



Brussels, 16.6.2017  
C(2017) 4098 final

**COMMISSION DECISION**

**amending Decision C(2004) 4030 (final) of 20 October 2004 relating to a proceeding  
under Article 81(1) of the EC Treaty**

**(COMP/38.238 – Raw Tobacco – Spain)**

(Only the English and Spanish texts are authentic)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty<sup>1</sup>, and in particular Article 7 and Article 23(2) thereof,

Having regard to Commission Decision C(2004) 4030 (final) of 20 October 2004 relating to a proceeding under Article 81(1) of the EC Treaty in Case COMP/38.238 – *Raw Tobacco – Spain*,

Having given the undertaking concerned the opportunity to make known its views,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the hearing officer in this case,

WHEREAS:

- (1) In Decision C(2004) 4030 (final) of 20 October 2004 relating to a proceeding pursuant to Article 81(1) of the EC Treaty (Case AT.38238 – *Raw Tobacco – Spain*) (hereinafter "the *Raw Tobacco – Spain* Decision"), the Commission found that thirteen undertakings, among which World Wide Tobacco España, S.A. (hereinafter: "WWTE"), had infringed Article 81(1) of the Treaty by concluding agreements and/or concerted practices, during the period 1996-2001, designed, among other things, to fix prices for raw tobacco, fix price brackets per quality grade of each variety of raw tobacco, and agree on the additional conditions that would apply (Article 1 of the *Raw Tobacco – Spain* Decision).
- (2) In Article 3, third indent, of the *Raw Tobacco – Spain* Decision, the Commission therefore imposed the following fine on WWTE and its parent companies Standard Commercial Corporation (hereinafter "SCC"), Standard Commercial Tobacco Co. Inc. (hereinafter "SCTC") and Trans-Continental Leaf Tobacco Corporation Ltd. (hereinafter "TCLT"):

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<sup>1</sup> OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market".

"WWTE EUR 1 822 500 (SCC, SCTC and TCLT to be jointly and severally liable)"

- (3) On 11 February 2005, WWTE provisionally paid its fine on behalf of itself and also for SCC, SCTC and TCLT.
- (4) WWTE challenged the *Raw Tobacco – Spain* Decision in Case T-37/05. By judgment of 8 March 2011, the General Court partly granted WWTE's application for annulment and fixed its fine at EUR 1 579 500, reducing the fine imposed on it by EUR 243 000 as a consequence of increasing WWTE's leniency reduction from 25% to 35%. This judgment was confirmed by the Court of Justice on 3 May 2012 in Case C-240/11 P.
- (5) Alliance One International Inc. (hereinafter "AOI"), which is the result of a merger between Dimon Inc. and SCC, challenged the *Raw Tobacco – Spain* Decision, together with SCTC and TCLT, in Case T-24/05. Unlike WWTE in Case T-37/05, the parent companies of WWTE in Case T-24/05 had not raised a plea about the amount of leniency reduction. By judgment of 24 October 2010, the General Court rejected the action in its entirety with regard to AOI and SCTC, but annulled TCLT's liability entirely. The Court of Justice confirmed the General Court's judgment on 19 July 2012 in Case C-628/10 P.
- (6) The merger between Dimon Inc. and SCC to form AOI took place in May 2005. SCTC was a wholly-owned subsidiary of AOI until it merged into AOI in June 2005. As SCTC has ceased to exist as a result of this merger, and as the *Raw Tobacco – Spain* Decision was annulled with respect to TCLT, this Decision should be addressed to WWTE and AOI<sup>2</sup>.
- (7) Although in Case T-24/05 the General Court dismissed SCC and SCTC's action for annulment against the *Raw Tobacco – Spain* Decision, the Commission nevertheless finds it appropriate in the light of the relevant case law to apply the same leniency reduction of 35% for the fines of SCC and SCTC (both succeeded by AOI).
- (8) The fine of WWTE was definitively set in the T-37/05 and C-240/11 P judgments. Accordingly, the present decision does not affect WWTE. But the fines of SCC and SCTC (both succeeded by AOI) should be reduced by an amount to reflect the leniency reduction of 35% for the cooperation of that undertaking, as recognised in Case T-37/05.
- (9) On 7 December 2015, the Commission sent letters to both AOI and WWTE to inform them of the Commission's intention to adopt the present decision and to obtain their views. AOI responded by letter of 22 December 2015. In its response, AOI accepted that an amending decision should be addressed to it and provided the confirmations mentioned in footnote 2. Despite repeated efforts, the Commission did not succeed in establishing contact with WWTE.
- (10) Therefore, the *Raw Tobacco – Spain* Decision should be amended to the extent that it was addressed to SCC and SCTC (both succeeded by AOI) in order to reduce by EUR 243 000 the amount of the fine imposed in Article 3, third indent. As SCC and

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<sup>2</sup> AOI has confirmed that AOI is the same legal entity and the legal successor of SCC and SCTC, and therefore has by law assumed the liability imposed by the *Raw Tobacco – Spain* Decision of 20 October 2004 on the latter companies. As confirmed by AOI by letter of 22 December 2015, AOI accepts that this Decision is addressed to AOI (instead of referring to the names SCC and SCTC) without any further procedural steps being necessary.

SCTC were succeeded by the same legal entity and they were jointly liable for the same fine amount, it is sufficient to impose a single reduced fine on their successor, AOI.

- (11) With respect to the interest that has accrued on the original EUR 1 822 500 fine provisionally paid also on behalf of SCC and SCTC on 11 February 2005, the Commission considers that the interest on the EUR 243 000 amount of reduction, which has accrued to the Commission since the provisional payment on 11 February 2005, should also be returned to AOI.

HAS ADOPTED THIS DECISION:

*Article 1*

In Article 3, third indent, of Decision C(2004) 4030 (final) of 20 October 2004 relating to a proceeding under Article 81(1) of the EC Treaty in Case COMP/38.238 – *Raw Tobacco – Spain*, the text is amended as follows:

"WWTE: EUR 1 579 500 (jointly and severally liable with Alliance One International Inc.)"

*Article 2*

The interest on the EUR 243 000 amount of reduction, which has accrued to the Commission since the provisional payment on 11 February 2005, shall be returned to AOI.

*Article 3*

This Decision is addressed to:

World Wide Tobacco España, S.A.  
Calle Zurbano, 43  
Madrid 28010  
Spain

Alliance One International Inc.  
8001 Aerial Center Parkway  
Morrisville, NC 27560-2009  
United States of America

This Decision shall be enforceable pursuant to Article 299 TFEU.

Done at Brussels,

*For the Commission*  
*Margrethe VESTAGER*  
*Member of the Commission*

