



EUROPEAN COMMISSION
DG Competition

CASE AT.39965 - Mushrooms

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003 and Commission Regulation (EC) 773/2004

Article 7 Regulation (EC) 1/2003

Date: 25/06/2014

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EUROPEAN
COMMISSION

Brussels, 25.6.2014
C(2014) 4227 final

COMMISSION DECISION

of 25.6.2014

addressed to:

- Bonduelle SCA**
- Bonduelle SAS**
- Bonduelle Conserve International SAS**
- C4C Holding B.V.**
- Lutèce Holding B.V.**
- Lutèce B.V.**
- Peffer Holding B.V.**
- Prochamp B.V.**

**relating to proceedings under Article 101 of the Treaty on the Functioning of the
European Union and Article 53 of the EEA Agreement
(AT.39965 - Mushrooms)**

(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

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

Having regard to the Agreement on the European Economic Area,

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 Treaty¹, and in particular Article 7 and Article 23(2) thereof,

¹ 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

Having regard to Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty² and in particular Article 10a thereof,

Having regard to the Commission decision of 16 January 2013 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 11(1) of Regulation (EC) No 773/2004,

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

Having regard to the final report of the hearing officer in this case³,

Whereas:

1. INTRODUCTION

- (1) The addressees of this Decision participated in a single and continuous infringement of Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the Agreement on the European Economic Area ("EEA Agreement"). The infringement consisted of price coordination and customer allocation for mushrooms sold in cans and jars ("canned mushrooms"). It covered the EEA and lasted at least from 1 September 2010 to 28 February 2012.
- (2) The Decision is addressed to the following companies
 - Bonduelle SCA, Bonduelle SAS, Bonduelle Conserve International SAS ("Bonduelle");
 - C4C Holding B.V., Lutèce Holding B.V., Lutèce B.V. ("Lutèce");
 - Peffer Holding B.V., Prochamp B.V. ("Prochamp").
- (3) The facts as outlined in this Decision have been accepted by Bonduelle, Lutèce and Prochamp (the "Settling Parties") in the settlement procedure. In Sections 2 and 3, reference is made to [...], which is not an addressee of this Decision.

("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty where appropriate. The TFEU also introduced certain changes in terminology, 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.

² OJ L 123, 27.4.2004, p. 18, as amended by Commission Regulation (EC) No 622/2008 of 30 June 2008 as regards the conduct of settlement procedures in cartel cases (OJ L 171, 1.7.2008, p. 3).

³ Final report of the Hearing Officer of 31 March 2014.

Therefore, this Decision does not relate to any liability of this non-settling party for any participation in an infringement of EU competition law in this case.⁴

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The product

- (4) The anticompetitive conduct concerned by the present proceedings relates to **canned mushrooms**.⁵ The cartel identified in these proceedings covered the private label sales (MDD, HD and MPP)⁶ via tender procedures to retailers and the food service channel.⁷

2.2. The undertakings subject to the proceedings

Parties to the settlement procedure

2.2.1. Bonduelle

- (5) The relevant legal entities are:
- (1) Bonduelle SCA with registered offices at La Woëstyne, 59173 Renescure, France;
 - (2) Bonduelle SAS with registered offices at La Woëstyne, 59173 Renescure, France;
 - (3) Bonduelle Conserve International SAS (previously Champiloire SA) with registered offices at La Woëstyne, 59173 Renescure, France.
- (6) Bonduelle is a French listed company active in the production and sale of processed vegetables. The undertaking's worldwide turnover in 2013 was approximately EUR 1.89 billion.

⁴ The administrative proceedings under Article 7 of Regulation (EC) No 1/2003 against the non-settling party, this is to say [...], are pending: see paragraph (23) and footnote 10. The conduct referred to in this Decision involving the non-settling parties is exclusively used to establish liability of the settling parties for an infringement of Articles 101 of the Treaty and Article 53 of the EEA Agreement. All undertakings subject to the proceedings are commonly referred to as the "parties".

⁵ Tins and jars.

⁶ MDD stands for 'Marque des Distributeurs', 'HD' for 'Hard Discounts' and MPP stands for 'Marque Premier Prix'.

⁷ The retail channel includes sales to supermarkets, hypermarkets and hard discounters.

The food service channel includes sales to food wholesalers and processors.

Sales of fresh and frozen mushrooms are not concerned.

Sales of canned mushrooms that are not channelled through tender procedures, such as the sales of parties own brands, are also not concerned.

The business to business channel (i.e. industrial customers which use canned mushrooms as an ingredient for the products they sell to the retailers or the foodservice) is also not part of the infringement.

2.2.2. *Lutèce*

(7) The relevant legal entities are:

- (1) C4C Holding B.V. with registered offices at Driekronenstraat 6, 6596 MA Milsbeek, The Netherlands;
- (2) Lutèce Holding B.V. with registered offices at Handelstraat 8, 5691 PV Horst, The Netherlands;
- (3) Lutèce B.V. with registered offices at Handelstraat 8, 5961 PV Horst, The Netherlands.

