EUROPEAN COMMISSION
Competition DG

CASE AT. 40127 – Canned vegetables

(Only the English text is authentic)

CARTEL PROCEDURE

Council Regulation (EC) 1/2003

Article 7 Regulation (EC) 1/2003

Date: 27/09/2019

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EUROPEAN
COMMISSION

Brussels, 27.9.2019
C(2019) 6903 final

COMMISSION DECISION

of 27.9.2019

relating to proceedings under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the Agreement on the European Economic Area

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(Text with EEA relevance)

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(Text with EEA relevance)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ('the Treaty'),

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'),

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[1], and in particular Article 7 and Article 23(2) thereof,

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 Treaty[2], as amended by Commission Regulation (EC) No 622/2008 of 30 June 2008 as regards the conduct of settlement procedures in cartel cases[3], and in particular Article 10a thereof,

Having regard to the Commission Decision of 17 February 2017 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 case,

Whereas:

1. INTRODUCTION

(1) The addressees of this Decision participated in a single and continuous infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement. The infringement consisted in price coordination, market sharing and the exchange of commercially sensitive information in relation to the sale of certain types of canned vegetables to retailers and/or the food service industry in the EEA. The

[1] OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Article 81 of the EC Treaty has become Article 101 of the Treaty. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Article 101 of the Treaty should be understood as references to Article 81 of the EC Treaty where appropriate. The Treaty also introduced certain changes in terminology, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'.

[2] OJ L 123, 27.4.2004, p. 18.

[3] OJ L 171, 1.7.2008, p. 3.

infringement covered the entire EEA and took place between 19 January 2000 and 1 October 2013.

(2) This Decision is exclusively addressed to the following legal entities (referred to collectively as 'addressees' or individually as 'addressee'):

(a) Bonduelle SCA, Bonduelle SA (formerly Bonduelle SAS) and Bonduelle Europe Long Life SAS ('BELL'), with registered offices at La Woëstyne, 59173 Renescure, France, (together, 'Bonduelle');

(b) Coroos International NV ('Coroos International'), with registered offices at Schout Bij Nacht Doormanweg 40 Damacor Office Bldg 2nd Floor, Curaçao, Coroos Beheer BV ('Coroos Beheer') and Coroos Conserven BV ('Coroos Conserven'), with registered offices at Middenweg 1, 4421 JG Kapelle, Netherlands, (together, 'Coroos');

(c) Centrale Coopérative Agricole Bretonne SCA ('CECAB SCA'), with registered offices at Saint-Léonard Nord - Kerlurec, 56450 Theix-Noyalo, France, Compagnie Générale de Conserve SAS ('CGC'), with registered offices at Kerlurec - Saint-Léonard Nord, 56450 Theix-Noyalo, France, and GIE Groupe d'aucy, (formerly GIE Groupe CECAB), with registered offices at Saint-Léonard Nord - Kerlurec, 56450 Theix-Noyalo, France, (together, 'Groupe CECAB').

(3) The facts set out in Sections 3 and 4 of this Decision have been accepted by Bonduelle, Coroos and Groupe CECAB (referred to collectively as 'settling parties' or individually as 'settling party') in the settlement procedure[4]. In Sections 2 and 3, reference is made to […], which is also subject to the proceedings but not to the settlement procedure and is therefore not an addressee of this Decision (see Recitals (12), (13) and (25))[5].

(4) The description of the conduct referred to in Sections 3 and 4 of this Decision is exclusively used for the purpose of establishing the liability of the settling parties for an infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement. This Decision does not make any findings concerning any liability of […] for any participation in an infringement of EU competition law in this case.

2. THE INDUSTRY AND THE UNDERTAKINGS SUBJECT TO THE PROCEEDINGS

2.1. The products and markets concerned

(5) The conduct concerned the following products and markets:

(a) Sales of all types of canned vegetables[6], including mixes of vegetables and canned vegetable preparations and dishes (but excluding mixes, salads and preparations that do not have vegetables as their main ingredient), under the producer's own brand or brands or under private labels to retailers and to the food service industry in France;

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4 See points 5 to 33 of the 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 ('the Settlement Notice') (OJ C 167, 2.7.2008, p. 1).

5 At the date of adoption of this Decision, the administrative proceedings under Article 7 of Regulation (EC) No 1/2003 against […] are pending (see Recital (25) and footnote 9).

6 Except canned tomatoes, mushrooms, condiments or olives, and canned products having these as main ingredients.

(b) Sales of all types of canned green beans, peas, peas and carrots mix, vegetable macedoine, wax beans, and flageolet beans under private labels to retailers in the EEA, in particular in Belgium, Germany, France and the Netherlands;

(c) Sales of all types of canned sweetcorn under private labels to retailers in the EEA, in particular in Belgium, Germany, Denmark, Ireland, Spain, France, Italy, Luxembourg, the Netherlands, Austria, Portugal, Norway, Finland, Sweden and the United Kingdom.

2.2. The undertakings subject to the proceedings

2.2.1. The undertakings subject to the proceedings and to the settlement procedure

2.2.1.1. Bonduelle

(6) Bonduelle produces processed vegetables. Its total turnover in the business year from 1 July 2018 to 30 June 2019 was approximately EUR 2 777 million.

(7) The relevant legal entities of Bonduelle for the purposes of this case are Bonduelle SCA, Bonduelle SA and BELL.

2.2.1.2. Coroos

(8) Coroos produces canned fruits and vegetables. Its total turnover in the business year from 1 January 2018 to 31 December 2018 was approximately EUR [160-190][*] million.

(9) The relevant legal entities of Coroos for the purposes of this case are Coroos International, Coroos Beheer and Coroos Conserven.

2.2.1.3. Groupe CECAB

(10) Groupe CECAB mainly produces processed vegetables, meat and meat products, eggs and egg products, and other food products. Its total turnover in the business year from 1 July 2018 to 30 June 2019 was approximately EUR […].

(11) The relevant legal entities of Groupe CECAB for the purposes of this case are CECAB SCA, CGC and GIE Groupe d'aucy.

