by one week and makes it more expensive since the transshipment to Ireland needs to be included.<sup>207</sup> A retailer from Ireland also explained that "net cost pricing in Ireland is higher than the UK. This is primarily down to the cost to transport from the UK to Ireland. However as Fyffes are bringing direct ships to Ireland they are able to overcome".<sup>208</sup>
- (273) Currently these clauses are not fully enforced in practice since Maersk is also discharging bananas for Tesco directly in Ireland instead of delivering them in a subsequent port (e.g. in Antwerp, Rotterdam or the UK). Competitors claimed that after the Transaction, given its larger volumes (not only in Ireland but also worldwide) and thus better negotiating position, the Merged Entity would be in an even better position to prevent other players from using this shipping route.<sup>209</sup> In fact, the Merged Entity could make these clauses more enforceable (thus effectively impeding Tesco from access to the direct route) as well as extend them for a longer period (for instance, in a potential negotiation for a new contract). As a consequence, competitors' costs of shipping would increase or would be kept at a higher level for a longer period, which would reduce their ability to compete with the Merged Entity in Ireland.
- (274) This is also valid for Fairtrade and organic bananas, despite Chiquita having no sales in this segment. In fact, since banana importers contract with shipping companies the transport of volumes of bananas in a liner service, independently of them being non-conventional or conventional bananas, the market influence of a banana importer vis-à-vis shipping companies depends on the total amount of bananas transported.
- (275) As concerns banana ripening services, there is no overlap between the Notifying Parties. Fyffes owns [30-40]% of the ripening capacity in Ireland and Total Produce, [...], controls [10-20]%. However, all competitors have their own ripening facilities in Ireland.

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<sup>206</sup> Responses to questions 18 and 55 of Questionnaire Q1 – Retailers and questions 63 and 87 of Questionnaire Q3 – Competitors.

<sup>207</sup> Minutes of conference calls with competitors dated 6 June 2014 and 17 July 2014.

<sup>208</sup> Responses to question 14 of Questionnaire Q1 – Retailers.

<sup>209</sup> Minutes of conference call with competitor dated 17 July 2014.

**Table 17: Capacity for ripening services in Ireland in LCEs per week**

Competitors	Capacity
Fyffes	[30-40]%
Keelings	[20-30]%
Total Produce	[10-20]%
N. Smyth	[10-20]%
Global Fruit	[5-10]%

*Source: Estimates of the Notifying Parties.*

- (276) Additionally, if a new banana supplier intends to enter the Irish market or if a retailer intends to start self-sourcing, they can either procure banana ripening services from any of the competitors or even easily invest in new facilities.
- (277) In conclusion, the Commission considers, on the basis of the above and of the information available to it, that the Transaction raises serious doubts as regards the market for the import and supply of bananas to retailers and wholesalers (and its possible segmentations) in Ireland, due to the risk that the Merged Entity, as a result of its the accrued market influence vis-à-vis shipping companies, limits access to shipping services for its competitors thus excluding or substantially reducing the sources of supply in Ireland. On the contrary, the Transaction does not raise serious doubts as regards the market for banana ripening services in Ireland.

#### **4.1.4.8. The Netherlands**

##### The Notifying Parties' arguments

- (278) The Notifying Parties submit that the Transaction will not significantly impede effective competition in the markets for the import and supply of bananas and for banana ripening services in the Netherlands.
- (279) First, the Notifying Parties argue that the Netherlands are characterised by the presence of large retailers and buying groups with significant buyer power and an emphasis on multi-sourcing. The three main retailers in the Netherlands control over 85% of all food purchases. Moreover, hard discounters have become increasingly prevalent and are aggressively competing on retail prices. The intensity of competition at the retail level has further increased competition at the import and wholesale level.
- (280) Second, the Notifying Parties claim that there are a wide range of credible banana suppliers in the Netherlands including global importers such as Dole and Del Monte but also other significant players such as Banacol, Cobana, T-Port, AFC and AgroFair. In addition, there are large, well established wholesalers, for instance de Groot, which import part of their banana procurement directly and supply Dutch retailers. Moreover, the Notifying Parties argue that there are no barriers restricting access to the Netherlands since Rotterdam is one of the busiest ports and most major container lines have regular services to Rotterdam.
- (281) Third, the Notifying Parties argue that the increasing trend of direct sourcing has significantly impacted the negotiations with Dutch retailers. In this respect, the Notifying Parties give the example of the buying group Superunie which has set up a direct import programme for conventional and Fairtrade bananas. According to the Notifying Parties the ability of retailers to direct source is reinforced by the

diminishing importance of brands and the increasing popularity of private label bananas in the Netherlands.

- (282) Regarding banana ripening services, the Notifying Parties claim that only Chiquita owns ripening facilities in the Netherlands, There is therefore no overlap in the Notifying Parties' activities in ripening in the Netherlands. Moreover, there is significant ripening capacity in the Netherlands with a number of third party banana ripeners able to provide ripening services as well availability of cross-border supply of ripening services from Germany and Belgium.

Commission's assessment

- (283) The total size of the market for the supply of bananas in the Netherlands is estimated at approximately 8.9 million LCEs in 2013. The modern retail channel represents 75% of these sales. Fairtrade/organic bananas weight has been growing in the Netherlands, from 7% in 2011 to 10% in 2013.
- (284) In 2013, the Notifying Parties have a combined market share in the Netherlands of [50-60]% for all types of bananas (Fyffes: [20-30]%, Chiquita: [20-30]%). The context is similar in the market for the supply of conventional bananas. As concerns Fairtrade/organic bananas there is almost no overlap since Chiquita only has marginal sales of Fairtrade/organic bananas in the Netherlands.

**Table 18: Market shares of Notifying Parties in the Netherlands, 2011-2013, in volume**

		<b>Fyffes</b>	<b>Chiquita</b>	<b>Combined</b>
<b>2011</b>	All types of bananas	[30-40]%	[30-40]%	[60-70]%
	<i>Conventional</i>	[30-40]%	[30-40]%	[60-70]%
	<i>Fairtrade / organic</i>	[80-90]%	[0-5]%	[80-90]%
<b>2012</b>	All types of bananas	[20-30]%	[30-40]%	[50-60]%
	<i>Conventional</i>	[20-30]%	[30-40]%	[50-60]%
	<i>Fairtrade / organic</i>	[40-50]%	[0-5]%	[50-60]%
<b>2013</b>	All types of bananas	[20-30]%	[20-30]%	[50-60]%
	<i>Conventional</i>	[20-30]%	[30-40]%	[50-60]%
	<i>Fairtrade / organic</i>	[70-80]%	[0-5]%	[70-80]%

Source: Estimates of the Notifying Parties.

- (285) In the last three years the Notifying Parties' combined market share decreased from [60-70]% in 2011 to [50-60]% in 2013, in particular given Fyffes' losses. In previous years Fyffes' sales were also volatile (in 2009, [10-20]%; in 2010, [30-40]%). [...]. This is an example of the high volatility of contracts for the supply of bananas in the Netherlands.
- (286) Chiquita sales in the Netherlands have been more stable, although also decreasing, and are mostly concentrated [...]. According to the Commission's investigation, Chiquita is not competing very aggressively for any other retailers in the Netherlands. One



retailer mentioned that "Chiquita is not sending offers to [name of retailer], even though [name of retailer] contacted Chiquita last year".<sup>210</sup> Also [...].<sup>211</sup>

(287) The Commission, on the basis of the replies to its investigation, confirmed that the Notifying Parties only sell branded bananas in the Netherlands, and according to the Notifying Parties there are no sales of private label bananas in the Netherlands. In fact, brands still play a role in the Netherlands, in particular the Chiquita brand, although some retailers and wholesalers mentioned that "today the brand is not really a differentiation in terms of quality anymore" and "most customers do not know any banana brand".<sup>212</sup>

(288) The Commission, on the basis of the replies to its investigation, also confirmed that the large banana importers like Dole, Del Monte and Noboa are present in the Netherlands. Moreover, smaller competitors like Cobana and T-Port are also active. Finally, de Groot a wholesaler also recently started doing self-sourcing to serve the Dutch market. AFC also become recently active in the Netherlands after gaining the contract with an important retailer. Moreover, the Notifying Parties estimate their main competitor to be Dole (with a market share between 15-25%), which was confirmed by the Commission.<sup>213</sup>

**Table 19: Market share of the main competitors in the Netherlands, 2011-2013, in volume**

Competitors	2013	2012	2011
Fyffes	[20-30]%	[20-30]%	[30-40]%
Chiquita	[20-30]%	[30-40]%	[30-40]%
Dole	15-25%	15-25%	15-25%
Cobana	5-10%	0-5%	0-5%
De Groot	5-10%	5-10%	5-10%
Del Monte	5-10%	5-10%	5-10%
Banacol	5-10%	5-10%	0-5%

*Source: Estimates of the Notifying Parties.*

(289) Regarding the retail landscape in the Netherlands, the Commission's investigation confirmed that it is highly concentrated and that retailers tend to multi-source between several banana suppliers. However, no retailer buys from both Fyffes and Chiquita. Moreover, one of the main retailers is already doing self-sourcing for a part of its needs.

**Figure 12: [...]**

[...]

*Source: [...].*

(290) In general, during the Commission's investigation, retailers did not express concerns regarding the potential impact on price resulting from the Transaction, quoting the

<sup>210</sup> Minutes of conference call with a retailer dated 30 June 2014.

<sup>211</sup> See internal document of Fyffes, [...].

<sup>212</sup> Minutes of conference calls with a retailer dated 30 June 2014 and with a wholesaler dated 3 June 2014

<sup>213</sup> Replies to the European Commission request for data – Competitors dated 5 August 2014.

number of alternative suppliers available.<sup>214</sup> Retailers mentioned they received offers from Chiquita, Fyffes, Del Monte, Dole, de Groot and other importers.<sup>215</sup> The only concern expressed by one retailer related to the availability of suppliers of Fairtrade banana. However, in this particular case, the Transaction would have very insignificant effect given that Chiquita almost does not supply Fairtrade bananas in the Netherlands. Moreover, there are no potential restrictions on access to shipping services in the Netherlands. Given the large volumes of bananas that arrive to the Netherlands there are several shipping companies landing in Rotterdam and it is unlikely that any shipping company would be interested in entering into an agreement with an exclusivity clause for this port.