(8) Lutèce is a producer of conserved mushrooms selling its products to clients in more than 60 countries. The undertaking's worldwide turnover in 2013 was approximately EUR 231 million.

2.2.3. *Prochamp*

(9) The relevant legal entities are:

- (1) Peffer Holding B.V. with registered offices at Wertsteeg 10, 5331 PE Kerkdriel, The Netherlands;
- (2) Prochamp B.V. with registered offices at Laarstraat 2, 5334 NS Velddriel, The Netherlands.

(10) Prochamp is a company specialised in the production and sale of a specific quality of preserved mushrooms. The undertaking's worldwide turnover in 2013 was approximately EUR [30-45] million.

The undertaking subject to the proceedings but not to the settlement procedure

2.2.4. [...]

(11) [...]

(12) [...]

(13) [...]

3. PROCEDURE

- (14) On 22 December 2011 Lutèce applied for a marker for immunity under point 14 of the Commission notice on immunity from fines and reduction of fines in cartel cases⁸ ("the Leniency Notice"). On 25 January 2012 Lutèce submitted an application for immunity from fines pursuant to point 8 of the Leniency Notice aiming at perfecting the marker. On 17 February 2012 the Commission granted conditional immunity pursuant to point 8(a) of the Leniency Notice to Lutèce.
- (15) Starting on 28 February 2012 the Commission carried out inspections under Article 20(4) of Regulation 1/2003 at the premises of various mushroom producers in France, the Netherlands and Spain.
- (16) As of 3 April 2012 the Commission addressed several requests for information pursuant to Article 18(2) of Regulation 1/2003 to the parties.
- (17) [...], on 21 May 2012, and Prochamp, on 21 September 2012, submitted leniency applications.
- (18) On 9 April 2013 the Commission initiated proceedings pursuant to Article 11(6) of Regulation (EC) No 1/2003 against Bonduelle, Lutèce, Prochamp and [...] with a view to engaging in settlement discussions with them. After each party had confirmed its willingness to engage in settlement discussions, the discussions started on [...].
- (19) Settlement meetings between each party and the Commission took place between [...] and March 2014. During those meetings, the Commission informed the parties of the objections it envisaged raising against them and disclosed the main pieces of evidence in the Commission file relied upon to establish these potential objections. The parties were also given a copy of the relevant pieces of evidence in the file as well as a list of all the documents in the file. Further, [...] were made available to the parties at the Commission premises. The Commission also provided the parties with an estimation of the range of fines likely to be imposed by the Commission.
- (20) Each party expressed its view on the objections which the Commission envisaged raising against them. The parties' comments were carefully considered by the Commission and, where appropriate, taken into account. At the end of the settlement discussions, Bonduelle, Lutèce and Prochamp considered that there was a sufficient common understanding as regards the potential objections and the estimation of the range of likely fines to continue the settlement process.
- (21) Between 31 March and 4 April 2014, Bonduelle, Lutèce and Prochamp submitted to the Commission their formal request to settle pursuant to Article 10a(2) of

⁸ Commission notice on immunity from fines and reduction of fines in cartel cases, OJ C 298, 8.12.2006, p. 17.

Regulation (EC) No 773/2004⁹ (the “settlement submissions”). The settlement submission of each settling party contained:

- an acknowledgement in clear and unequivocal terms of the party's liability for the infringement summarily described as regards its object, the main facts, their legal qualification, including the party's role and the duration of its participation in the infringement in accordance with the results of the settlement discussions;
- an indication of the maximum amount of the fine the party expects to be imposed by the Commission and which it would accept in the framework of a settlement procedure;
- the party's confirmation that it has been sufficiently informed of the objections the Commission envisages raising against it and that it has been given sufficient opportunity to make its views known to the Commission;
- the party's confirmation that it does not envisage requesting access to the file or requesting to be heard again in an oral hearing, unless the Commission does not reflect its settlement submission in the statement of objections and the decision;
- the party's agreement to receive the statement of objections and the final decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003 in English.

(22) Each of the settling parties made the above-mentioned submission conditional upon the imposition of a fine by the Commission which will not exceed the amount as specified in its settlement submission.

(23) [...] did not submit a formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004.¹⁰

(1) On 15 May 2014, the Commission adopted a Statement of Objections addressed to Bonduelle, Lutèce and Prochamp. All the settling parties replied to the Statement of Objections by confirming that it corresponded to the contents of their settlement submissions and that they therefore remained committed to following the settlement procedure.

4. DESCRIPTION OF THE EVENTS

4.1. Nature and scope of the conduct

(2) The overall aim of this cartel was to stabilise the market shares for the cartelized product and stop the decline of prices. Summarized, the cartel was a non-aggression

⁹ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, OJ L 123, 27.4.2004, p. 18.