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

(12) […] is subject to the proceedings but not to the settlement procedure.

(13) […] are not addressees of this Decision[7].

(14) […].

[*] For the actual amount, see […].

[7] […] did not submit a formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004 (see Recital (25)). Therefore, this Decision is not addressed to […]. This Decision is based on matters of fact as accepted by Bonduelle, Coroos and Groupe CECAB in the settlement procedure. In Section 3, the reference to […] is exclusively used to establish the liability of the settling parties for an infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement. Administrative proceedings taken pursuant to Article 7 of Regulation (EC) No 1/2003 against […] are pending.

3. PROCEDURE

(15) On 11 June 2013, Bonduelle applied for immunity from fines under points (14) and (15) of the Commission Notice on Immunity from fines and reduction of fines in cartel cases ('the Leniency Notice')[8]. By decision of 24 September 2013, notified on 1 October 2013, the Commission granted Bonduelle conditional immunity from fines under point (18) of the Leniency Notice.

(16) From 1 October to 4 October 2013, the Commission carried out inspections under Article 20(4) of Regulation (EC) No 1/2003 at the premises of Bonduelle, […], Coroos and Groupe CECAB.

(17) […].

(18) On 20 November 2013, Groupe CECAB applied for immunity from fines under point (14) of the Leniency Notice or, in the alternative, a reduction of fine under point (27) of the Leniency Notice.

(19) On 13 February 2014, Coroos applied for immunity from fines under point (14) of the Leniency Notice or, in the alternative, a reduction of fine under point (27) of the Leniency Notice.

(20) […].

(21) By decision of 17 February 2017, notified to […], Coroos and Groupe CECAB on 22 February 2017 and to Bonduelle on 23 February 2017, the Commission initiated proceedings under Article 11(6) of Regulation (EC) No 1/2003 and Article 2(1) of Regulation (EC) No 773/2004 against all parties with a view to engaging in settlement discussions with them.

(22) Between March 2017 and June 2019, the Commission conducted settlement discussions with the parties in accordance with the provisions set out in points 14 to 19 of the Settlement Notice. During those discussions, the Commission informed the parties of the objections it envisaged raising against them and disclosed the main pieces of evidence relied upon to establish these objections. Access was given to the parties to copies of the relevant pieces of documentary evidence in the file and to […]. Access was also given to the parties at the Commission's premises to the corporate leniency statements. 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. The Commission also indicated to the parties an estimation of the range of fines likely to be imposed against them. At the end of the settlement discussions the settling parties considered that there was a sufficient common understanding on the potential objections and the estimated fines range to continue the settlement process.

(23) Between […], each settling party submitted to the Commission a formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004, in the form of a settlement submission. Each settlement submission contained:

(a) in accordance with the results of the settlement discussions, an acknowledgement in clear and unequivocal terms of the settling party's liability for the infringement, summarily described as regards its object, the main facts, their legal qualification, and including the settling party's role and the duration of its participation in the infringement;

[8] OJ C 298, 8.12.2006, p. 17.

(b) an indication of the maximum amount of the fine the settling party expects to be imposed by the Commission and which it would accept in a settlement;

(c) the settling 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;

(d) the settling 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;

(e) the settling party's agreement to receive the statement of objections and the final decision in English, pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003.

(24) Each of the settling parties made its settlement submission conditional upon the imposition by the Commission of a fine not exceeding the amount as specified in its settlement submission.

(25) […] did not submit a formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004[9].

(26) On 25 July 2019, the Commission adopted a statement of objections addressed to the settling parties. All of the settling parties replied to the statement of objections by confirming that it reflected the contents of their settlement submissions and that they remained committed to following the settlement procedure.

(27) Having regard to the clear and unequivocal acknowledgments of the settling parties given in their settlement submissions and to their clear and unequivocal confirmation that the statement of objections reflected their settlement submissions, the addressees of this Decision should be held liable for the infringement described in this Decision.

4. DESCRIPTION OF THE CONDUCT

4.1. Nature and scope of the conduct

(28) The Commission investigated the following three agreements:

Table 1: Overview of the agreements

Agreement	Addressees	Relevant products/markets
French agreements	Bonduelle Groupe CECAB	Products: All canned vegetables[10] Sales channels: Own brand, private label Customers: Retailers and the food service industry in France (own brand to the food service industry as of the 2004/2005 campaign)
4P/4P agreement[11]	Bonduelle	Products: Green beans, peas, peas and carrots mix,

9 […]

10 See Recital (5)(a). Sales of private label products to retailers concerned only the products not covered by the 4P/4P and sweetcorn agreements.

11 4P/4P refers to the French denomination of the agreement, '4 pays/4 produits' (4 countries/4 products). As from the 2010/2011 campaign, wax beans and flageolet beans were also included in the agreement.

	Coroos Groupe CECAB	vegetable macedoine; wax beans, flageolet beans (as of the 2010/2011 campaign) Sales channel: Private label Customers: Retailers in the EEA, in particular in Belgium, Germany, France, Netherlands
Sweetcorn agreement	Bonduelle Groupe CECAB	Products: Sweetcorn Sales channel: Private label Customers: Retailers in the EEA, in particular in Belgium, Germany, Denmark, Ireland, Spain, France, Italy, Luxembourg, the Netherlands, Austria, Portugal, Norway, Finland, Sweden, United Kingdom

(29) In the framework of these arrangements, the addressees participated in three closely inter-related horizontal price fixing and market sharing agreements through which they coordinated their commercial conduct on the market. The agreements had a common objective, a common historical origin, and several common or identical characteristics regarding, for instance, the participating individuals of the addressees, the overall functioning of the agreements, the organisation of relevant contacts and meetings, and the implementation, reporting and monitoring mechanisms.

(30) The agreements concerned either different groupings of addressees, different sales channels, customers or product families, different geographical areas, or a combination of such factors, as listed in Table 1 above.