- (291) As regards the non-modern retail channel, wholesalers did not show a particular concern with the Transaction. One wholesaler explained that although in the short term the Transaction could have an impact, in the medium term both retailers and other competitors would react.<sup>216</sup> Moreover, the Commission confirmed that competitors supplying the modern retail channel are also making offers to wholesalers.<sup>217</sup>
- (292) The Commission thus concludes, on the basis of its investigation, that customers in the Netherlands have a variety of banana suppliers to choose from. It is unlikely that these suppliers would face any potential restriction. Moreover, retailers seem to be taking advantage of the competition between these suppliers already and are multi-sourcing (and even self-sourcing) to ensure they obtain best offers.
- (293) As concerns banana ripening services, there is no overlap between the Notifying Parties. Chiquita owns less than [10-20]% of the ripening capacity in the Netherlands. Besides Chiquita there are plenty of other companies selling ripening services.

**Table 20: Capacity for ripening services in the Netherlands in LCEs per week**

Competitors	capacity
Anaco Greeve	[...]
Bakker	[...]
Banafood	[...]
Borgers	[...]
Chiquita	[...]
De Groot Group	[...]
Kooji	[...]
United Fresh Services	[...]
Van der Lem	[...]
Others	[...]
Total	[...]

*Source: Estimates of the Notifying Parties.*

<sup>214</sup> Responses to questions 18 and 55 of Questionnaire Q1 – Retailers.

<sup>215</sup> Responses to question 20 of Questionnaire Q1 – Retailers.

<sup>216</sup> Minutes of conference calls with a wholesaler dated 3 June 2014.

<sup>217</sup> Responses to question 20 of Questionnaire Q1 – Retailers and results of the market reconstruction.

(294) This was also confirmed by respondents during the Commission's investigation.<sup>218</sup> One wholesaler explained that "Fyffes is not active in the ripening of bananas. All important ripeners are privately owned companies [...]. Chiquita is involved in ripening on a very small scale".<sup>219</sup>

(295) In conclusion, the Commission considers, on the basis of the above and of the information available to it, that the Transaction does not raise serious doubts (i) as regards the market for the import and supply of bananas to retailers and wholesalers (and its possible segmentations) and (ii) as regards the market for banana ripening services, in the Netherlands.

#### **4.1.4.9. Sweden**

##### The Notifying Parties' arguments

(296) The Notifying Parties submit that the Transaction will not significantly impede effective competition in the markets for the import and supply of bananas and for banana ripening services in Sweden.

(297) First, the Notifying Parties state that in Sweden the retail sector is highly concentrated, with ICA, Coop Sweden (belonging to a buying cooperative – Coop Trading) and Axfood controlling 86% of it.

(298) Second, the Notifying Parties note that they have strong competitors in Sweden, in particular Dole but also smaller ones such as Ewerman, which purchases bananas directly from the growers.

(299) Third, the Notifying Parties argue that there are no access issues in relation to Sweden in what concerns shipping. [...]. Other companies can also access Sweden by feeder vessels from Germany.

(300) Finally the Notifying Parties argue that there is no overlap with respect to banana ripening facilities in Sweden, since only Chiquita has ripening facilities there. Furthermore according to the Notifying Parties the overcapacity in ripening in Sweden amounts to 31-46%.

##### Commission's assessment

(301) The total size of the market for the supply of bananas in Sweden is estimated at about 7.8 million LCEs in 2013. The modern retail channel represents 85% of these sales. Fairtrade/organic bananas represent already 25% of the total bananas sold in Sweden. There are almost no private label sales of bananas in Sweden.

(302) The Notifying Parties have a combined market share in Sweden of [50-60]% for all types of bananas, with an overlap of [10-20]%. Their combined share is much lower in the potential segment for Fairtrade/organic bananas and it amounts to [0-5]%

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<sup>218</sup> Minutes of conference calls with a wholesaler dated 12 June 2014 and a competitor dated 7 July 2014.

<sup>219</sup> Minutes of conference call with a wholesaler dated 3 June 2014.

**Table 21: Market shares of Notifying Parties in Sweden, 2011-2013, in volume**

		<b>Fyffes</b>	<b>Chiquita</b>	<b>Combined</b>
<b>2011</b>	All types of bananas	[10-20]%	[30-40]%	[50-60]%
	<i>Conventional</i>	[20-30]%	[40-50]%	[60-70]%
	<i>Fairtrade / organic</i>	[0-5]%	[0-5]%	[5-10]%
<b>2012</b>	All types of bananas	[10-20]%	[40-50]%	[60-70]%
	<i>Conventional</i>	[20-30]%	[50-60]%	[70-80]%
	<i>Fairtrade / organic</i>	[0-5]%	[0-5]%	[0-5]%
<b>2013</b>	All types of bananas	[10-20]%	[30-40]%	[50-60]%
	<i>Conventional</i>	[20-30]%	[40-50]%	[60-70]%
	<i>Fairtrade / organic</i>	[0-5]%	[0-5]%	[0-5]%

Source: Estimates of the Notifying Parties.

- (303) The market share of Fyffes has been relatively stable over the past five years (in 2009, [10-20]%; in 2010, [20-30]%), while Chiquita's share of the total bananas market in Sweden has been fluctuating between [30-40]% and [40-50]% since 2009. Chiquita for instance lost volumes in 2010, regained it in 2012, and lost again in 2013.
- (304) The Commission confirmed, on the basis of the replies to its investigation, the presence of competitors in Sweden, as estimated by the Notifying Parties below, albeit Dole appears to have a higher market share, while AFC's share is lower. Noboa does not appear to be active in Sweden but instead T-Port has some sales there.<sup>220</sup>

**Table 22: Market share of main competitors in Sweden, 2011-2013, in volume**

Competitors	<b>2013</b>	<b>2012</b>	<b>2011</b>
<b>Fyffes</b>	[10-20]%	[10-20]%	[10-20]%
<b>Chiquita</b>	[30-40]%	[40-50]%	[30-40]%
Dole	15-25%	NA	15-25%
Total Produce	5-10%	NA	15-25%
AFC	5-10%	NA	0-5%
Noboa	5-10%	NA	0-5%

Source: Estimates of the Notifying Parties.

- (305) Neither retail nor wholesale customers expressed concerns as to the impact of the Transaction on the market in Sweden. In particular a retailer stated that it would still have enough alternative suppliers.<sup>221</sup> In the past it has switched banana suppliers and also used smaller players such as AFC.<sup>222</sup> This implies that despite the high combined market share of the Notifying Parties, the presence of alternative suppliers – both already active in Sweden and those which could enter the Swedish market – exercises an effective competitive constraint.
- (306) These alternative suppliers will continue to exercise a competitive constraint provided their access to shipping services is not restricted. In particular due to the accrued

<sup>220</sup> Replies to the European Commission request for data – Competitors dated 5 August 2014.

<sup>221</sup> Minutes of a conference call with a retailer dated 15 September 2014.

<sup>222</sup> Minutes of a conference call with a retailer dated 15 September 2014.



influence of the Merged Entity vis-à-vis shipping companies, competitors might be subject to a cost disadvantage. This is because (i) the Merged Entity could then possibly be in a position to obtain exclusivity for an existing shipping line to Sweden and (ii) alternative providers of shipping services might be less willing to establish additional shipping lines in view of the limited banana volumes of the competitors. As a result sources of supply in Sweden could be substantially reduced.

(307) This is also valid for Fairtrade and organic bananas, despite the Notifying Parties have minor sales in this segment. In fact, since banana importers contract with shipping companies the transport of volumes of bananas in a liner service, independently of them being non-conventional or conventional bananas, the market influence of a banana importer vis-à-vis shipping companies depends on the total amount of bananas transported.

(308) As regards banana ripening services, one of the competitors noted that it is difficult to find ripening facilities in Sweden and since it supplies only green bananas this could be a potential barrier to enter Swedish market.<sup>223</sup> In fact there are only two truly independent ripeners in Sweden – Ewerman and Lundbladh, while the significant proportion of the banana ripening capacity is controlled by the global banana companies. As regards the incentives of Total Produce to act independently from Fyffes, see section 4.1.4.4 above.

**Table 23: Capacity for ripening services in Sweden in LCEs per week**

Competitors	Capacity
Chiquita	[...]
Total Produce	[...]
Ewerman	[...]
Lundbladh	[...]
Dole	[...]
<b>Total</b>	[...]

*Source: Estimates of the Notifying Parties.*

(309) However it appears that increasing banana ripening capacity does not entail a large investment or require a long time.<sup>224</sup> Furthermore the capacity in the Chiquita ripening facility can be used by ICA Sweden [...] to ripen bananas supplied by whoever ICA Sweden chooses.<sup>225</sup> Already in the past bananas supplied by Chiquita's competitors were ripened in its Swedish facility.<sup>226</sup> As a result it can be concluded that a potential entrant into the Swedish market could use the facilities of the independent ripeners or, if it wins a contract with ICA Sweden (which amounts for 50% of Swedish retail sales) its bananas will be ripened in the Chiquita facility [...].

(310) In conclusion, the Commission considers that it does not need to determine whether the Transaction raises serious doubts as regards the market for the import and supply of bananas to retailers and wholesalers (and its possible segmentations) in Sweden, due to the potential risk that the Merged Entity, as a result of its the accrued market

<sup>223</sup> Minutes of a conference call with a competitor dated 7 July 2014.

<sup>224</sup> Minutes of a conference call with a customer dated 15 September 2014.

<sup>225</sup> Minutes of a conference call with a customer dated 15 September 2014.

<sup>226</sup> Minutes of a conference call with a customer dated 15 September 2014.

influence of the Merged Entity vis-à-vis shipping companies, given that the Final Commitments entered into by the Notifying Parties would eliminate any potential serious doubts that could stem therefrom. The Transaction does not raise serious doubts as regards the market for banana ripening services in Sweden.