¹⁰ Concerning [...] the Commission has reverted to the standard procedure in view of the adoption of any Decision(s) pursuant to Article 7 and Article 23 of Regulation (EC) No 1/2003.

pact with a compensation scheme in case of customer transfer and application of minimum prices which had been agreed beforehand.¹¹ To achieve this aim the cartel members exchanged confidential information on tenders, set minimum prices, agreed on volume targets and allocated customers.¹²

- (3) The cartel members held numerous regular multilateral meetings and occasionally some of the cartel members had additional contacts on bilateral basis. Top level management in the companies was directly involved¹³ as it would discuss the general parameters of the cartel and then the sales managers would intervene, discuss individual tenders and monitor the cartel on a regular basis.
- (4) Secrecy was applied to the cartel arrangements as cartel members were instructed a) not to exchange emails, b) only use dedicated phones for their communications and c) communicate via private email addresses.¹⁴
- (5) The implementation of the cartel was carried out thoroughly not only by the exchange of prices to be offered in tenders and disclosure of individual customers in follow-up meetings but also by having a mechanism in place to compensate transfers of customers between competitors and thus stabilise market shares for private label sales.¹⁵ This compensation issue was raised on a regular basis during cartel meetings.¹⁶ This shows that cartelists paid close attention that agreements were implemented.

4.2. Geographic scope of the conduct

- (6) The geographic scope of the infringement, as regards all the settling parties, was EEA-wide – with focus on Western European countries - during the entire period of the infringement.

4.3. Duration of the participation in the anti-competitive conduct

- (7) The cartel contacts involving the undertakings concerned started at least on 1 September 2010 with the multilateral meeting in Paris which was attended by all parties.¹⁷
- (8) Since 1 September 2010 there were regular multilateral meetings at [*top management*] level¹⁸ and as of 31 May 2011 also at sales manager level between the cartel participants.
- (9) Based on the available evidence, there is no indication that the anticompetitive arrangements came to an end before the Commission inspections in this case.

¹¹ See for example [...]

¹² See for example [...]

¹³ As far as Bonduelle is concerned, it is the top level management of the business unit Champiloire which was directly involved in the infringement.

¹⁴ See for example [...]

¹⁵ See for example [...]

¹⁶ See for example [...]

¹⁷ See for example [...]

¹⁸ As far as Bonduelle is concerned, it is the [*top level management*] of the business unit Champiloire who participated in multilateral meetings.

Therefore, the Commission considers the first day of its inspections, namely 28 February 2012, as the end date of the involvement of Bonduelle and Prochamp. For Lutèce, the immunity applicant, the date of its immunity application, namely 22 December 2011, is the end date of its involvement in the cartel.

5. LEGAL ASSESSMENT

- (10) Having regard to the body of evidence, the facts as described in Section 4 and the settling parties' clear and unequivocal acknowledgement of the facts and the legal qualification thereof, and their replies to the Statement of Objections, the legal assessment is set out below.

5.1. Jurisdiction

- (11) In this case the Commission has jurisdiction to apply Article 101 of the Treaty and Article 53 of the EEA Agreement since the cartel arrangements were capable of having an appreciable effect upon trade between Member States and between contracting parties to the EEA Agreement (see recitals (52) and (53)).

5.2. Application of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement

5.2.1. Nature of the infringement

5.2.1.1. Agreements and concerted practices

(a) Principles

- (12) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement prohibit *agreements* between undertakings, decisions by associations of undertakings and *concerted practices* which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market.
- (13) Such *agreements* may be said to exist when the parties adhere to a common plan which limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. Although Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement draw a distinction between the concept of *concerted practice* and that of *agreements between undertakings*, the object is to bring within the prohibition of those Articles a form of coordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical cooperation between them for the risks of competition. Thus, conduct may fall under Article 101 of the Treaty and Article 53 of the EEA Agreement as a *concerted practice* even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt

or adhere to collusive devices which facilitate the coordination of their commercial behaviour.¹⁹

- (14) In the case of a complex infringement of long duration, it is not necessary for the Commission to characterise the conduct as exclusively one or other of these forms of illegal behaviour. The concepts of *agreement* and *concerted practice* may overlap. It would be artificial analytically to sub-divide what is clearly a continuing common enterprise having one and the same overall objective into several different forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time²⁰.

(b) Application to this case

- (15) The behaviour of Bonduelle, Lutèce and Prochamp can be qualified as an infringement consisting of various actions which can be classified as an agreement and/or concerted practice, whereby competitors knowingly substituted practical co-operation between them for the risks of competition. In addition, the participating undertakings in such concertation may be considered to have used the information exchanged with competitors in determining their own conduct on the market, all the more so because the concertation occurred on a regular basis during the entire period of the infringement.
- (16) The cartel consists of a non-aggression pact whereby the cartel members exchanged confidential information on individual tenders, set minimum prices, agreed on volume targets and allocated customers. Their behaviour had therefore all the characteristics of an agreement and/or concerted practice within the meaning of Article 101(1) of the Treaty and Article 53 EEA Agreement.²¹