(31) The conduct consisted in:

(a) the fixing of selling prices (price increases, minimum prices, target prices) and the coordination of pricing policy and pricing structure among the addressees[12];

(b) the allocation of volume quotas and market shares among the addressees[13];

(c) the allocation of customers and markets among the addressees[14];

(d) the coordination of tenders and price offers to be submitted to retailers and/or the food service industry among the addressees[15];

(e) the coordination of other sales conditions and rebates, marketing strategy, and promotional policy among the addressees[16];

(f) the disclosure and exchange of commercially sensitive information among the addressees[17].

(32) The relevant contacts between the individuals of the addressees who participated in the conduct mainly consisted of bilateral or multilateral meetings. The individuals of

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the addressees communicated by telephone[18] or by text message[19] and exchanged information or documents by email[20], on USB keys[21] or by fax[22].

(33) Meetings between representatives or employees of the addressees were in principle organised at two levels: (i) 'top-level' meetings between management executives[23]; (ii) meetings between commercial executives, or between other staff in sales and marketing, finances or accounting[24]. The 'top-level' meetings took place generally at least once a year between the management executives of the addressees to discuss and agree on the general orientation of the conduct, the overall level of price increases, the market shares and volumes of each addressee, including the compensation due if some of them would not respect the agreed volumes[25]. The meetings between commercial executives of the addressees, or between other staff in sales and marketing, finances or accounting took place very frequently, sometimes on a weekly basis during negotiations with customers. The addressees discussed and agreed on the implementation of each agreement (prices and volumes per product or product family, per market or per customer, negotiation scenarios, conduct regarding specific customers, etc.)[26].

(34) Meetings relating to different agreements were sometimes held in conjunction, either on the same day or on consecutive days[27], and information relating to one agreement was sometimes exchanged between the addressees together with information relating to another agreement[28]. The individuals from each addressee who participated in the relevant contacts were frequently the same or their successors, independently of which agreement or agreements were discussed[29]. There were also economic links between the agreements, as, on certain occasions, the addressees operated cross-compensations in terms of volume quotas and customer or market allocation between certain of the agreements[30].

(35) The addressees put in place elaborate reporting, monitoring and compensation mechanisms and conducted at least one audit to verify the implementation of the agreements[31]. They regularly exchanged large spreadsheet files or pre-filled tables containing bi-monthly or annual figures on sales prices, sales volumes and market shares, which were verified and compared ex-post[32]. The addressees also put in place mechanisms to ensure carry-overs from one year to the next and to compensate differences in volumes between the addressees[33].

(36) The individuals of the addressees who participated in the relevant contacts took measures to conceal their activities. For instance, some meetings were held at private

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31 […], for the compensation mechanisms: […]; for the conduct of audits: […]; for reporting: […]
32 […]
33 […]

homes[34], individuals were referred to by codenames[35], participants communicated using prepaid mobile telephones or private email addresses and exchanged information using dedicated laptops and USB keys[36].

4.2. Geographical scope of the conduct

(37) The conduct covered the entire EEA since, whereas the agreements described in Recital (5) and Table 1 in Recital (28) focused on certain EU-15 Member States, there was a general policy of non-aggression between the addressees which covered the EEA countries in which they were active[37]. In addition, given that some retailers issue calls for tenders that cover several EEA countries or that concern product volumes without specifying in which countries those volumes would be sold, the conduct would have affected sales in other EEA countries than those that were the subject of those arrangements[38].

4.3. Duration of the conduct

(38) Bonduelle, Coroos and Groupe CECAB's participation in the conduct commenced on 19 January 2000, which is the date on which a multilateral meeting was held between management executives of Bonduelle, Coroos and Groupe CECAB[39].

(39) Bonduelle's participation in the conduct is considered to have ceased on the date of its immunity application on 11 June 2013 (see Recital (15)). Coroos and Groupe CECAB's participation in the conduct is considered to have ceased on the date of the start of the Commission's inspections on 1 October 2013.

5. LEGAL ASSESSMENT

(40) The legal assessment set out in this Section takes into account the facts and the body of evidence as described in Section 4, the settling parties' clear and unequivocal acknowledgement in their settlement submissions of those facts and of their legal qualification.

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

5.1.1. Legal basis

(41) Article 101(1) of the Treaty prohibits as incompatible with the internal market all agreements between undertakings, decisions by associations of undertakings or concerted practices that may affect trade between Member States and have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions, limit or control production and markets, or share markets or sources of supply, unless they meet the conditions for an exemption set out in Article 101(3) of the Treaty.

(42) Article 53(1) of the EEA Agreement prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices that may affect trade between Contracting Parties to the EEA Agreement and have as their object or

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37 […]. The addressees' sales however predominantly concerned certain EU-15 Member States.
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effect the prevention, restriction or distortion of competition within the territory covered by the EEA Agreement, unless they meet the conditions for an exemption set out in Article 53(3) of the EEA Agreement[40].

5.1.2. Jurisdiction

(43) The Commission is the competent authority to apply both Article 101 of the Treaty, as the infringement described in this Decision is capable of having an appreciable effect on trade between Member States, and Article 53, in conjunction with Article 56 of the EEA Agreement, in so far as the infringement described in this Decision is capable of having an appreciable effect on trade between Contracting Parties to the EEA Agreement.

5.1.3. Agreements and concerted practices

5.1.3.1. Principles

(44) Article 101(1) of the Treaty refers to '*agreements between undertakings*' and '*concerted practices*'. An agreement between undertakings 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.

(45) Although Article 101(1) of the Treaty draws a distinction between the concept of agreements between undertakings and that of concerted practices, the object of that distinction is to bring within the prohibition of those articles any 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[41]. Thus, conduct may fall under Article 101(1) of the Treaty as a concerted practice even where the parties have not explicitly subscribed to a common plan defining their action on the market but knowingly adopt or adhere to collusive devices which facilitate the coordination of their commercial behaviour[42].

(46) The concepts of agreement and concerted practice are fluid and may overlap. Indeed, it may not even be possible to make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while when considered in isolation some of its manifestations could accurately be described as one rather than the other[43].