#### **4.1.4.10. The UK**

##### The Notifying Parties' arguments

- (311) The Notifying Parties submit that the Transaction will not significantly impede effective competition in the markets for the import and supply of bananas and for ripening services in the UK.
- (312) First, the Notifying Parties argue that the UK is characterized by a large number of competitors, retailers' buying power and direct sourcing, and absence of brand preference. Tesco, Asda, Sainsbury's and Morrisons account for over 75% of retail sales. Tesco, the largest retailer in the UK, started direct sourcing from growers in 2009. Morrisons and Asda also started direct sourcing. Wholesalers in the UK are actively direct sourcing. The ability to direct source is reinforced by the absence of brand preference.
- (313) Second, the Notifying Parties argue that there is a wide range of credible suppliers in the UK, including global corporations such as Compagnie Fruitière, Noboa, Dole and Del Monte, as well as players such as the Fresca, Winfresh, S.H. Pratt, and AgroFair and new local entrants such as Banabay.
- (314) Third, Fairtrade/organic products are particularly popular in the UK and Chiquita does not offer Fairtrade bananas.
- (315) Fourth, the Notifying Parties argue that the UK market is also characterised by price wars at the retail level, which have a significant impact on UK retailers' procurement strategies, with the result that there is an intense focus on price when purchasing bananas at the wholesale level.
- (316) As for banana ripening services, there is an overlap in the banana ripening facilities. However, the Notifying Parties state there is overcapacity for ripening in the UK. Moreover, Chiquita has decided to close its facility in Dewsbury due to Asda moving its volume. The Notifying Parties estimate their combined share of the contract ripening services market at about [10-20]%. They also claim that ten other companies can offer ripening services in the UK.

##### Commission's assessment

- (317) The total size of the UK market for bananas is estimated at about 48 million LCEs in 2013. The modern retail channel represents 87% of these sales. The Notifying Parties estimate that about 13 million LCEs sold in the UK in 2013 were Fairtrade and/or organic bananas (27% of the total), growing from 10 million LCEs in 2011. Amongst conventional bananas, the Notifying Parties estimate that all bananas sold were branded.<sup>227</sup>

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<sup>227</sup> The Notifying Parties consider for instance the bananas sold by Tesco as "grower branded".

(318) In 2013, the Notifying Parties had a combined market share in the UK of [40-50]% for all types of bananas. Chiquita is currently not active in Fairtrade/organic bananas in the UK, an area in which Fyffes is strong ([50-60]% for all types of bananas). The market share of the Notifying Parties has been overall stable over the last five years (in 2009, Fyffes: [30-40]%, Chiquita: [0-5]%)

**Table 24: Market share of Notifying Parties in the UK, 2011-2013, in volume**

		<b>Fyffes</b>	<b>Chiquita</b>	<b>Combined</b>
<b>2011</b>	All types of bananas	[30-40]%	[5-10]%	[40-50]%
	<i>Conventional</i>	[30-40]%	[5-10]%	[40-50]%
	<i>Fairtrade / organic</i>	[50-60]%	[0-5]%	[50-60]%
<b>2012</b>	All types of bananas	[40-50]%	[5-10]%	[40-50]%
	<i>Conventional</i>	[30-40]%	[5-10]%	[40-50]%
	<i>Fairtrade / organic</i>	[50-60]%	[0-5]%	[50-60]%
<b>2013</b>	All types of bananas	[40-50]%	[5-10]%	[40-50]%
	<i>Conventional</i>	[30-40]%	[5-10]%	[40-50]%
	<i>Fairtrade / organic</i>	[50-60]%	[0-5]%	[50-60]%

Source: Estimates of the Notifying Parties.

(319) The Commission, on the basis of the replies to its investigation, confirmed the perception that retailers have a strong buyer power and that the annual tenders are highly competitive. For instance, a competitor stated that "The UK market is characterised by the pressure exercised by big retailers. It is a very competitive market".<sup>228</sup> A retailer stated that for bananas the UK market "is probably the most aggressive in terms of prices in Europe".<sup>229</sup> Retailers in the UK tend to multi-source. Hard-discounters such as Aldi are also emerging.

(320) As for direct sourcing, Tesco, with its significant scale and volumes, was widely quoted in the Commission's investigation as the key retailer active in direct sourcing in the EU. Tesco is the largest importer of bananas in the UK after Fyffes. "Until 2010, Tesco used to source all its bananas from integrated multinational companies including Chiquita, Fyffes and Fresh Del Monte."<sup>230</sup> Still, Tesco buys Fairtrade/organic bananas from Fyffes. Also in the UK, Morrisons, who used to purchase 100% of its needs from Fyffes, now sources 90% of its needs for bananas directly from growers, and also co-owns a ripening facility.<sup>231</sup> Therefore, in the UK "large bananas companies are becoming more and more service providers".<sup>232</sup> However, not all UK retailers have indicated interest in direct-sourcing, due to their small scale and the perceived risks.<sup>233</sup>

(321) As for brands, the limited role of bananas in the modern retail channel was confirmed.<sup>234</sup> Brands however signal quality. The Fyffes brand is recognized by final

<sup>228</sup> Minutes of a conference call with a competitor dated 15 July 2014.

<sup>229</sup> Minutes of a conference call with a retailer dated 20 May 2014.

<sup>230</sup> Minutes of a conference call with a retailer dated 23 May 2014.

<sup>231</sup> Minutes of a conference call with a retailer dated 20 May 2014.

<sup>232</sup> Minutes of a conference call with a retailer dated 20 May 2014.

<sup>233</sup> Responses to question 46 of Questionnaire Q1 – Retailers.

<sup>234</sup> Minutes of conference calls with competitors dated 23 June and 15 July 2014.

consumers (unlike the Chiquita brand) but does not appear to command a premium. Brands are perceived as more relevant in the wholesale channel.

- (322) The popularity of Fairtrade bananas in the UK, where some retailers sell 100% Fairtrade bananas, was confirmed. By contrast organic bananas do not account for significant volumes in the UK.
- (323) The Commission's investigation also confirmed the presence of several competitors active in the UK.<sup>235</sup> Tesco is not a competitor per se as it does not supply bananas to retailers and wholesalers, but is the second importer of bananas to the UK. The market reconstruction for 2013 gave results relatively close to the Notifying Parties' estimates of competitors' market shares below. The volumes of Compagnie Fruitière appeared underestimated. Moreover, Del Monte also had some sales in the UK in 2013.

**Table 25: Market share of main competitors in the UK, 2011-2013, in volume**

Competitors	2013	2012	2011
Fyffes	[40-50]%	[40-50]%	[30-40]%
Chiquita	[5-10]%	[5-10]%	[5-10]%
Tesco	20-25%	25-30%	25-30%
Dole/Compagnie Fruitière	5-10%	2-5%	2-5%
Global Pacific	5-15%	5-10%	5-10%
Fresca	5-10%	5-10%	5-10%
International Procurement	5-10%	5-10%	5-10%
Winfresh	5-10%	5-10%	5-10%
SH Pratt	0-5%	0-5%	0-5%
Del Monte	NA	NA	0-5%

*Source: Estimates of the Notifying Parties.*

- (324) Overall, most retailers in the UK that responded to the Commission's questionnaire stated that there are enough alternative suppliers available, including for Fairtrade/organic bananas.<sup>236</sup> Moreover, there are no potential restrictions on access to shipping services in the UK. Given the large volumes of bananas that arrive to the UK there are several shipping companies landing in Portsmouth and it is unlikely that any shipping company would be interested in entering into an agreement with an exclusivity clause in this port. No impact on price is expected to result from the Transaction by most retailers.<sup>237</sup> A competitor mentioned the Transaction might lead to opportunities, if retailers might be interested in looking for alternatives.<sup>238</sup>
- (325) As for the non-modern retail channels, the Commission's investigation confirmed that competitors are fairly the same as in modern retail, with several independent ripeners.

<sup>235</sup> Replies to the European Commission request for data – Competitors dated 5 August 2014.

<sup>236</sup> Responses to questions 18 and 56 of Questionnaire Q1 – Retailers. See also Minutes of a conference call with a retailer dated 20 May 2014.

<sup>237</sup> Responses to question 55 of Questionnaire Q1 – Retailers.

<sup>238</sup> Minutes of a conference call with a competitor dated 15 July 2014.



Some degree of cross-border supply was mentioned, for instance "Some Dutch suppliers sell bananas on the UK wholesale market when they have overflows".<sup>239</sup>

(326) The Commission thus concludes, on the basis of its investigation, that customers in the UK have a variety of banana suppliers to choose from and tend to self-source bananas directly in the tropics. Moreover, it is unlikely that these suppliers would face any potential restriction to access the UK market.

(327) As for banana ripening, Chiquita and Fyffes together have more than [40-50]% of the ripening capacity in the UK. Moreover, the ripening facility of Fyffes in Scotland was mentioned as being attractive to serve the area.<sup>240</sup> However several independent players are active in ripening. A competitor was for instance recently building a new banana ripening centre.<sup>241</sup> Besides, a trend towards retailers doing the banana ripening themselves was mentioned in the Commission's investigation. "For instance, Morrisons has bought a ripening facility in Boston (UK) from Del Monte and has built a capacity of 110 000 LCEs per week".<sup>242</sup>

**Table 26: Capacity for ripening services in the UK, in LCEs per week**

<b>Competitors</b>	<b>Capacity</b>
Compagnie Fruitière	[...]
Del Monte	[...]
Chiquita	[...]
Fyffes	[...]
Pratt	[...]
Morrisons	[...]
Winfresh	[...]
Mack	[...]
Others	[...]
<b>Total</b>	[...]

*Source: Estimates of the Notifying Parties.*

(328) While in fact overall retailers which responded to the Commission's questionnaire were not willing to integrate into banana ripening due to the lack of expertise or resources, most indicated that they were sufficient alternative banana ripeners in the UK.<sup>243</sup> Most competitors similarly stated that there was no entry barrier related with access to ripening facilities.<sup>244</sup>

(329) In conclusion, the Commission considers, on the basis of the above and of the information available to it, that the Transaction does not raise serious doubts (i) as regards the market for the import and supply of bananas to retailers and wholesalers

<sup>239</sup> Minutes of a conference call with a competitor dated 15 July 2014.