5.2.1.2. Single and continuous infringement

(a) Principles

- (17) The concept of “single agreement” or “single infringement” presupposes a complex of practices adopted by various parties in pursuit of a single anticompetitive economic aim.²² The cartel may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. It would be artificial to split up such continuous conduct, characterised by a single purpose, by treating it as consisting of several separate infringements, when what was involved was a single infringement which progressively would manifest itself in both agreements and concerted practices. Moreover the Court has considered that interpretation of the “single and continuous infringement” cannot be challenged on the ground that one or several elements of a series of acts or continuous conduct could also constitute in

¹⁹ See Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, at paragraph 256. See also Case 48/69, *Imperial Chemical Industries v Commission* [1972] ECR 619, at paragraph 64, and Joined Cases 40-48/73, etc. *Suiker Unie and others v Commission* [1975] ECR 1663, at paragraphs 173-174.

²⁰ See Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, paragraph 264.

²¹ See Cases 48/69 *Imperial Chemical Industries Ltd v Commission* [1972] ECR 619, paragraph 64

²² Joined Cases T-25/95 and others *Cement* [2000] ECR II-491, paragraph 3699.

themselves an infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement²³.

- (18) The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same anticompetitive object or effect. An undertaking which takes part in the common unlawful enterprise by actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement, where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could reasonably have foreseen it and was prepared to take the risk.²⁴

(b) Application to this case

- (19) In this case, the Commission considers that Bonduelle, Lutèce and Prochamp, by participating in the conduct described in Section 4, committed a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.
- (20) First, the existence of a single and continuous infringement is supported by the fact that the cartel followed the same pattern throughout the infringement period, the undertakings as well as individuals involved were essentially the same and there was a continuity of method.
- (21) Second, the evidence available to the Commission shows that the parties pursued with their contacts a single anti-competitive object and a single economic aim, namely that of stabilising market shares for the cartelized product and stopping the decline of prices. To that end the cartel members were jointly engaged in price coordination activities.
- (22) Third, there is no evidence available that at any point in time any one of the parties to the cartel disassociated itself from the cartel arrangements.
- (23) Finally, the evidence also shows that the conduct described above was an on-going process and not an isolated or sporadic occurrence. The contacts between the various parties were of a continuous nature, with numerous multi- and bilateral contacts.

²³ See Case T-53/03 *BPB plc v Commission* [2008] ECR II-01333, at paragraph 252.

²⁴ In Case 49/92 P *Commission v Anic Partecipazioni* [1999] ECR I-4125, paragraph 83, the Court of Justice ruled that: “an undertaking that had taken part in such an infringement through conduct of its own which formed an agreement or concerted practice having an anti-competitive object for the purposes of Article 85(1) of the Treaty and which was intended to help bring about the infringement as a whole was also responsible, throughout the entire period of its participation in that infringement, for conduct put into effect by other undertakings in the context of the same infringement. That is the case where it is established that the undertaking in question was aware of the offending conduct of the other participants or that it could reasonably have foreseen it and that it was prepared to take the risk.”

5.2.2. *Restriction of competition*

(a) Principles

- (24) Article 101(1) of the Treaty and Article 53 of the EEA Agreement expressly prohibit as incompatible with the internal market such agreements and concerted practices which have as their object or effect the restriction of competition by directly or indirectly fixing prices or any other trading conditions.
- (25) It is settled case-law that, for the purpose of the application of Article 101 of the Treaty and Article 53 of the EEA Agreement, there is no need to take into account the actual effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the internal market.²⁵ The same applies to concerted practices.²⁶

(b) Application to this case

- (26) As is clear from the facts set out above under Section 4, Bonduelle, Lutèce and Prochamp were involved in horizontal anticompetitive arrangements which formed part of an overall scheme pursuing a single anti-competitive **object** of stabilizing market shares and stopping the decline of prices for canned mushrooms. Therefore, the object of the behaviour of the cartel participants was the restriction of competition within the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement.

5.2.3. *Effect upon trade between Member States and between Contracting Parties to the EEA Agreement*

(a) Principles

- (27) Article 101 of the Treaty is aimed at agreements and concerted practices which might harm the attainment of a single market between the Member States, whether by partitioning national markets or by affecting the structure of competition within the internal market. Similarly, Article 53 of the EEA Agreement is directed at agreements that undermine the achievement of a homogeneous EEA.
- (28) The application of Article 101 of the Treaty and Article 53 of the EEA Agreement to a cartel is not, however, limited to the part of the cartel members' sales that actually involve the transfer of goods from one Member State or Contracting Party to another. Nor is it necessary, in order for those provisions to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States or between Contracting Parties to the EEA Agreement.

(b) Application to this case

- (29) During the relevant period, the canned mushrooms producers with production facilities in certain EU Member States sold significant quantities of canned

²⁵ Case T-62/98 *Volkswagen AG v Commission* [2000] ECR II-2707, paragraph 178 and case-law cited therein.

²⁶ Case C-199/92 *P Hüls v Commission*, [1999] ECR I-4287, paragraphs 158-166.

mushrooms to retailers and the food service channel based in different EU Member States and contracting parties to the EEA Agreement.