5.1.3.2. Application in this case

(47) Bonduelle, Coroos and Groupe CECAB participated in horizontal anti-competitive arrangements which formed part of an overall scheme that had as its aim to restrict or distort competition by fixing selling prices and other trading conditions, limiting or

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40 The case-law of the Court of Justice of the European Union in relation to the interpretation of Article 101 of the Treaty applies equally to the interpretation of Article 53 of the EEA Agreement (see Recitals 4 and 15 and Article 6 of the EEA Agreement, Article 3(2) of the Surveillance and Court Agreement and judgment of the EFTA Court of 16 December 1994 in Case E-1/94, *Ravintoloitsijain Liiton Kustannus Oy Restamark*, [1994-1995] EFTA Ct. Rep. 15, paragraph 34). References in this Decision to Article 101(1) of the Treaty therefore apply also to Article 53(1) of the EEA Agreement.

41 See, to that effect, judgment of 14 July 1972, *ICI* v *Commission*, C-48/69, ECLI:EU:C:1972:70, paragraph 64.

42 See, to that effect, judgment of 17 December 1991, *Hercules Chemicals* v *Commission*, T-7/89, ECLI:EU:T:1991:75, paragraph 242.

43 See, to that effect, judgment of 8 July 1999, *Commission* v *Anic Partecipazioni*, C-49/92 P, ECLI:EU:C:1999:356, paragraph 81.

controlling markets, and sharing markets. The objective of the conduct was for the addressees to maintain or reinforce their position on the market, to maintain or increase their selling prices, to restrict direct competition between them, to reduce uncertainty regarding their future commercial conduct, and to formulate and control marketing and trading conditions to their advantage in the EEA. To this end, those undertakings fixed selling prices (by agreeing on price increases, minimum prices and target prices), allocated customers, markets, volumes, and market shares among themselves, coordinated tenders and price offers to be submitted to retailers and/or the food service industry, agreed on other sales conditions and rebates, including marketing strategy and promotional policy, and exchanged sensitive commercial information. Such conduct constitutes, by its very nature, a restriction of competition within the meaning of Article 101(1) of the Treaty.

(48) As described in Recitals (28), (29), (31) and (47), Bonduelle, Coroos and Groupe CECAB participated in conduct consisting in price fixing, market sharing, bid rigging and the exchange of commercially sensitive information, which can be considered as agreements or concerted practices. Each of the addressees is considered to have used the information exchanged with competitors in determining its own individual conduct on the market, in particular as the anti-competitive conduct occurred on a regular basis and over a long period of time.

(49) The conduct therefore presents all the characteristics of an agreement and/or a concerted practice within the meaning of Article 101(1) of the Treaty.

5.1.4. Single and continuous infringement

5.1.4.1. Principles

(50) An infringement of Article 101(1) of the Treaty may result not only from an isolated act, but also from a series of acts or from continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of that provision[44]. When the different actions form part of an 'overall plan', because their identical object distorts competition in the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole[45].

(51) An undertaking which has participated in such a single and complex infringement through its own conduct, which fell within the definition of an agreement or a concerted practice having an anti-competitive object for the purposes of Article 101(1) of the Treaty and was intended to help bring about the infringement as a whole, may accordingly be liable also in respect of the conduct of other undertakings in the context of the same infringement throughout the period of its participation in the infringement. That is the position where it is shown that the undertaking intended, through its own conduct, to contribute to the common objectives pursued by all the participants and that it was aware of the offending conduct planned or put into effect by other undertakings in pursuit of the same

44 Ibid., paragraph 81.

45 See, to that effect, judgment of 7 January 2004, *Aalborg Portland* v *Commission*, C-204/00 P, ECLI:EU:C:2004:6, paragraph 258.

objectives or that it could reasonably have foreseen it and was prepared to take the risk[46].

(52) An undertaking may thus have participated directly in all the forms of anti-competitive conduct comprising the single and continuous infringement, in which case the Commission is entitled to attribute liability to it in relation to that conduct as a whole and, therefore, in relation to the infringement as a whole. Equally, the undertaking may have participated directly in only some of the forms of anti-competitive conduct comprising the single and continuous infringement, but have been aware of all the other unlawful conduct planned or put into effect by the other participants in the cartel in pursuit of the same objectives, or could reasonably have foreseen that conduct and have been prepared to take the risk. In such cases, the Commission is also entitled to attribute liability to that undertaking in relation to all the forms of anti-competitive conduct comprising such an infringement and, accordingly, in relation to the infringement as a whole[47].

5.1.4.2. Application in this case

(53) In the present case, the Commission considers that the evidence and facts show that Bonduelle, Coroos and Groupe CECAB, in participating in the conduct described in Section 4, participated in a single and continuous infringement of Article 101(1) of the Treaty on the market for canned vegetables within the EEA.

(54) Bonduelle and Groupe CECAB directly participated in all three agreements (French agreements, 4P/4P and sweetcorn) forming part of the single and continuous infringement.

(55) Coroos did not participate in the sweetcorn agreement and the French agreements but was aware of Bonduelle and Groupe CECAB's anti-competitive practices regarding the sweetcorn agreement and the French agreements and of the objectives pursued by those agreements (see Recital (34)).

(56) Bonduelle, Coroos and Groupe CECAB expressed, through their individual and collective actions, their joint intention to behave on the market in a certain way. They followed a common plan to determine their individual commercial conduct in pursuit of an identical anti-competitive object and a single economic aim which remained the same throughout the entire period of the infringement, as described in Recital (47).

(57) The participation of the settling parties in the contacts described in Section 4 had a common objective to restrict competition on the market for canned vegetables. As noted in Recital (29), the agreements had a common historical origin. In particular, as shown in Recital (34), they had common features and identical principles of functioning and implementation mechanisms (for example, the participating individuals were essentially the same, as were the price coordination and quota allocation systems). Likewise, the means used for exchanging information on prices and volumes and for monitoring the implementation of the arrangements were identical for all three agreements (see Recitals (29) and (32) to (35)).