<sup>240</sup> Minutes of a conference call with a retailer dated 20 May 2014.

<sup>241</sup> Minutes of a conference call with a competitor dated 15 July 2014.

<sup>242</sup> Minutes of a conference call with a competitor dated 15 July 2014.

<sup>243</sup> Responses to question 51 of Questionnaire Q1 – Retailers.

<sup>244</sup> Responses to question 42 of Questionnaire Q2 – Global Competitors and question 48 of Questionnaire Q3 – Competitors.

(and its possible segmentations) and (ii) as regards the market for banana ripening services, in the UK.

#### **4.1.4.11. Other countries**

(330) The Transaction also gives rise to affected markets in the import and supply of bananas to retailers and wholesalers in the Czech Republic, Poland, Italy, Latvia and Lithuania. There is no overlap between the Notifying Parties' activities in ripening bananas in those countries.

##### The Notifying Parties' arguments

(331) The Notifying Parties note that in the Czech Republic the increment resulting from the Transaction is marginal and amounts to [0-5]%. Fyffes has only [...]. Chiquita sells [...]. Furthermore the Notifying Parties claim that they face competition from global corporation such as Compagnie Fruitière and Noboa and also from smaller domestic players such as Cerozfrucht and Fruit Trading. Neither of the Notifying Parties has ripening assets in the Czech Republic.

(332) With respect to Poland, the Notifying Parties claim that a number of competitors exercise competitive constraint on their activities, including: Dole, Del Monte, Noboa, AFC, Fruta del Pacifico (importer of bananas from Ecuador based in Barcelona) and Citronex. In addition large Polish wholesalers, such as Targban and Quiza own ripening facilities and have good relationships with retail and non-retail customers. There is no overlap as to the ownership of ripening facilities in Poland, as only Chiquita owns ripening rooms there.

(333) As regards Italy, the Notifying Parties argue that the increment resulting from the Transaction is marginal and amounts only to [0-5]%. There is no overlap as to the ownership of ripening facilities, as only Chiquita operates a ripening facility.

(334) As regards Latvia and Lithuania, the Notifying Parties argue that the increment resulting from the Transaction is small. In fact they point out that as of 2014 there is no overlap in Latvia, [...]. The competitors mentioned by the Notifying Parties in the Baltic countries include Martinique Fruit, Dole, Del Monte, AFC and Citronex. Neither of the Notifying Parties owns ripening facilities in any of the Baltic countries. The Notifying Parties also submit there is cross-border ripening between Latvia and Lithuania.

##### Commission's assessment

(335) In the Czech Republic, the total size of the market for bananas is estimated at 6 million LCEs in 2013. Fairtrade/organic bananas are not sold according to the Notifying Parties. The Notifying Parties had in 2013 a combined market share of [20-30]% for all channels (Fyffes: [0-5]%, Chiquita: [10-20]%). Their combined market share has been fairly stable over the last five years (in 2009, Fyffes: [0-5]%, Chiquita: [20-30]%). According to the Notifying Parties' estimate, other suppliers include notably Bonita (5-15%) and Compagnie Fruitière (40-50%). In the course of the Commission's investigation, competitors from other countries have indicated that

there were some cross-border sales to the Czech Republic.<sup>245</sup> Tesco is direct sourcing bananas jointly for its UK and Central Europe activities, including the Czech Republic. Neither of the Notifying Parties has ripening facilities in the Czech Republic. No concerns were raised regarding any impact of the Transaction in the Czech Republic. Therefore, the Commission considers, on the basis of the above and of the information available to it, that the Transaction does not raise serious concerns in the Czech Republic both in the markets for the import and supply of bananas to retailers and wholesalers and for banana ripening services.

(336) In Poland, the total size of the market is estimated at around 13 million LCEs in 2013. The Notifying Parties' combined market share, estimated at around [30-40]% for all channels (Chiquita: [20-30]%, Fyffes: [10-20]%), has remained stable over the last five years. Other important competitors include Citronex, Targban and Quiza, while Dole and Del Monte are present through distributors. One of the local importers sources bananas directly in the Central and South America. No concerns were raised as to the ability of customers to switch suppliers and effectively constrain the Notifying Parties. Furthermore a customer stated that "the transaction will not have impact on the prices or availability of bananas in Poland".<sup>246</sup> The Commission considers, on the basis of the replies received during the investigation that Polish customers are price sensitive, and the only recognised brand in Poland is Chiquita. It was also indicated that in addition to regular suppliers, Polish market is the destination for spot sales of excess volumes from the Western European markets.<sup>247</sup> There is sufficient independent banana ripening capacity in Poland, and neither shipping nor inland transportation is perceived as a barrier to entry or expansion.<sup>248</sup> Therefore, the Commission considers, on the basis of the above and of the information available to it, that the Transaction does not raise serious concerns in Poland both in the markets for the import and supply of bananas to retailers and wholesalers and for ripening services.

(337) In Italy, the total size of the market for bananas is estimated at around 33 million LCEs in 2013. The Notifying Parties had a combined market share of [20-30]% for all channels in 2013 (Chiquita: [20-30]%, Fyffes: [0-5]%), down from a level of [20-30]% in the preceding four years. According to the Notifying Parties' estimates, other brands include Dole (10-20%), Del Monte (5-15%) and Bonita (5-15%), while around 35-40% of bananas are sold unbranded. The Commission identified a number of other significant competitors, such as Spreafico (supplied by Uniban, a Colombian grower), GF Group (Orsero), Compagnie Fruitière (importing mainly African bananas) and smaller operators such as Alimentari Ortofrutticoli. Some of these competitors are vertically integrated and source bananas directly from the tropics. Several direct containerised and reefer vessel shipping lines from Central and South America serve various Italian ports, which in total unload around 11% of total banana imports in the EU. [...].<sup>249</sup> The Commission considers, on the basis of the replies received during the investigation and the other available evidence that access to banana growers, shipping and banana ripening facilities does not represent a barrier to

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<sup>245</sup> Minutes of conference calls with a retailer dated 10 June 2014 and with a competitor dated 12 June 2014.

<sup>246</sup> Minutes of conference call with a retailer dated 10 June 2014.

<sup>247</sup> Responses to question 29 to Questionnaire Q3 – Competitors.

<sup>248</sup> Responses to Questionnaire Q3 – Competitors and to Questionnaire Q1 - Retailers.

<sup>249</sup> See internal documents of Fyffes [...].

entry or expansion in Italy.<sup>250</sup> The Commission considers that, on the basis of the above and of the information available to it, and in particular given Fyffes' very limited market presence in Italy, the availability of alternative suppliers and absence of entry barriers, the Transaction does not raise serious concerns in Italy both in the markets for the import and supply of bananas to retailers and wholesalers and in the for banana ripening services

(338) In Latvia, the total size of the market for bananas is estimated at around 0.8 million LCEs in 2013, with the modern retail channel representing about half of the sales. The Notifying Parties had in 2013 a combined market share of [40-50]% for all channels (Fyffes: [5-10]%, Chiquita: [30-40]%). Their combined market share has been lower over the last five years (for instance in 2009, Fyffes: [0-5]%, Chiquita: [5-10]%), and fluctuating (for instance in 2011, Fyffes: [0-5]%, Chiquita: [0-5]%). In Lithuania, the total size of the market for bananas is estimated at around 1 million LCEs in 2013, with the modern retail channel representing less than half of the sales. The Notifying Parties had in 2013 a combined market share of [20-30]% for all channels (Fyffes: [5-10]%, Chiquita: [10-20]%). Their combined market share has been higher over the last five years (in 2009, Fyffes: [10-20]%, Chiquita: [50-60]%), and fluctuating. Fairtrade/organic bananas are not sold in Latvia and Lithuania according to the Notifying Parties' estimates.<sup>251</sup> Finally, regarding Estonia, it is noted that the Notifying Parties' market shares have also been fluctuating widely, from a combined market share of [50-60]% in 2009 (Fyffes: [0-5]%, Chiquita: [50-60]%) to [0-5]% in 2013 (Fyffes: [0-5]%, Chiquita: [0-5]%). The total size of the market for bananas in Estonia is estimated at around 0.7 million LCEs in 2013.

(339) Overall, if the three Baltic countries are analysed jointly,<sup>252</sup> the Notifying Parties' combined market share has been fluctuating between [20-30]% (in 2013) and [40-50]% (in 2009). During the Commission's investigation, a wholesaler explained that large banana companies are not usually directly present in the Baltic countries. "There are several big competitors in the Baltics. [...] In Estonia: Karskrona and Bambona. [...] From Latvia are Banalat and Litbana. In Lithuania, Augma [...] Citma, Baltic Fresh fruits and Litbana."<sup>253</sup> Those players mainly purchase bananas from large importing companies on the spot market in ports in Northern Europe, where there are many potential suppliers.<sup>254</sup> Both Banalat and Augma also have programs to source bananas directly from growers in Ecuador since 2008-2010. As for transport, bananas are transported by trucks when bought on the spot market for instance in Germany (2-3 days), or by feeder to Klaipeda, Lithuania.<sup>255</sup> Cross-border trade flows are relatively important in Eastern Europe. For instance, "Polish competitors also provide bananas to Lithuanian supermarkets".<sup>256</sup>

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<sup>250</sup> Responses to Questionnaire Q3 – Competitors.

<sup>251</sup> A wholesaler estimated sales of organic bananas at "about 3% of [it]s sales" but that demand is growing; another stated that "Organic bananas constitute a very small niche, for a very limited number of customers. Fairtrade bananas are inexistent". Minutes of conference calls with competitors dated 18 and 20 June 2014.

<sup>252</sup> Estonia is however seen as having somewhat different characteristics as Latvia and Lithuania. Minutes of conference calls with competitors dated 18 and 20 June 2014.

<sup>253</sup> Minutes of a conference call with a competitor dated 20 June 2014.

<sup>254</sup> Minutes of conference calls with competitors dated 18 and 20 June 2014.

<sup>255</sup> Minutes of a conference call with a competitor dated 20 June 2014.

<sup>256</sup> Minutes of a conference call with a competitor dated 20 June 2014.

