The banana cartel decision

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On 15 October 2008, the Commission adopted a prohibition decision against Dole, Chiquita, Weichert and Del Monte for operating a cartel for fresh bananas (1) in eight EU Member States. The Commission imposed fines totalling €60.3 million on Dole, Weichert and Del Monte. Dole, Chiquita and Weichert participated in a single and continuous infringement of Article 81 of the EC Treaty for three years from January 2000 to December 2002. Del Monte is held jointly and severally liable for the fine imposed on Weichert as it controlled Weichert at the time of the infringement. Because it was the first to inform the Commission of the existence of the cartel, Chiquita was granted immunity from fines.

The product

The product covered by the decision is fresh bananas. Fresh bananas may be sold unripened (green) or ripened (yellow). Bananas are bought all year round by a large proportion of EU consumers.

Geographic scope of the decision

The infringement which is the subject of the decision relates to the supply of bananas to the northern European region of the EU. For the purposes of the decision this region includes Austria, Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands and Sweden. The Commission has estimated that the annual retail value of the bananas sold to consumers in the eight Member States affected by the cartel amounted to around €2.5 billion in 2002.

The cartel

The decision relates to a concerted practice between certain banana suppliers by which they coordinated weekly reference prices for bananas.

The banana business is organised in weekly cycles. During the relevant period the importers of leading brands of bananas into the eight EU Member States principally served by the north European ports each set and then announced every Thursday morning their reference price (announced price) for the following week. While this reference price may be different from the transaction price obtained, changes in the weekly reference prices did constitute an important pricing signal to the market. On many occasions over the three years covered by the decision there were bilateral phone calls among the companies, usually the day before they set their price. Through these pre-pricing communications the parties disclosed their pricing intentions to competitors. By concerting in advance on reference prices set weekly and in particular on the development of these prices, i.e. whether they would be going up, going down or staying the same, the parties coordinated their price-setting behaviour instead of deciding upon their prices independently.

Fines

In setting the fines in accordance with the Guidelines on fines, the Commission also took into account the fact that at the time of the infringement bananas were subject to a very specific regulatory regime (not least under Council Regulation (EEC) No 404/93 (2) of 13 February 1993 on the common organization of the market in bananas). The banana import regime was based on import quotas and tariffs. Banana import quotas for the Community were set annually and allocated on a quarterly basis with some limited flexibility between the quarters of a calendar year.

Furthermore, in setting the fine for Weichert/Del Monte account was taken of the fact that, given the circumstances of the case, it could not be established that Weichert was aware of the pre-pricing communications between Dole and Chiquita or that it could reasonably have foreseen them.

Application of the 2002 Leniency Notice

The Commission’s investigation was triggered by an application for immunity lodged by Chiquita in April 2005. Chiquita was the first to inform the Commission of the existence of a cartel. Chiquita was eventually granted immunity from any fines that would otherwise have been imposed in this case.

(1) The content of this article does not necessarily reflect the official position of the European Commission. Responsibility for the information and views expressed lies entirely with the authors.

(2) Case COMP/39.188 Bananas.