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[46] See, to that effect, judgments of 8 July 1999, *Commission* v *Anic Partecipazioni*, C-49/92 P, ECLI:EU:C:1999:356, paragraphs 87 and 203; of 7 January 2004, *Aalborg Portland* v *Commission*, C-204/00 P, ECLI:EU:C:2004:6, paragraph 83.

[47] See, to that effect, judgment of 6 December 2012, *Commission* v *Verhuizingen Coppens*, C-441/11 P, ECLI:EU:C:2012:778, paragraph 43.

(58) Bonduelle, Coroos and Groupe CECAB were aware of the anti-competitive nature of their activities and knew that the anti-competitive conduct was part of an overall plan in pursuit of a common unlawful object (see Recitals (29) and (36)). The fact that those undertakings regularly sought to re-negotiate, amend or update certain features of the arrangements demonstrates that they monitored and assessed the functioning of the arrangements and considered them in an overall perspective.

(59) As regards overall price levels and market shares, the arrangements were generally valid for at least one annual campaign. Although there may exist periods during which Bonduelle, Coroos or Groupe CECAB did not fully respect the anti-competitive agreements, at no point in time did any of those undertakings seek to dissociate itself from the anti-competitive arrangements.

(60) The conduct therefore constitutes a single and continuous infringement of Article 101(1) of the Treaty.

5.1.5. Restriction of competition

5.1.5.1. Principles

(61) To come within the prohibition laid down in Article 101(1) of the Treaty an agreement, a decision by an association of undertakings or a concerted practice must have as its object or effect the prevention, restriction or distortion of competition in the internal market.

(62) In that regard, certain types of coordination between undertakings reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects. This arises from the fact that certain types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition. Consequently, certain collusive behaviour, such as that leading to horizontal price fixing by cartels, may be considered so likely to have negative effects, in particular on the price, quantity or quality of the goods and services, that it may be considered redundant, for the purposes of applying Article 101(1) of the Treaty, to prove that it has actual effects on the market[48].

5.1.5.2. Application in this case

(63) Through the conduct described in Section 4, Bonduelle, Coroos and Groupe CECAB coordinated their behaviour on the market, in particular through price coordination, market sharing and the exchange of commercially sensitive information in relation to the sale of certain types of canned vegetables to retailers and/or the food service industry in the EEA.

(64) Such conduct constitutes a restriction of competition and can be regarded, by its very nature, as being harmful to the proper functioning of normal competition.

(65) The conduct therefore had as its object the restriction of competition within the meaning of Article 101(1) of the Treaty.

[48] See, to that effect, judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, ECLI:EU:C:2015:184, paragraphs 113-115 and the case-law cited.

5.1.6. Effect on trade between Member States and between Contracting Parties to the EEA Agreement

5.1.6.1. Principles

(66) Article 101(1) of the Treaty prohibits anti-competitive agreements between undertakings, decisions of associations of undertakings and concerted practices which may affect trade between Member States. Similarly, Article 53(1) of the EEA Agreement is applicable to agreements between undertakings, decisions of associations of undertakings and concerted practices which may affect trade between Contracting Parties to the EEA Agreement.

(67) Article 101(1) of the Treaty does not require proof that such agreements or practices have in fact significantly affected trade between Member States and/or Contracting Parties to the EEA Agreement, but requires that it be established that the agreement was capable of having that effect[49].

(68) The Court of Justice has held that an agreement affecting trade between Member States and having an anti-competitive object by its nature constitutes an appreciable restriction of competition in violation of Article 101(1) of the Treaty, independently of any concrete effect that it may have[50].

5.1.6.2. Application in this case

(69) The market for canned vegetables is characterised by a substantial volume of trade between Member States as well as between the Contracting Parties to the EEA Agreement. During the period of the infringement, the addressees had sales of canned vegetables within the EEA and the agreements or concerted practices applied within the EEA.

(70) The agreements or concerted practices were therefore, by their nature, capable of having an appreciable effect on trade between Member States and/or Contracting Parties to the EEA Agreement within the meaning of Article 101(1) of the Treaty.

5.2. Non applicability of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement

5.2.1. Principles

(71) 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, respectively, where an agreement or concerted practice contributes to improving the production or distribution of goods or to promoting technical or economic progress, provided that it allows consumers a fair share of the resulting benefit, does not impose restrictions that are not indispensable to the attainment of those objectives, and does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

5.2.2. Application in this case

(72) There are no indications that the conduct contributed to improving the production or distribution of goods or to promoting technical or economic progress. The conditions

[49] See, to that effect, judgment of 15 March 2000, *Cimenteries CBR* v *Commission*, T-25/95, ECLI:EU:T:2000:77, paragraph 3930.

[50] See, to that effect, judgment of 13 December 2012, *Expedia*, C-226/11, ECLI:EU:C:2012:795, paragraph 37.

for exemption provided for in Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement are therefore not fulfilled in this case.

6. DURATION OF PARTICIPATION IN THE INFRINGEMENT

(73) On the basis of the facts set out in Section 4, it is appropriate to consider that Bonduelle, Coroos and Groupe CECAB started their participation in the infringement on 19 January 2000. The participation of Bonduelle in the infringement ended on 11 June 2013. The participation of Coroos and Groupe CECAB in the infringement ended on 1 October 2013.

7. LIABILITY

7.1. Principles

(74) Article 101(1) of the Treaty refers to the activities of undertakings. The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. The concept of an undertaking, in that same context, must be understood as designating an economic unit even if in law that economic unit consists of several persons, natural or legal[51].

(75) When such an economic entity infringes Article 101(1) of the Treaty, that entity must be held liable for the infringement. The infringement must be imputed unequivocally to a legal person on whom fines may be imposed and the statement of objections must be addressed to that person[52].