- (340) A wholesaler has expressed concerns about shipping to the Baltic countries, concerning the bargaining power of the Merged Entity and the risk that the shipping costs for smaller competitors could be raised.<sup>257</sup> In particular due to the accrued market influence of the Merged Entity vis-à-vis shipping companies, competitors might be subject to a cost disadvantage. This is because (i) the Merged Entity could then possibly be in a position to obtain exclusivity for existing shipping line to the Baltics and (ii) alternative providers of shipping services might be less willing to establish additional shipping lines in view of the limited banana volumes of the competitors. As a result sources of supply in Estonia, Latvia and Lithuania could be substantially reduced.
- (341) This is also valid for Fairtrade and organic bananas. In fact, since banana importers contract with shipping companies the transport of volumes of bananas in a liner service, independently of them being non-conventional or conventional bananas, the market influence of a banana importer vis-à-vis shipping companies depends on the total amount of bananas transported.
- (342) In conclusion, the Commission considers that it does not need to determine whether the Transaction raises serious doubts as regards the market for the import and supply of bananas to retailers and wholesalers (and its possible segmentations) in Latvia, Lithuania and Estonia, as a result of the accrued market influence of the Merged Entity vis-à-vis shipping companies, given that the Final Commitments entered into by the Notifying Parties would eliminate any potential serious doubts that could stem therefrom.

#### **4.1.4.12. Conclusion**

- (343) The arguments of the Notifying Parties concerning contestability of the subsequent levels of the banana value chain were largely confirmed in the investigation. As a result, despite high combined market shares in particular Member States the position of the Notifying Parties should be constrained by the possible entry and expansion of their competitors.
- (344) However, during the investigation specific concerns regarding the impact of the Transaction were raised by retail and wholesale customers, most prominently in Finland and Ireland. These concerns are related to the increase in the negotiating position of the Merged Entity vis-à-vis shipping companies, resulting not only from its larger scale in each country but also from its larger scale worldwide. This would possibly allow the Merged Entity to foreclose access to shipping services or make them more costly for its rivals. A natural experiment is Ireland where Fyffes, given the large volumes that it is landing in this country, was able to negotiate an exclusivity clause with Maersk, which forces rivals to land bananas in Belgium, the Netherlands and the UK, with the consequent higher costs associated.
- (345) More broadly, and regarding Member States in Northern Europe which have ports located at the end of more peripheral routes, potential exclusivity clauses for existing shipping lines could create serious risks of restricting access to shipping services for the Notifying Parties' competitors. This is because alternative providers of shipping services might be less willing to establish shipping lines to these destinations in view of the limited remaining banana volumes involved.

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<sup>257</sup> Minutes of a conference call with a competitor dated 18 June 2014.

- (346) Due to the nature of the banana supply chain some ports in Northern Europe serve as intermediary steps, for instance where bananas are unloaded from big containers and put onto feeder vessels to continue their journey towards Member States with ports located at more peripheral routes. These intermediary ports are located in particular in Belgium, Germany, Netherlands and the UK. Therefore while no explicit concerns were voiced as regards access to the shipping services in these Member States it is important that competitors in Estonia, Finland, Ireland, Latvia, Lithuania and Sweden are not foreclosed from ports located in Belgium, Germany, Netherlands and the UK, as these constitutes gates to the ports located in the aforementioned Member States.
- (347) The Commission considers, on the basis of the above and of the information available to it, that the Transaction thus raises serious doubts as to its compatibility with the internal market in relation to non-coordinated effects as regards the markets for the import and supply of bananas to retailers and wholesalers (and their possible segmentations) in Finland and Ireland. These serious doubts result from the increased risk that the Merged Entity, given its accrued market influence, could possibly make it more costly for rivals to ship bananas to the abovementioned Member States. As concerns Estonia, Latvia, Lithuania and Sweden the Commission considers that it does not need to determine whether the Transaction raises serious doubts as regards the markets for the import and supply of bananas to retailers and wholesalers (and its possible segmentations) as a result of the accrued market influence of the Merged Entity vis-à-vis shipping companies, given that the Final Commitments entered into by the Notifying Parties would eliminate any potential serious doubts that could stem therefrom.
- (348) The Commission also concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to non-coordinated effects with respect to (i) import and supply of bananas to retailers and wholesalers (and their possible segmentations) in: Belgium, Czech Republic, Denmark, Germany, Italy, the Netherlands, Poland and the UK and (ii) banana ripening services in none of the assessed Member States.

#### **4.1.5. ASSESSMENT OF POTENTIAL COORDINATED EFFECTS**

##### The Notifying Parties' arguments

- (349) The Notifying Parties claim that the Transaction does not give rise to coordinated effects since the market for the supply of bananas does not fulfil the conditions for coordination to occur.
- (350) First, the Notifying Parties claim that market for the supply of bananas is characterised by significant complexity and a lack of transparency as well as fierce competition.
- (351) The Notifying Parties support this by claiming that banana suppliers have heterogeneous business models, with differences in, for example, the level and type of vertical integration (notably into growing, shipping, and ripening), branding strategies, and positions in non-conventional bananas (organic, Fairtrade).
- (352) The Notifying Parties also argue that banana suppliers face sophisticated customers with significant buyer power, which are able to switch significant volumes to alternative suppliers. The Notifying Parties consider that there is fierce competition for supplies, and tenders are organised for large volumes of bananas, the success at which may have significant impact even on large suppliers.

- (353) The Notifying Parties add that the prices are agreed in bilateral negotiations with retailers. Prices may be based on different price formulas for different durations, and may encompass different level of services to the customers. This is all the more so with wholesalers, which also source bananas on a weekly basis and on spot markets.
- (354) The Notifying Parties thus consider that the market conditions for banana supplies are opaque, very dynamic and are not conducive to the creation of a mechanism to reach a common understanding between operators.
- (355) Second, the Notifying Parties claim there is also no conceivable mechanism to sanction deviations from the potential coordinated behaviour since the competitive environment is characterized by presence of a small number of large contracts (which creates the incentive for suppliers to compete to win the business) and by competition for individual customers in the context of bilateral negotiations.
- (356) Third, the Notifying Parties argue that the reaction of customers and competitors would defeat any tacit coordination. In fact, according to the Notifying Parties, the market for the supply of bananas does not offer the degree of stability needed for tacit collusion, as numerous potential new entrants or direct sourcing by customers could distort any attempt to raise prices or limit output.
- (357) Fourth, the Notifying Parties argue that the Transaction will not enhance the scope for coordination, as a large number of asymmetric competitors will continue to exist, the market would still be opaque and complex and entry or expansion by rival firms would still be easy after the Transaction.
- (358) Finally, while banana suppliers were found to have operated cartels infringing Article 101 TFEU in the period 2000-2002 in Northern Europe and in the period 2004-2005 in Southern Europe, the Notifying Parties claim that this historic behaviour is without bearing for the assessment of coordinated effects of the Transaction, as (i) the practice amounted to explicit collusion and not tacit coordination, and (ii) since decisions concerning these cartels were issued, there have been significant changes throughout the supply chain. First, the liberalisation of banana imports removed barriers to entry and expansion, and allowed for a higher number of competitors. Second, these competitors have now more flexible shipping options. Third, the practice of announcing price quotations in Northern Europe (which was the focus of the previous cartel infringements) has been abandoned, with a consequent decrease in market transparency.

#### Commission's assessment

- (359) In the Commission's view, a number of features of the market for the supply of bananas have the potential to generate a degree of transparency in the market. The fact that imported bananas are funnelled through few entry points and banana ripening facilities before they reach distribution channels may create visibility of the volumes and origin of bananas. If, in addition, the distribution channels are concentrated, it is easier to monitor the presence and the positioning of rivals.
- (360) However, according to the Commission's investigation, nowadays the market for the supply of banana seems to be less prone to coordination than before the end of the quota regime.



- (361) First, after the abolition of the quota regime in 2006, several companies entered the market and started sourcing bananas directly in the tropics. This was confirmed by retailers and competitors that responded to the Commission's questionnaires.<sup>258</sup> According to one retailer "more suppliers began to offer products, because no import quota was required anymore".<sup>259</sup>
- (362) These players generally have very different company structures and strategies. Some are small importers focussed exclusively on some countries and on niche products such as Fairtrade/organic bananas. Others are wholesalers which, besides buying from importers, started also direct sourcing bananas in the tropics. There are also growers which successfully started to sell their bananas directly in Europe. This diversity makes it difficult for banana suppliers to reach a common understanding.
- (363) Second, in 2012 Aldi stopped announcing its weekly prices which previously represented a focal point for importers in their price negotiations with retailers. The majority of retailers that responded to the Commission's questionnaire stated that the market for the supply of bananas is not transparent in terms of prices.<sup>260</sup> This results mainly from the fact that prices and volumes are set in bilateral negotiations.
- (364) Third, customers in this market are generally strong retailers or wholesalers with a degree of buyer power. They can switch large volumes of their purchases between suppliers, or even source bananas directly from growers. This has the potential to destabilize a potential coordination between banana suppliers.
- (365) Fourth, the Transaction would actually further increase the asymmetry between the market leader resulting from the Transaction and the remaining banana suppliers.

### Conclusion

- (366) In view of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to coordinated effects in the market for the import and supply of bananas to retailers and wholesalers (and its possible segmentations).

## **4.2. PINEAPPLES**

### **4.2.1. RELEVANT PRODUCT MARKET**

#### The Notifying Parties' arguments

- (367) According to the Notifying Parties pineapples are a part of a single market for the sourcing and supply of all fruit (including bananas). First, the consumption and volumes of pineapples is claimed to fluctuate depending on the availability of other fresh fruit, in particular seasonal local fruit. Second, fruit importers and wholesalers can readily switch to sourcing and supplying pineapples given the similarities of the supply chain, and availability of containerised liner transport.

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<sup>258</sup> Responses to question 52.1 of Questionnaire Q1 – Retailers and question 83.1 of Questionnaire Q3 – Competitors.

<sup>259</sup> Responses to question 52.1 of Questionnaire Q1 – Retailers.

<sup>260</sup> Responses to question 23 of Questionnaire Q1 – Retailers.