- (30) The market for canned mushrooms is characterised by a substantial volume of trade between EU Member States and between Contracting Parties to the EEA Agreement. The cartel arrangements covered the entire EEA - with focus on Western European countries - and related to trade within the EEA. The pricing coordination by the undertakings concerned was therefore capable of having an appreciable effect upon trade between EU Member States and between contracting parties to the EEA Agreement.

5.2.4. *Appreciability*

- (31) All of the arrangements covered by this Decision had the object of restricting price competition. Such agreements cannot benefit from the *de minimis* thresholds in the Notice on agreements of minor importance²⁷. The Commission refers, in this respect, also to the judgment of the Court of Justice in *Expedia*,²⁸ in which the Court stated in a preliminary ruling: *"It must therefore be held that an agreement that may affect trade between Member States and that has an anti-competitive object constitutes, by its nature and independently of any concrete effect that it may have, an appreciable restriction on competition."*

5.3. **Non-applicability of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement**

- (32) The provisions of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement may be declared inapplicable pursuant to Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement.
- (33) On the basis of the facts before the Commission, there are **no indications** that the conditions of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement could be fulfilled with regard to the cartel in this case.

6. **DURATION OF THE INFRINGEMENT**

- (34) As set out in Section 4.3 Bonduelle, Lutèce and Prochamp started their participation in the cartel on 1 September 2010. The cartel ended for Bonduelle and Prochamp on 28 February 2012. The participation of Lutèce ended on 22 December 2011.

²⁷ Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (*de minimis*) (OJ C 368, 22.12.2001, p.13). See point 11 thereof.

²⁸ Case C-226/11 *Expedia*, judgment of 13 December 2012.

7. LIABILITY

- (35) Article 101 of the Treaty applies to undertakings and associations of undertakings.²⁹ The notion “*undertaking*” covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.³⁰
- (36) The term “*undertaking*” must be understood as designating an economic unit even if in law that economic unit consists of several natural or legal persons.³¹ In order to determine whether separate legal entities form part of the same undertaking, regard must be had especially to the economic, organisational and legal links between those entities.³²
- (37) According to the settled case-law, where a parent company has a 100% shareholding in a subsidiary which has infringed the competition rules of the Union, the parent company can exercise decisive influence over the conduct of the subsidiary and there is a rebuttable presumption that the parent company does in fact exercise decisive influence over the conduct of its subsidiary³³.
- (38) Having regard to the body of evidence and the facts described in Section 4, the parties’ clear and unequivocal acknowledgements of the facts and the legal qualification thereof, this Decision is addressed to the legal entities listed in Sections 7.1 to 7.4.

7.1. Bonduelle

- (39) The Bonduelle group entered the mushrooms business on 31 March 2010, when Bonduelle SA acquired Champiloire SA, the head company of the France Champignon Group and all of its subsidiaries. The France Champignon group was active in the production and selling of mushrooms in the EEA.
- (40) Within Bonduelle, Champiloire SA and all of its subsidiaries was placed in the new business unit ‘Champiloire’. In July 2011 the marketing of canned mushrooms was transferred from the business unit ‘Champiloire’ to the business unit, ‘Bonduelle Conserve International’ and on 31 March 2012 the company structure was updated accordingly. The share ownership in the companies which produce mushrooms was transferred from Champiloire SA to Champiloire SAS, another wholly owned subsidiary of Bonduelle SAS. Champiloire SA’s business activity of selling canned mushrooms merged with and became Bonduelle Conserve International SAS, another wholly owned subsidiary of Bonduelle SAS.

²⁹ Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P *Aalborg Portland and Others v Commission* [2004] ECR I-123, paragraph 59.

³⁰ Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others v Commission* [2005] ECR I-5425, paragraph 112; Case C-222/04 *Cassa di Risparmio di Firenze and Others* [2006] ECR I-289, paragraph 107; and Case C-205/03 P *FENIN v Commission* [2006] ECR I-6295, paragraph 25.

³¹ Joined Cases C-201/09 P and C-216/09 P *Arcelor v Mittal and Luxembourg v Commission and Others* [2011] ECR I, point 95.

³² Case C-97/08 P *Akzo Nobel and Others v Commission* [2009] ECR I-8237, paragraph 58 and the case-law cited.

³³ See Case C-97/08 P *Akzo Nobel and others v Commission* [2009] ECR I-08237, paragraph 60.

- (41) Champiloire SA (now Bonduelle Conserve International SAS) has participated directly in the cartel contacts. During the entire period of the infringement, Champiloire SA was a wholly owned subsidiary of Bonduelle SAS and Bonduelle SCA.
- (42) Bonduelle Conserve International SAS clearly and unequivocally acknowledges liability for its direct participation in the cartel. Bonduelle SAS and Bonduelle SCA unequivocally acknowledge that they exercised decisive influence over and are liable for this anticompetitive behaviour of their wholly owned subsidiary. The liability for this single and continuous infringement should therefore be imputed jointly and severally to Bonduelle SCA, Bonduelle SAS and Bonduelle Conserve International SAS.