(76) The conduct of a subsidiary may be imputed to its parent company in particular where, although having a separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, having regard in particular to the economic, organisational and legal links between those two legal entities. That is the case because, in such a situation, the parent company and its subsidiary form a single economic unit and therefore form a single undertaking within the meaning of Article 101(1) of the Treaty, which enables the Commission to address a decision imposing fines to the parent company, without having to establish the personal involvement of the latter in the infringement[53].

(77) In the specific case where a parent company has a 100% (or near 100%) shareholding in a subsidiary which has infringed Article 101(1) of the Treaty, there is a rebuttable presumption that the parent company does in fact exercise a decisive influence over the conduct of its subsidiary[54]. In those circumstances, it is sufficient for the Commission to prove that the subsidiary is wholly owned by the parent company in order to presume that the parent company exercises a decisive influence over the commercial policy of the subsidiary. The Commission will then be able to regard the parent company as jointly and severally liable for the payment of the fine imposed on its subsidiary[55].

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51 See, to that effect, judgment of 10 September 2009, *Akzo Nobel and Others* v *Commission*, C-97/08 P, ECLI:EU:C:2009:536, paragraphs 54 and 55 and the case-law cited.

52 Ibid., paragraph 56 and 57 and the case-law cited.

53 Ibid., paragraphs 58 and 59 and the case-law cited.

54 Ibid., paragraph 60 and the case-law cited.

55 Ibid., paragraph 61 and the case-law cited.

7.2. Application in this case

(78) Having regard to the body of evidence and the facts described in Section 4 and to the settling parties' clear and unequivocal acknowledgements of those facts and of their legal assessment as set out in Sections 5 and 6, it is appropriate to hold liable the following undertakings.

7.2.1. Bonduelle

(79) Bonduelle SCA, Bonduelle SA and BELL have acknowledged joint and several liability for their participation in the infringement from 19 January 2000 to 11 June 2013.

(80) The following legal entities of Bonduelle directly participated in the infringement in the period from 19 January 2000 to 11 June 2013:

(a) Bonduelle Conserve International SAS;

(b) Bonduelle Grand Public SAS;

(c) Bonduelle Food Service SAS;

(d) Bonduelle SA;

(e) Bonduelle Surgelé International SAS;

(f) BPL Légumes SAS.

(81) BELL is the economic and legal successor of Bonduelle Conserve International SAS, Bonduelle Grand Public SAS, Bonduelle Food Service SAS, Bonduelle Surgelé International SAS and BPL Légumes SAS. It is therefore appropriate to hold BELL liable for the direct participation of those entities in the infringement from 19 January 2000 to 11 June 2013 and to hold Bonduelle SA liable for its direct participation in the infringement from 19 January 2000 to 11 June 2013.

(82) Bonduelle SCA holds 99.99% of the share capital of Bonduelle SA, which holds 99.99% of the share capital of BELL. It is therefore appropriate to hold Bonduelle SA jointly and severally liable, as parent company of BELL, for the direct participation of the predecessor entities of BELL in the infringement and to hold Bonduelle SCA jointly and severally liable, as parent company of Bonduelle SA and BELL, for the direct participation of Bonduelle SA and of the predecessor entities of BELL in the infringement.

7.2.2. Coroos

(83) Coroos International, Coroos Beheer and Coroos Conserven have acknowledged joint and several liability for their participation in the infringement from 19 January 2000 to 1 October 2013.

(84) Coroos International, Coroos Beheer and Coroos Conserven directly participated in the infringement in the period from 19 January 2000 to 1 October 2013. It is therefore appropriate to hold Coroos International, Coroos Beheer and Coroos Conserven liable for their direct participation in the infringement from 19 January 2000 to 1 October 2013.

(85) Coroos International holds 100% of the share capital of Coroos Beheer, which holds 100% of the share capital of Coroos Conserven. It is therefore appropriate to hold Coroos Beheer jointly and severally liable, as parent company of Coroos Conserven, for the participation of Coroos Conserven in the infringement and to hold Coroos International jointly and severally liable, as parent company of Coroos Beheer and

Coroos Conserven, for the participation of Coroos Beheer and Coroos Conserven in the infringement.

7.2.3. Groupe CECAB

(86) CECAB SCA, CGC and GIE Groupe d'aucy have acknowledged joint and several liability for their participation in the infringement from 19 January 2000 to 1 October 2013.

(87) CECAB SCA, CGC and GIE Groupe CECAB (now GIE Groupe d'aucy) directly participated in the infringement in the period from 19 January 2000 to 1 October 2013. It is therefore appropriate to hold CECAB SCA, CGC and GIE Groupe d'aucy liable for their direct participation in the infringement from 19 January 2000 to 1 October 2013.

(88) CECAB SCA is the economic and legal successor of SCA Union Fermière Morbihannaise which was a parent company of CGC during the period from 19 January 2000 to 1 October 2013. CECAB SCA holds, indirectly, [90-95][*]% of the share capital of CGC. It is therefore appropriate to hold CECAB SCA jointly and severally liable, as parent company of CGC, for the participation of CGC in the infringement.

8. REMEDIES

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

(89) In accordance with Article 7 of Regulation (EC) No 1/2003, 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 and associations of undertakings concerned to bring an end to such infringement.

(90) In the present case, given the secrecy in which the anti-competitive arrangements were carried out, it is not possible to declare with absolute certainty that the infringement has ceased for all the participants. It is therefore appropriate for the Commission to require the undertakings to which this Decision is addressed to immediately bring an end to the infringement, if they have not already done so, and to refrain from all agreements between undertakings, decisions by associations of undertakings or concerted practices which may have the same or a similar object or effect.

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

(91) In accordance with Article 23(2) of Regulation (EC) No 1/2003, the Commission may by decision impose on undertakings and associations of undertakings fines where, either intentionally or negligently, they infringe Article 101 of the Treaty and Article 53 of the EEA Agreement.

(92) Based on the facts described in Section 4, it is apparent that the infringement was committed intentionally. It is therefore appropriate for the Commission to impose fines on the undertakings to which this Decision is addressed.