### Previous decisional practice

(368) In its past decisions, the Commission left the exact boundaries of the product market for fresh fruit, including pineapples, open.<sup>261</sup>

### Commission's assessment

(369) A majority of retailers that responded to the Commission's questionnaire indicated that a 5-10% price increase for pineapples would not lead to a change of their purchasing patterns for pineapples.<sup>262</sup> Moreover, many retailers organise separate tenders for pineapples.<sup>263</sup> Likewise, the majority of competitors that responded to the Commission's questionnaire stated that, for their customers, pineapples are not substitutable to other fresh fruit.<sup>264</sup>

(370) From a supply perspective, a clear majority of competitors that responded to the Commission's questionnaires consider that there are no specificities in sourcing pineapples compared to other fresh fruit.<sup>265</sup>

### Conclusion

(371) In the present case, the Commission considers that the exact market definition for the import and supply of pineapples can be left open, as the Transaction will not give rise to competition concerns under any potential market definition, including a separate market for pineapples only.

## **4.2.2. RELEVANT GEOGRAPHIC MARKET**

### The Notifying Parties' arguments

(372) The geographic scope of this market is, according to the Notifying Parties, at least EEA-wide. This reflects the strong cross-border dimension driven by the existence of centralised logistical hubs for imports into the EEA both in Northern and Southern Europe. Accordingly, the activities of a majority of suppliers span over a number of EU Member States. Alternatively the Notifying Parties propose that the Transaction is assessed on the basis of a Northern EU cluster and a Southern EU cluster.

### Previous decisional practice

(373) In its past decisions, the Commission left the exact boundaries of the geographic market open and considered the sourcing and supply of fresh fruits on a national, clusters of countries, and EEA-wide basis.<sup>266</sup>

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<sup>261</sup> Case COMP/M.1409 *Fyffes / Capespan* (1999), Case COMP/M.4896 *CVC Capital Partners / Katope International* (2008), Case COMP/M.5199 *De Weide Blik / Atlanta* (2008).

<sup>262</sup> Responses to question 9 of Questionnaire Q1 – Retailers.

<sup>263</sup> Responses to question 10 of Questionnaire Q1 – Retailers.

<sup>264</sup> Responses to question 12 of Questionnaire Q2 – Global Competitors and question 15 of Questionnaire Q3 – Competitors.

<sup>265</sup> Responses to question 14 of Questionnaire Q3 – Competitors and question 11 of Questionnaire Q2 – Global Competitors.

<sup>266</sup> Case COMP/M.1409 *Fyffes / Capespan* (1999), Case COMP/M.4896 *CVC Capital Partners / Katope International* (2008), Case COMP/M.5199 *De Weide Blik / Atlanta* (2008).

### Commission's assessment

(374) According to the Commission's investigation only a minority of those retailers active in several Member States negotiate pineapple prices at a level that is broader than national, and that there are price differences between different Member States or clusters/regions within the EU.<sup>267</sup> A vast majority of retailers that responded to the Commission's questionnaire saw no obstacles to purchasing pineapples from a supplier located in another Member State.<sup>268</sup>

### Conclusion

(375) In the present case, the Commission considers that the exact boundaries of the geographic market for the import and supply of pineapples can be left open, as the Transaction will not give rise to competition concerns under any potential market definition, including on a national basis.

### **4.2.3. COMPETITIVE ASSESSMENT**

#### The Notifying Parties' arguments

(376) The Notifying Parties submit pineapples compete as part of a wider market for all fresh fruit. The Notifying Parties' combined shares on a market for fresh fruit (including or excluding bananas) is below 20% irrespective of what the relevant geographic reference is, (i.e. EEA, Northern EU Cluster or national), and thus does not constitute an affected market.

(377) Even if pineapples were considered as a separate market and national markets were defined, the Notifying Parties argue that they face vigorous competition from a number of large, medium size and small players, including Del Monte (the market leader in the pineapple category), Hispa, Dole, Orsero, Banacol and Compagnie Fruitière. In addition, the Notifying Parties are also constrained by the ability of wholesalers and retailers to direct source.

(378) Moreover, the Notifying Parties argue that they are also subject to significant competitive constraints on the supply side from suppliers of other fruit which can at any time decide to import pineapples and on the demand side by final consumers switching between different fruits, in particular when local fruits are more widely available.

#### Commission's assessment

(379) There are no affected markets on the basis of a product market definition of all fruit, even when excluding on a conservative basis bananas and when limiting the geographic scope of such a market to national Member States.

(380) On a national basis, in a hypothetical market solely for pineapples affected markets, with a non-negligible increment, arise in Germany ([20-30]%, with an increment of [5-10]%), the Netherlands ([20-30]%, with an increment of [5-10]%) and Sweden ([20-30]%, with an increment of [10-20]%).

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<sup>267</sup> Responses to questions 15 and 17 of Questionnaire Q1 – Retailers.

<sup>268</sup> Responses to question 16 of Questionnaire Q1 – Retailers.

(381) Competitors of the Notifying Parties include Del Monte (EEA leader – present in Germany with a market share of 20%, in the Netherlands with 10-20% market share and in Sweden with a market share of 10%), Hispa (active mostly in the Netherlands with 10-20% market share) and Dole (with a market share of 20% in Germany, 10-20% in the Netherlands and 20% in Sweden). One retailer from the Netherlands mentioned that "Fyffes and Chiquita aren't leading brands in pineapples".<sup>269</sup>

(382) The vast majority of market participants expect no adverse impact of the Transaction on the supply of pineapples.<sup>270</sup> Retailers and competitors alike confirm that there are sufficient alternatives to Fyffes and Chiquita.<sup>271</sup> For instance, retailers from the Netherlands stated that "more suppliers are active" in pineapples and that "there are sufficient suppliers of pineapples in the market."<sup>272</sup> According to one multinational competitor "there are many players on the market which is extremely fragmented".<sup>273</sup>

### Conclusion

(383) In view of the above and of the information available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the hypothetical market for the import and supply of pineapples or any other broader market including all fresh fruits.

## **5. REMEDIES**

### **5.1. Description of the commitments**

(384) In order to render the concentration compatible with the internal market, the Notifying Parties submitted commitments under Article 6 (2) on the Merger Regulation on 12 September 2014 ("First Remedy Package") which were subsequently amended on 17 September 2014 ("Second Remedy Package"). These commitments were market tested by the Commission and following certain modifications a final set of commitments was submitted on 2 October 2014 ("Final Commitments").

(385) The First Remedy Package consisted of the followings three elements:

i. release of Maersk from the exclusivity clause in the Maersk Shipping Agreement [...] and an obligation not to enter into any similar new arrangements in relation to shipping to any ports in Northern Europe for a period of five years;

ii. [...]; and

iii. divestment of one of Chiquita's two ripening centres in Sweden to a suitable purchaser.

(386) Given the Commission further investigation, the Second Remedy Package submitted by the Notifying Parties on 17 September 2014 did not include the second and third

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<sup>269</sup> Responses to question 57 of Questionnaire Q1 – Retailers.

<sup>270</sup> Responses to question 57 of Questionnaire Q1 – Retailers, question 63 of Questionnaire Q2 – Global Competitors and question 88 of Questionnaire Q3 – Competitors.

<sup>271</sup> Responses to question 54 of Questionnaire Q1 – Retailers and question 88 of Questionnaire Q3 – Competitors.

<sup>272</sup> Responses to question 54 of Questionnaire Q1 – Retailers.

<sup>273</sup> Minutes of a conference call with a competitor dated 30 July 2014.

elements of the First Remedy Package. Instead, it consisted of (i) Fyffes releasing Maersk from an exclusivity clause contained in the Maersk Shipping Agreement, and (ii) both Notifying Parties committing not to enter into any arrangements which include a shipping exclusivity obligation, that is an obligation which directly or indirectly prevents a shipping company from loading, transporting and/or discharging bananas other than bananas from the Notifying Parties on any shipping route between any ports in (a) Central and South America and/or Africa and (b) Northern Europe (i.e. Belgium, Denmark, Estonia, Finland, Germany, Ireland, Latvia, Lithuania, the Netherlands, Sweden and the UK) for a period of five years.

(387) According to the Final Commitments submitted on 2 October 2014, the Notifying Parties commit:

- i. not to enter or seek to enter into any agreement which contains a Shipping Exclusivity Obligation from the closing of the notified Transaction and for a period of ten years thereafter;
- ii. to refrain from incentivising any shipping company in any other (non-contractual) manner to refuse to provide shipping services for bananas of third party importers on relevant routes from the closing of the notified Transaction and for a period of ten years thereafter;
- iii. to release Maersk from the Maersk Shipping Clause immediately following closing of the notified Transaction; and
- iv. to release any shipping company from any Shipping Exclusivity Obligations or otherwise not apply any Shipping Exclusivity Obligations (if any) which either Notifying Party may have entered into between the effective date and the closing of the notified Transaction immediately following closing of the notified Transaction.

(388) According to the Final Commitments of 2 October 2014, a Shipping Exclusivity Obligation is defined as any contractual provision (whether oral or in writing) (i) which directly or indirectly prevents a shipping company from offering shipping services for bananas other than bananas from the Notifying Parties on any shipping route between any ports in (a) Central and South America and/or Africa and (b) Northern Europe (“Relevant Routes”); (ii) which directly or indirectly restricts a shipping company from adding capacity to a liner shipping service operating on a Relevant Route, e.g. by running larger or additional vessels or by operating an additional liner shipping service on any Relevant Routes; or (iii) whose purpose is directly or indirectly to incentivise a shipping company to refuse to provide shipping services for bananas from third parties and/or to add capacity on any Relevant Routes.

## **5.2. The Notifying Parties' view on the Commitments**

(389) The Notifying Parties consider that the Final Commitments offered more than dispose of the purported concerns regarding the exclusivity provision in the Maersk Shipping Agreement. As a result of the implementation of these commitments effective access to shipping services will, in the opinion of the Notifying Parties, be preserved. [...].

### **5.3. The Commission's assessment of the Commitments**

#### **5.3.1. FRAMEWORK FOR THE COMMISSION'S ASSESSMENT OF THE COMMITMENTS**

(390) Where a concentration raises serious doubts as to its compatibility with the internal market, the Notifying Parties may undertake to modify the concentration so as to remove the grounds for the serious doubts identified by the Commission with a view to having the Transaction approved in phase I of the merger review procedure. In this respect, the Commission has the power to accept commitments provided that they are deemed capable of rendering the concentration compatible with the internal market.