7.2. Lutèce

- (43) Lutèce B.V. and Lutèce Holding B.V. clearly and unequivocally acknowledge liability for their direct participation in the cartel and that they are liable for the single and continuous infringement. C4C Holding B.V. clearly and unequivocally acknowledges that it exercised decisive influence over and is liable for the anticompetitive behaviour of its wholly owned subsidiaries Lutèce B.V. and Lutèce Holding B.V. The liability for this single and continuous infringement should therefore be imputed jointly and severally to C4C Holding B.V., Lutèce Holding B.V. and Lutèce B.V.

7.3. Prochamp

- (44) Peffer Holding B.V. and Prochamp B.V. clearly and unequivocally acknowledge liability for their direct participation in the cartel. The liability for this single and continuous infringement should therefore be imposed jointly and severally on Peffer Holding B.V. and Prochamp B.V.

8. REMEDIES

8.1. Article 7 of Regulation (EC) No 1/2003

- (45) Where the Commission finds that there is an infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement it may by decision require the undertakings concerned to bring such infringement to an end in accordance with Article 7 of Regulation (EC) No 1/2003.
- (46) Given the secrecy in which the cartel arrangements were carried out, in this case it is not possible to declare with absolute certainty that the infringement has ceased. It is therefore necessary for the Commission to require the undertakings to which this Decision is addressed to bring the infringement to an end (if they have not already done so) and to refrain from any agreement or concerted practice which may have the same or a similar object or effect.

8.2. Article 23(2) of Regulation (EC) No 1/2003 – Fines

- (47) Under Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose fines on undertakings and associations of undertakings where, either

intentionally or negligently, they infringe Article 101 of the Treaty or Article 53 of the EEA Agreement³⁴. For each undertaking participating in the infringement, the fine must not exceed 10% of its total turnover in the preceding business year.

- (48) In this case, based on the facts described in this Decision, the Commission considers that the infringement was committed intentionally.
- (49) The Commission imposes fines in this case on the undertakings to which this Decision is addressed.
- (50) Pursuant to Article 23(3) of Regulation (EC) No 1/2003, the Commission must, in fixing the amount of the fine to be imposed, have regard to all relevant circumstances and particularly the gravity and duration of the infringement, which are the two criteria explicitly referred to in that Regulation. In doing so, the Commission sets the fines at a level sufficient to ensure deterrence. Moreover, the role played by each undertaking party to an infringement is assessed on an individual basis. The fine imposed must reflect any aggravating and attenuating circumstances pertaining to each undertaking.
- (51) In setting the fines to be imposed, the Commission refers to the principles laid down in its Guidelines on Fines³⁵. Finally, the Commission applies, as appropriate, the provisions of the Leniency Notice and the Settlement Notice.³⁶

8.3. Calculation of the fines

- (52) According to the Guidelines on Fines, the basic amount of the fine to be imposed on each undertaking concerned results from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the infringement relates in a given year (normally, the last full business year of the infringement) multiplied by the number of years of the undertaking's participation in that infringement. The additional amount ("entry fee") is calculated as a percentage between 15% and 25% of the value of sales. The resulting basic amount can then be increased or reduced for each undertaking if aggravating or mitigating circumstances are found to be applicable.

8.3.1. The value of sales

- (53) The basic amount of the fine to be imposed on the undertakings concerned is to be set by reference to the value of sales,³⁷ that is to say, the value of the undertakings'

³⁴ According to Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area, "the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 101 and 102 of the Treaty] of the EC Treaty [...] shall apply *mutatis mutandis*" (OJ L 305, 30.11.1994, p.6.).

³⁵ Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ C 210, 1.09.2006, p. 2).

³⁶ Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (OJ C 167, 2.7.2008, p. 1).

³⁷ Point 12 of the Guidelines on Fines.

sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area in the EEA.

- (54) In this case the relevant value of sales is the undertaking's sales of canned mushrooms (as defined in Section 2.1 above) in the EEA.
- (55) The Commission normally takes the sales made by the undertakings during the last full business year of their participation in the infringement³⁸. If the last year is not sufficiently representative, the Commission may take into account another year and/or other years for the determination of the value of sales. Based on the foregoing and on the information provided by the parties, the Commission intends to use the undertakings' sales in the last full business year of their participation in the infringement, namely 2011.
- (56) Accordingly, the value of sales for each undertaking is as set out in Table 1.

Table 1. The value of sales

Undertaking	Value of Sales in the EEA (EUR)
Bonduelle	[...]
Lutèce	[...]
Prochamp	[...]