8.3. Calculation of the fines

(93) In accordance with Article 23(3) of Regulation (EC) No 1/2003, when setting the amount of a fine, the Commission must consider all relevant circumstances, in

[*] For the actual amount, see […].

particular the gravity and the duration of the infringement. The principles relied upon by the Commission when setting the amount of a fine are laid down in the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 ('the Fines Guidelines')[56].

(94) The Commission will first determine the basic amount of the fine for each undertaking. This consists in the sum of a variable amount of up to 30% of the value of sales of each undertaking, multiplied by the duration of its participation in the infringement, and of an additional amount of between 15% and 25% of that same value of sales, irrespective of duration, in order to deter undertakings from even entering into horizontal price fixing, market sharing and output limitation agreements. The Commission may increase or reduce the basic amount of the fine for each undertaking if either aggravating or mitigating circumstances apply or may increase the basic amount of the fine to a level sufficient to ensure deterrence. For each undertaking participating in the infringement, the fine must not exceed 10% of its total turnover in the preceding business year to the Commission's decision. Finally, the Commission will apply, as appropriate, the provisions of the Leniency Notice and of the Settlement Notice.

8.3.1. Value of sales

(95) In order to determine the basic amount of each fine, the Commission takes into account the value of each undertaking's sales of goods or services to which the infringement is directly or indirectly related in the relevant geographical area within the EEA.

(96) In the present case, the relevant goods and the relevant geographical area within the EEA to which the infringement is related are those described in Recital (5) in accordance with Bonduelle, Coroos and Groupe CECAB's participation in each of the three agreements, as set out in Table 1 in Recital (28).

(97) The Commission normally takes into account the sales made by each undertaking during the last full business year of its participation in the infringement. If the last year is not representative, the Commission may take into account the sales made during another year or period.

(98) In the present case, as the end date of the infringement was 11 June 2013 for Bonduelle and 1 October 2013 for Coroos and Groupe CECAB, the last full business year of participation in the infringement was, for Bonduelle, from 1 July 2012 to 30 June 2013 and, for Coroos and Groupe CECAB, from 1 January 2012 to 31 December 2012[57]. The Commission has examined the sales figures provided by Bonduelle, Coroos and Groupe CECAB and considers that taking into account the value of sales for 2012 would not be representative of those undertakings' sales throughout the period of the infringement. On this basis, it is appropriate to take into account the average of each those undertaking's value of sales for the business years corresponding to the entire duration of the infringement for which figures are available, that is, for Bonduelle from 1 July 2001 to 30 June 2013, for Coroos from

[56] Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (2006/C 010/02) (OJ C 2010, 1.9.2006, p. 2).

[57] During the period of the infringement, the financial years for Coroos and Groupe CECAB were from 1 January to 31 December whereas for Bonduelle they were from 1 July to 30 June. Although Bonduelle applied for immunity from fines on 11 June 2013, it is appropriate to consider the financial year ended on 30 June 2013 as the last full business year of Bonduelle's participation in the infringement.

1 January 2002 to 31 December 2012 and for Groupe CECAB from 1 January 2000 to 31 December 2012.

(99) Accordingly, it is appropriate to take into account the values of sales set out in Table 2 when setting the basic amount of each fine:

Table 2: Values of sales

Undertaking	**Value of sales (EUR)**
Bonduelle	[…]
Coroos	[…]
Groupe CECAB	[…]

(100) Each settling party has, in its settlement submission, confirmed that the values of sales set out in Table 2 are correct.

8.3.2. Gravity

(101) In order to determine the proportion of the value of sales to be taken into account when setting the basic amount of each fine, the Commission takes into account a number of factors relating to the gravity of the infringement, such as the nature of the infringement, the combined market share of all the undertakings concerned, the geographical scope of the infringement and whether or not the infringement has been implemented[58].

(102) In the present case, the infringement concerned price coordination and market sharing, which are, by their very nature, among the most harmful infringements of Article 101(1) of the Treaty. In accordance with point 23 of the Fines Guidelines, it is therefore appropriate to set the proportion of the value of sales at the higher end of the scale of up to 30% of the value of sales.

(103) The Commission also takes into account the fact that (i) the infringement involved different types of anti-competitive behaviour, (ii) related to the whole territory of the EEA, and (iii) was implemented on a continuous and systematic basis.

(104) Accordingly, the Commission sets the proportion of the value of sales to be taken into account for calculating the basic amount of the fines at 18%.

8.3.3. Duration

(105) For setting the basic amount of each fine, it is appropriate to take into account the duration of participation in the infringement of Bonduelle, Coroos and Groupe CECAB as set out in Recitals (38) and (39). The resulting multiplier factor for duration is calculated on the basis of the number of days of participation in the infringement.

Table 3: Duration of participation in the infringement

Undertaking	**Period of participation in the infringement**	**Multiplier factor**
Bonduelle	19.1.2000-11.6.2013 (4 893 days)	13.39

[58] See points 19-26 of the Fines Guidelines.

Coroos	19.1.2000-1.10.2013 (5 005 days)	13.70
Groupe CECAB	19.1.2000-1.10.2013 (5 005 days)	13.70

8.3.4. Additional amount

(106) As noted in Recital (102), the infringement consists in price fixing and market sharing. In accordance with point 25 of the Fines Guidelines, to deter undertakings from entering into such practices, the basic amount of each fine should include a sum of between 15% and 25% of the value of sales.

(107) For the purpose of determining the additional amount, it is appropriate to consider the factors relating to the nature, the geographical scope and the implementation of the infringement as set out in Recital (103) and to therefore apply, for the fine of each of the parties, a proportion of the value of sales of 18%.

8.3.5. Calculation of the basic amount of the fines

(108) On the basis of the facts set out in Recitals (95) to (107), the basic amounts of the fines to be imposed are set out in Table 4.

Table 4: Basic amounts of the fines

Undertaking	**Basic amount (EUR)**[59]
Bonduelle	[…]
Coroos	[…]
Groupe CECAB	[…]

8.3.6. Aggravating circumstances

(109) The Commission may increase the basic amount of a fine where it considers that aggravating circumstances exist. Those aggravating circumstances are listed non-exhaustively in point 28 of the Fines Guidelines.