(391) As set out in the Commission Notice on Remedies,<sup>274</sup> the commitments have to eliminate the competition concerns entirely and have to be comprehensive and effective from all points of view and must be capable of being implemented effectively within a short period of time as the conditions of competition on the market will not be maintained until the commitments have been fulfilled.<sup>275</sup>

(392) In assessing whether or not the remedy will restore effective competition, the Commission considers the type, scale and scope of the remedies by reference to the structure and the particular characteristics of the market in which the competition concerns arise.<sup>276</sup>

#### **5.3.2. RESULTS OF THE MARKET TESTS AND ASSESSMENT OF THE COMMITMENTS**

(393) The Commission deemed the last two elements of the First Remedy Package not to be relevant in view of the scope of the preliminary serious doubts raised by the Transaction as initially notified.

(394) First, concerning the contract with Total Produce in Denmark and Sweden, as set out in sections 4.1.4.4 and 4.1.4.9, the Commission found that serious doubts did not arise as regards access to banana ripening in those countries. While Total Produce has an estimated [70-80]% of the banana ripening capacity in Denmark, other options exist, including cross-border ripening from Germany and, to a lesser extent, from Sweden. As for Sweden, independent banana ripeners such as Lundblah and Ewerman are active. It appears that limited spare capacity was potentially available for banana ripening in Sweden. However, the Commission found, after further investigation, that one of the independent banana ripeners has recently increased its ripening capacity, and estimates that "a new ripening room [...] costs approximately EUR 150 000 and it takes 3-4 months to build it".<sup>277</sup>

(395) Second, the two Chiquita banana ripening centres in Sweden are used by ICA Sweden [...]. As explained in section 4.1.4.9 above, [...] the ripening centres can be used to ripen bananas from any supplier. For instance, in 2013 ICA Sweden was purchasing bananas from Dole, ripened by Chiquita.<sup>278</sup>

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<sup>274</sup> Commission Notice on remedies acceptable under Council Regulation (EEC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ C 267, 22.10.2008, p. 1-27).

<sup>275</sup> Commission Notice on remedies, paragraph 9.

<sup>276</sup> Commission Notice on remedies, paragraph 12.

<sup>277</sup> Minutes of a conference call with a competitor dated 15 September 2014.

<sup>278</sup> Minutes of a conference call with a retailer dated 15 September 2014.

- (396) The Notifying Parties offered the voluntary commitments concerning all the ports in Northern Europe, i.e. Belgium, Denmark, Estonia, Finland, Germany, Ireland, Latvia, Lithuania, the Netherlands, Sweden and the UK. The Commission considers that this extensive geographic scope safeguards the effectiveness of the commitments and ensures access to shipping services for any potential route in Northern Europe for the competitors of the Merged Entity.
- (397) On 17 September 2014, the Commission launched a market test with the purpose of verifying whether the Second Remedy Package was sufficient to clearly rule out the preliminary doubts identified by the Commission. In particular, the market test aimed at verifying whether the Second Remedy Package would ensure that small and medium size competitors (with less bargaining power than the Notifying Parties) would not be put at a cost disadvantage in relation to the shipping of bananas into the Member States located at the end of peripheral shipping routes.
- (398) In general, no substantiated concerns were expressed as to the appropriateness of the commitments as a whole, although the respondents to the market test identified specific elements of the commitments that could be improved. The final version of the commitments submitted on 2 October 2014 subsequently improved these elements.
- (399) The large majority of respondents to the market test indicated that the proposed commitments ensure that, after the Transaction, competitors of the Notifying Parties will be able to unload bananas in any port of Northern Europe and in particular in Member States such as Estonia, Finland, Ireland, Latvia, Lithuania and Sweden, which have their ports at the end of more peripheral routes, and that no barrier to entry would persist.<sup>279</sup> A competitor indicated that focusing on exclusivity clauses would not be sufficient, as there would be other indirect ways to obtain a similar effect (for instance "no space available"). A retailer also stated that the ability of the Notifying Parties to reach similar deals to hinder imports by competitors or retailers would increase in any event with the Transaction.
- (400) The large majority of the respondents also indicated that they do not foresee difficulties or risks in the implementation of the commitments.<sup>280</sup> Respondents also agree that a Monitoring Trustee could effectively monitor the commitments, given that he will have access to books, records, documents etc. of the Notifying Parties.<sup>281</sup>
- (401) As for the duration of the commitments, the results of the market test were inconclusive, with some respondents indicating that the period of five years is not sufficient and requiring an indefinite duration of such a ban on exclusivity.<sup>282</sup>
- (402) The Commission considered that the Second Remedy Package submitted on 17 September 2014 was insufficient to remove the serious doubts identified because (i) it did not provide for a sufficiently broad definition of the exclusivity clauses, (ii) the Notifying Parties could overcome the commitments through other means than direct exclusivity and (iii) the duration of the commitments was insufficient.

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<sup>279</sup> Responses to question 1 of Questionnaire Q6 – Market test.

<sup>280</sup> Responses to question 3 of Questionnaire Q6 – Market test.

<sup>281</sup> Responses to question 5 of Questionnaire Q6 – Market test.

<sup>282</sup> Responses to question 4 of Questionnaire Q6 – Market test.



- (403) Further to the Commission's assessment of the Second Remedy Package in light of the market test, the Notifying Parties submitted on 2 October 2014 the Final Commitments. The Final Commitments remove the remaining concerns regarding the possibility of using other ways than direct exclusivity clauses to obtain an effect similar to exclusivity. The Final Commitments extended the definition of shipping exclusivity obligation, so that it covers also situations in which the Notifying Parties might via contract provisions directly or indirectly (i) restrict shipping companies from adding capacity on a Relevant Route and (ii) incentivise shipping companies to refuse to provide shipping services to third parties. Furthermore the Notifying Parties committed to refrain from incentivising shipping companies to refuse to provide shipping services to third parties also through non-contractual means. It is thus guaranteed that the access to shipping will not be foreclosed to competitors at least as a result of any initiative of the Notifying Parties.
- (404) As regards the opinions expressed in the market test as to the desired prolongation of the term of the commitments, the Final Commitments extend this term from five to ten years. The Commission notes that Articles 101 and/or 102 TFEU remain fully applicable to the entirety of the Notifying Parties' agreements or other practices for the duration of the commitments and beyond.
- (405) The Notifying Parties are obliged to provide the Monitoring Trustee with, among others, (i) copies of their agreements with shipping companies and (ii) final internal proposals of agreements to be concluded with shipping companies. As a result the Monitoring Trustee should have an overview of the Notifying Parties' relations with shipping companies and thus effectively monitor implementation of the commitments.
- (406) In addition the Monitoring Trustee will propose to the Notifying Parties such measures as it considers necessary to ensure their compliance with the Final Commitments. It will also act as a contact point for any request by third parties in relation to the Final Commitments; in particular it will examine and respond to any complaints regarding compliance by the Notifying Parties with the Final Commitments and provide guidance to these third parties in relation to the scope and application of the Final Commitments to third party access to shipping services for imports of bananas into Northern Europe.
- (407) The Commission concludes that the Final Commitments remove the serious doubts that the Merged Entity, given its accrued influence, might make it more costly for rivals to ship bananas to the ports in Finland and Ireland. Given the contestability of the remaining levels of the bananas value chain, with the changes to the Transaction included in the Final Commitments it is unlikely that post-Transaction the Notifying Parties will be able to create entry barriers by hindering the shipping of bananas in each of the abovementioned markets for the import and supply of bananas to retailers and wholesalers. Therefore, the position of the Notifying Parties in these markets should be constrained by the possible entry and expansion of competitors. As regards Estonia, Latvia, Lithuania and Sweden the Commission concludes that the Final Commitments eliminate any potential serious doubts that could arise in these Member States.

### **5.3.3. CONCLUSION ON REMEDIES**

- (408) For the reasons outlined above, the Final Commitments entered into by the Notifying Parties are sufficient to eliminate the serious doubts as to the compatibility of the Transaction with the internal market.

#### **5.4. Conditions and obligations**

- (409) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the Commitments they have entered into *vis-à-vis* the Commission with a view to rendering the concentration compatible with the internal market.
- (410) The achievement of the measure that gives rise to the change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6)(b) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.
- (411) In accordance with the basic distinction between conditions and obligations, the Decision in this case is conditional on full compliance with the requirements set out in section B of the Final Commitments (conditions), whereas section C of the Final Commitments constitutes obligations on the Notifying Parties.
- (412) The full text of the Final Commitments is annexed to this Decision as Annex and forms an integral part thereof.

#### **6. CONCLUSION**

- (413) For the above reasons, the Commission has decided not to oppose the Transaction as modified by the Final Commitments and to declare it compatible with the internal market, subject to full compliance with the conditions in section B of the Final Commitments annexed to the present Decision and with the obligations contained in Section C of the Final Commitments. This Decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.

*For the Commission*  
*(signed)*  
*Joaquín ALMUNIA*  
*Vice-President*

## Case M.7220 – Chiquita / Fyffes

### COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “**Merger Regulation**”), Chiquita Brands International, Inc. and Fyffes plc (the “**Notifying Parties**”) hereby enter into the following Commitments (the “**Commitments**”) vis-à-vis the European Commission (the “**Commission**”) with a view to rendering the merger of the totality of their operations (the “**Concentration**”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission’s decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the “**Decision**”), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the “**Remedies Notice**”).

#### Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

**Affiliated Undertakings:** undertakings controlled by the Notifying Parties and/or by the ultimate parents of the Notifying Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the “**Consolidated Jurisdictional Notice**”).

**Banana(s):** covers all types of Cavendish bananas irrespective of their origin, marketing class, certification (conventional, organic and/or Fairtrade), branding and colour.

**Central and South America:** the region comprising the territories of Argentina, Belize, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, French Guiana, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Peru, Suriname, Uruguay, Venezuela, as well as Cuba, Dominican Republic, Jamaica, Haiti and other islands in the Caribbean region.