8.3.2. *Determination of the basic amount of the fine*

- (57) The basic amount consists of an amount of up to 30% of an undertaking's relevant sales, depending on the degree of gravity of the infringement, multiplied by the number of years of the undertaking's participation in the infringement, and an additional amount of between 15% and 25% of the value of the undertaking's relevant sales, irrespective of duration.³⁹

8.3.2.1. Gravity

- (58) The gravity of the infringement determines the percentage of the value of sales taken into account in setting the fine. In assessing the gravity of the infringement, the Commission has regard to a number of factors, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographic scope of the infringement and/or whether or not the infringement has been implemented.⁴⁰
- (59) In its assessment, the Commission considers the facts described in this Decision, and in particular the fact that price coordination arrangements are, by their very nature,

³⁸ Point 13 of the Guidelines on Fines.

³⁹ Points 19-26 of the Guidelines on Fines.

⁴⁰ Points 21 and 22 of the Guidelines on Fines.

among the most harmful restrictions of competition. Therefore, the proportion of the value of sales taken into account for such infringements will generally be set at the higher end of the scale of the value of sales.⁴¹

- (60) The Commission also takes into account in the assessment the fact that the infringement has been implemented and covered the entire EEA.
- (61) Given the specific circumstances of this case and taking into account the nature, the geographic scope of the infringement and the fact that the infringement has been implemented the proportion of the value of sales to be taken into account is 17%.

8.3.2.2. Duration

- (62) In calculating the fine to be imposed on each undertaking, the Commission also takes into consideration the duration of the infringement⁴².
- (63) The duration to be taken into account for the purposes of calculating the fine to be imposed on each addressee, rounded down to the month, and the resulting multipliers for duration are set out in Table 2.

Table 2. Duration

Entity	Duration	Multipliers
Bonduelle	1 September 2010 - 28 February 2012	1.41
Lutèce	1 September 2010 - 22 December 2011	1.25
Prochamp	1 September 2010 - 28 February 2012	1.41

8.3.2.3. Additional amount

- (64) The infringement concerns a price coordination cartel. Therefore, the Commission includes in the basic amount of each fine a sum of between 15% and 25% of the value of sales to deter the undertakings from entering into such illegal practices on the basis of the criteria listed in recital (84) with respect to the variable amount.⁴³
- (65) Taking into account the factors listed in Section 8.3.2.1 relating to the nature, the geographic scope of the infringement and the fact that the infringement has been implemented the percentage to be applied for the purposes of calculating the additional amount is 17%.

⁴¹ Point 23 of the Guidelines on Fines.

⁴² Point 24 of the Guidelines on Fines.

⁴³ Point 25 of the Guidelines on Fines.

8.3.2.4. Calculation of the basic amount

- (66) Based on the criteria explained in recitals (75)-(88), the basic amount of the fine to be imposed on each undertaking is set out in Table 3.

Table 3. Basic amounts of the fine

Undertaking	Basic amount in EUR
Bonduelle	[...]
Lutèce	[...]
Prochamp	[...]

8.3.3. *Adjustments to the basic amount of the fine: aggravating or mitigating factors*

- (67) The Commission may increase the basic amount where it considers that aggravating circumstances apply. Those circumstances are listed in a non-exhaustive way in point 28 of the Guidelines on Fines. The Commission may also reduce the basic amount where it considers that mitigating circumstances apply. Those circumstances are listed in a non-exhaustive way in point 29 of the Guidelines on Fines.
- (68) The Commission does not consider that any aggravating or mitigating circumstances apply in this case.

8.4. Application of the 10% turnover limit

- (69) Article 23(2) of Regulation (EC) No 1/2003 provides that the fine imposed on each undertaking participating in the infringement must not exceed 10% of its total turnover relating to the business year preceding the date of the Commission decision.
- (70) The 10% cap laid down in Article 23(2) is calculated on the basis of the total turnover of all the entities constituting an 'undertaking' in accordance with settled case-law.⁴⁴

⁴⁴ See e.g. Joined Cases T-204/08 and T-212/08 Team Relocations and Others v Commission [2011] ECR II-3569, paragraphs 154; upheld on this point on appeal in the judgment of 11 July 2013 in Case C-444/11 P Team Relocations and Others v Commission, nyr, paragraphs 170-179, Judgment of 16 September 2013 in Case T-411/10 Laufen Austria v Commission, nyr, paragraph 150, Judgment of 17 May 2013 in Case T-146/09 Parker ITR and Parker-Hannifin v Commission, nyr, paragraphs 226-230, Judgment of 27 June 2012, Case T-448/07, YKK e.a. v Commission, nyr, paragraphs 192-195.

Table 4. Fine after application of 10% turnover limit

Undertaking	Legal maximum amount (EUR)
Bonduelle	[...]
Lutèce	[...]
Prochamp	[...]

8.5. Application of the Leniency Notice

- (71) On 22 December 2011, Lutèce applied for immunity under the Leniency Notice. On 17 February 2012, the Commission granted Lutèce conditional immunity from fines pursuant to point 8(a) of the Leniency Notice. Lutèce's co-operation fulfilled the requirements of the Leniency Notice. Lutèce should therefore be granted immunity from fines for the infringement that is the subject of this Decision.
- (72) Prochamp was the second undertaking to meet the requirements of points 24 and 25 of the Leniency Notice. Prochamp was notified of the decision of 9 April 2013 by which the Commission announced its intention to grant a reduction of the fine within the range of 20-30%. The application of Prochamp not only corroborated the existing facts, but also contained evidence on new events and was very useful in clarifying these and other events. Prochamp should therefore be granted 30% reduction of its fines.