**Chiquita:** Chiquita Brands International, Inc., incorporated under the laws of New Jersey, USA, with its registered office in Charlotte, North Carolina (USA) and currently listed (ticker symbol: CQB) on the New York Stock Exchange.

**Closing:** the date of the closing of the notified Concentration between the Notifying Parties.

**Confidential Information:** any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

**Conflict of Interest:** any conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under the Commitments.

[...]: [...].

**Effective Date:** the date of adoption of the Decision.

**Fyffes:** Fyffes plc incorporated under the laws of Ireland, with its registered office in Dublin (Ireland) and registered with the Company Register in Ireland under number 73342.

**Maersk:** A.P. Moller – Maersk A/S incorporated under the laws of Denmark, with its registered office in Copenhagen (Denmark) and registered under number 22 75 62 14.

**Maersk Shipping Agreement:** the outsourcing agreement concluded between Fyffes International and A.P. Moller – Maersk A/S [...].

**Maersk Shipping Clause:** the provisions in [...].

**Monitoring Trustee:** one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Parties, and who has/have the duty to monitor the Notifying Parties' compliance with the conditions and obligations attached to the Decision.

**Northern Europe:** the territories of Belgium, Denmark, Estonia, Finland, Germany, Ireland, Latvia, Lithuania, the Netherlands, Sweden and the UK.

**Notifying Parties:** Chiquita Brands International, Inc. and Fyffes plc.

**Shipping Exclusivity Obligation:** any contractual provision (whether oral or in writing):

- (i) which directly or indirectly prevents a Shipping Services Provider from offering Shipping Services for Bananas other than Bananas from the Notifying Parties on any shipping route between any ports in (a) Central and South America and/or Africa and (b) Northern Europe ("Relevant Routes");
- (ii) which directly or indirectly restricts a Shipping Services Provider from adding capacity to a Liner Shipping Service operating on a Relevant Route, e.g. by running larger or additional vessels or by operating an additional Liner Shipping Service on any Relevant Routes; or
- (iii) whose purpose is directly or indirectly to incentivise a Shipping Services Provider to refuse to provide Shipping Services for Bananas from third parties and/or to add capacity on any Relevant Routes.

For the avoidance of doubt, subject to compliance with the provisions under (i) to (iii) above, it is not a Shipping Exclusivity Obligation for the Notifying Parties to agree with a Shipping Services Provider to acquire Shipping Services for Banana volumes which may be equal to the total current capacity of a given Liner Shipping Service, provided such Banana volumes correspond to the Notifying Parties' good faith forecast of their estimated Banana transportation needs at the time of the agreement.

**Shipping Services:** (i) any commercial liner shipping services, including container liner services and reefer liner services and any related loading and discharging services ("Liner Shipping Service"); and (ii) the general making available of vessels for time charter and any directly related services. (For the avoidance of doubt, the use by the Notifying Parties of time chartered vessels shall be outside the scope of these Commitments.)

**Shipping Services Provider:** any provider of Shipping Services.

## **Section B. Commitments in relation to the Maersk Shipping Agreement and Shipping Exclusivity Obligations**

2. In order to maintain effective competition and ensure effective access to Shipping Services for all importers of Bananas into Northern Europe, the Notifying Parties commit that:
  - (a) the Notifying Parties and their Affiliated Undertakings shall not enter or seek to enter into any agreement which contains a Shipping Exclusivity Obligation from the Closing of the notified Concentration and for a period of ten years thereafter;
  - (b) the Notifying Parties shall equally refrain from incentivising any Shipping Services Providers in any other (non-contractual) manner to refuse to provide Shipping Services for Bananas of third party importers on Relevant Routes from the Closing of the notified Concentration and for a period of ten years thereafter;
  - (c) the Notifying Parties shall release Maersk from the Maersk Shipping Clause immediately following Closing of the notified Concentration; and
  - (d) the Notifying Parties and their Affiliated Undertakings shall release any Shipping Providers from any Shipping Exclusivity Obligations or otherwise disapply any Shipping Exclusivity Obligations (if any) which either Notifying Party or any of their Affiliated Undertakings may have entered into between the Effective Date and the Closing of the notified Concentration immediately following Closing of the notified Concentration.

Together these Commitments will preserve effective access to Shipping Services for all importers of Bananas into Northern Europe.

## **Section C. Monitoring Trustee**

### **I. Appointment procedure**

3. The Notifying Parties shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Parties commit not to close the Concentration before the appointment of a Monitoring Trustee.
4. The Monitoring Trustee shall:
  - (i) at the time of appointment, be independent of the Notifying Parties and their Affiliated Undertakings;
  - (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
  - (iii) neither have nor become exposed to a Conflict of Interest.
5. The Monitoring Trustee shall be remunerated by the Notifying Parties in a way that does not impede the independent and effective fulfilment of its mandate.

#### *Proposal by the Notifying Parties*

6. No later than two weeks after the Effective Date, the Notifying Parties shall submit the name or names of one or more natural or legal persons whom the Notifying Parties propose to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Monitoring Trustee fulfil the requirements set out in paragraph 4 and shall include:
  - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments; and
  - (b) the outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

#### *Approval or rejection by the Commission*

7. The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, the Notifying Parties shall appoint or cause to be appointed the person or persons concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Notifying Parties shall be free to choose the Monitoring Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

#### *New proposal by the Notifying Parties*

8. If all the proposed Monitoring Trustees are rejected, the Notifying Parties shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 3 and 7 of these Commitments.

*Monitoring Trustee nominated by the Commission*

9. If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom the Notifying Parties shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Monitoring Trustee

10. The Monitoring Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Monitoring Trustee or the Notifying Parties, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

*Duties and obligations of the Monitoring Trustee*

11. The Monitoring Trustee shall:
- (i) within one month of its appointment, propose in a report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;
  - (ii) propose to the Notifying Parties such measures as the Monitoring Trustee considers necessary to ensure the Notifying Parties' compliance with the conditions and obligations attached to the Decision;
  - (iii) act as a contact point for any requests by third parties in relation to the Commitments. For the avoidance of doubt, the Monitoring Trustee shall examine and respond to complaints from third parties in relation to the compliance by the Notifying Parties with the Commitments and the Monitoring Trustee shall provide guidance to interested third parties who request such guidance in relation to the scope and application of the Commitments to third party access to Shipping Services for imports of Bananas into Northern Europe;
  - (iv) provide to the Commission, sending the Notifying Parties a non-confidential copy at the same time, an annual written report within one month after the end of every year following the Effective Date in relation to the Notifying Parties' compliance with the Commitments so that the Commission can assess whether the Notifying Parties are acting in accordance with the obligations and conditions attached to the Decision; and
  - (v) promptly report in writing to the Commission, sending the Notifying Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Notifying Parties are failing to comply with these Commitments.



### III. Duties and obligations of the Notifying Parties

12. The Notifying Parties shall provide and shall cause its advisors to provide the Monitoring Trustee with all such co-operation, assistance and information as the Monitoring Trustee may reasonably require to perform its tasks. The Monitoring Trustee shall have full and complete access to any books, records, documents, management or other personnel and technical information of the Notifying Parties necessary for fulfilling its duties under the Commitments and the Notifying Parties shall provide the Monitoring Trustee upon request with copies of any relevant document. The Notifying Parties shall make available to the Monitoring Trustee one or more offices on their premises and shall be available for meetings in order to provide the Monitoring Trustee with all information necessary for the performance of its tasks. The Notifying Parties shall also provide to the Monitoring Trustee without undue delay copies of (i) all agreements with Shipping Services Providers concluded by the Notifying Parties during the period in paragraph 2(a) of these Commitments which relate to the shipment by the Notifying Parties of Bananas to or within Northern Europe; and (ii) copies of any final internal proposals of agreements to be concluded with Shipping Services Providers which relate to the shipment by the Notifying Parties of Bananas to or within Northern Europe during the period in paragraph 2(a) of these Commitments presented for internal authorisation to the competent bodies of the Notifying Parties, such as the board or an executive committee.
13. The Notifying Parties shall indemnify the Monitoring Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Notifying Parties for, any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee, its employees, agents or advisors.
14. At the expense of the Notifying Parties, the Monitoring Trustee may appoint advisors (in particular for legal advice), subject to the Notifying Parties' approval (this approval not to be unreasonably withheld or delayed) if the Monitoring Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Should the Notifying Parties refuse to approve the advisors proposed by the Monitoring Trustee the Commission may approve the appointment of such advisors instead, after having heard the Notifying Parties. Only the Monitoring Trustee shall be entitled to issue instructions to the advisors. Paragraph 13 of these Commitments shall apply *mutatis mutandis*.
15. The Notifying Parties agree that the Commission may share Confidential Information proprietary to the Notifying Parties with the Monitoring Trustee. The Monitoring Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
16. The Notifying Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties of the identity and the tasks of the Monitoring Trustee.

17. For a period of 10 years from the Effective Date the Commission may request all information from the Notifying Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Monitoring Trustee

18. If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a Conflict of Interest:
  - (a) the Commission may, after hearing the Monitoring Trustee and the Notifying Parties, require the Notifying Parties to replace the Monitoring Trustee; or
  - (b) the Notifying Parties may, with the prior approval of the Commission, replace the Monitoring Trustee.
19. If the Monitoring Trustee is removed according to paragraph 18 of these Commitments, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs 3-9 of these Commitments.
20. Unless removed according to paragraph 18 of these Commitments, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Monitoring Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

**Section D. The review clause**

21. The Commission may extend the time periods foreseen in the Commitments in response to a request from a Notifying Party or, in appropriate cases, on its own initiative. Where a Notifying Party requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Parties. Only in exceptional circumstances shall the Notifying Parties be entitled to request an extension within the last month of any period.
22. The Commission may further, in response to a reasoned request from the Notifying Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Parties. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

**Section E. Entry into force**

23. The Commitments shall take effect upon the date of adoption of the Decision.

.....  
duly authorised for and on behalf of Chiquita Brands International, Inc.  
Juliane Ziebarth, principal associate at Freshfields Bruckhaus Deringer

.....  
duly authorised for and on behalf of Fyffes plc.  
Philipp Girardet, partner at King & Wood Mallesons LLP