8.6. Adaptation – Point 37 of the Guidelines on Fines

- (73) In view of the specific circumstances of this case, the Commission deems it appropriate to exercise its discretion and to apply point 37 of the Guidelines on Fines which allows it to depart from the methodology of the Guidelines. Taking into account that Prochamp is a very small independent company that does not belong to a large group of companies and the need to ensure an appropriate level of deterrence, without being disproportionate, in view of these specific characteristics Prochamp should be granted an additional 10% reduction.

8.7. Application of the Settlement Notice

- (74) In accordance with point 32 of the Settlement Notice, the reward for settlement is a reduction of 10% of the amount of the fine to be imposed on an undertaking after the 10% of turnover cap has been applied having regard to the Guidelines on Fines. Pursuant to point 33 of the Settlement Notice, when settled cases involve leniency applicants, the reduction of the fine granted to them for settlement is added to their leniency reward.
- (75) As a result of the application of the Settlement Notice, the amount of the fines to be imposed on Bonduelle, Lutèce and Prochamp should be reduced by 10%.

8.8. Conclusion: Final amount of individual fines to be imposed in this Decision

(76) The fines to be imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are set out in Table 5.

Table 5. Fines

Undertaking	Fines (in EUR)
Bonduelle	30 204 000
Lutèce	0
Prochamp	2 021 000

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating, during the periods indicated, in a single and continuous infringement covering the entire EEA in the canned mushrooms sector, which consisted of price coordination and customer allocation:

1. Bonduelle:
 - (a) Bonduelle SCA, from 1 September 2010 until 28 February 2012
 - (b) Bonduelle SAS, from 1 September 2010 until 28 February 2012
 - (c) Bonduelle Conserve International SAS, from 1 September 2010 until 28 February 2012
- (d) 2. Lutèce:
 - (e) C4C Holding B.V., from 1 September 2010 until 22 December 2011
 - (f) Lutèce Holding B.V., from 1 September 2010 until 22 December 2011
 - (g) Lutèce B.V., from 1 September 2010 until 22 December 2011
- (h) 3. Prochamp
 - (a) Peffer Holding B.V., from 1 September 2010 until 28 February 2012
 - (b) Prochamp B.V., from 1 September 2010 until 28 February 2012.

Article 2

For the infringement referred to in Article 1, the following fines are imposed:

- (a) Bonduelle SCA, Bonduelle SAS and Bonduelle Conserve International SAS, jointly and severally: EUR 30 204 000;
- (b) C4C Holding B.V., Lutèce Holding B.V. and Lutèce B.V., jointly and severally EUR 0;
- (c) Peffer Holding B.V. and Prochamp B.V., jointly and severally: EUR 2 021 000.

The fines shall be credited in euros within a period of three months from the date of notification of this Decision to the following bank account held in the name of the European Commission:

BANQUE ET CAISSE D'EPARGNE DE L'ETAT

1–2, Place de Metz

L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000

BIC: BCEELULL

Ref.: European Commission – BUFI /COMP/AT.39965

After the expiry of this period, interest will automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an undertaking referred to in Article 1 lodges an appeal, that undertaking shall cover the fine by the due date, either by providing an acceptable financial guarantee, or by making a provisional payment of the fine in accordance with Article 90 of Commission Delegated Regulation (EU) No 1268/2012.⁴⁵

Article 3

The undertakings listed in Article 1 shall immediately bring to an end the infringement referred to in that Article insofar as they have not already done so.

They shall refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or similar object or effect.

Article 4

This Decision is addressed to:

- (1) Bonduelle SCA, La Woëstyne, 59173 Renescure, France;
- (2) Bonduelle SAS, La Woëstyne, 59173 Renescure, France;
- (3) Bonduelle Conserve International SAS, La Woëstyne, 59173 Renescure, France.
- (4) C4C Holding B.V., Driekronenstraat 6, 6596 MA Milsbeek, The Netherlands;
- (5) Lutèce Holding B.V., Handelstraat 8, 5691 PV Horst, The Netherlands;
- (6) Lutèce B.V., Handelstraat 8, 5961 PV Horst, The Netherlands.
- (7) Peffer Holding B.V., Wertsteeg 10, 5331 PE Kerkdriel, The Netherlands;
- (8) Prochamp B.V., Laarstraat 2, 5334 NS Velddriel, The Netherlands.

⁴⁵ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

This Decision shall be enforceable pursuant to Article 299 of the Treaty and Article 110 of the EEA Agreement.

Done at Brussels, 25.6.2014

For the Commission

Joaquín ALMUNIA

Vice-President