(110) Aggravating circumstances are not applicable to any of the addressees of this Decision.

8.3.7. Mitigating circumstances

(111) The Commission may reduce the basic amount of a fine where it considers that mitigating circumstances exist. Those mitigating circumstances are listed non-exhaustively in point 29 of the Fines Guidelines.

(112) Mitigating circumstances are not applicable to any of the addressees of this Decision.

8.4. Application of the 10% of turnover limit

(113) In accordance with Article 23(2) of Regulation (EC) No 1/2003, the fine imposed on each undertaking participating in the infringement must not exceed 10% of its total turnover in the business year preceding the date of the adoption of the Commission

[59] The basic amounts of the fines are rounded down to the nearest thousand.

Decision. The 10% of turnover limit is applied before any reduction that may be granted for leniency and/or for settlement[60].

(114) In the present case, the adjusted basic amount of the fine for Bonduelle, Coroos and Groupe CECAB exceeds the 10% of turnover limit calculated on the basis of the total turnover of those undertakings in the preceding business year (see Recitals (6), (8) and (10)). The adjusted basic amount of the fine for Bonduelle, Coroos and Groupe CECAB should therefore be reduced accordingly, prior to the application of any reductions under the Leniency Notice and under the Settlement Notice.

8.5. Application of the Leniency Notice

8.5.1. Immunity from fines

(115) On 11 June 2013, Bonduelle applied for immunity from fines under points (14) and (15) of the Leniency Notice. On 1 October 2013, the Commission granted Bonduelle conditional immunity from fines under point (18) of the Leniency Notice (see Recital (15)).

(116) In accordance with point (22) of the Leniency Notice, Bonduelle's cooperation with the Commission meets the conditions referred to and set out in point (12) of the Leniency Notice. Bonduelle should therefore be granted immunity from fines in this case.

8.5.2. Reduction of fines

8.5.2.1. Groupe CECAB

(117) Groupe CECAB applied for a reduction of fine under point (27) of the Leniency Notice on 20 November 2013 (see Recital (18)), at an early stage of the investigation.

(118) Groupe CECAB submitted new evidence, in particular regarding […]. This evidence strengthened the Commission's ability to prove the infringement and establish a single and continuous infringement.

(119) Groupe CECAB was the second undertaking to meet the conditions of point (24) of the Leniency Notice to qualify from a reduction of any fine that would otherwise have been imposed, by providing the Commission with evidence of the infringement which represented significant added value with respect to the evidence already in the Commission's possession at the time it was provided.

(120) On 22 February 2017, the Commission informed Groupe CECAB of its intention to grant it a reduction of its fine within the range of 20% to 30% […].

(121) In accordance with point (30) of the Leniency Notice, Groupe CECAB's cooperation with the Commission meets the conditions set out in point (12) of the Leniency Notice.

(122) The amount of the fine to be imposed on Groupe CECAB should therefore be reduced by 30%.

8.5.2.2. Coroos

(123) Coroos applied for a reduction of fine under point (27) of the Leniency Notice on 13 February 2014 (see Recital (19)).

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[60] See points 32 and 34 of the Fines Guidelines and points 32 and 33 of the Settlement Notice. See also judgment of 29 November 2005, *SNCZ* v *Commission*, T-52/02, ECLI:EU:T:2005:429, paragraph 41.

(124) Coroos submitted various new evidence, in particular, regarding […]. This evidence strengthened the Commission's ability to prove the infringement and establish a single and continuous infringement. However, a significant proportion of the evidence submitted by Coroos was not relevant for the Commission's assessment of the case as it related to allegations for which there was insufficient proof overall and/or the alleged conduct was time-barred.

(125) Coroos was the third undertaking to meet the conditions of point (24) of the Leniency Notice to qualify from a reduction of any fine that would otherwise have been imposed, by providing the Commission with evidence of the infringement which represented significant added value with respect to the evidence already in the Commission's possession at the time it was provided.

(126) On 22 February 2017, the Commission informed Coroos of its intention to grant it a reduction of its fine within the range of up to 20% […].

(127) In accordance with point (30) of the Leniency Notice, Coroos's cooperation with the Commission meets the conditions set out in point (12) of the Leniency Notice.

(128) The amount of the fine to be imposed on Coroos should therefore be reduced by 15%.

8.6. Application of the Settlement Notice

(129) In accordance with point 32 of the Settlement Notice, the reward for settlement is a reduction by 10% of the amount of the fine to be imposed after the application of the 10% of turnover limit in accordance with the Fines Guidelines. In accordance with 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 the reduction granted for cooperation under the Leniency Notice.

(130) Consequently, the amount of the fines to be imposed on Coroos and Groupe CECAB should be further reduced by 10%.

8.7. Ability to pay

(131) According to point 35 of the Fines Guidelines, '*[i]n exceptional cases, the Commission may, upon request, take account of the undertaking's inability to pay in a specific social and economic context. It will not base any reduction granted for this reason in the fine on the mere finding of an adverse or loss-making financial situation. A reduction could be granted solely on the basis of objective evidence that imposition of the fine […] would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value*'.

(132) In exercising its discretion under point 35 of the Fines Guidelines, the Commission carries out an overall assessment of the undertaking's financial situation, with the primary focus on the undertaking's capacity to pay the fine in a specific social and economic context.

(133) In principle, in so far as an undertaking argues that the estimated fine would have a negative impact on its financial situation, but does not adduce credible evidence demonstrating its inability to pay the fine, the Commission is not required to take into account the poor financial situation of that undertaking when determining the amount of the fine to be imposed. Recognition of such an obligation would be

tantamount to giving an unjustified competitive advantage to the undertakings least well adapted to the conditions of the market[61].

(134) […] submitted an application claiming its inability to pay the fine under point 35 of the Fines Guidelines.

(135) The Commission has considered those claims and has carefully assessed the information submitted by […] in reply to requests for information pursuant to Article 18(1) and (2) of Regulation (EC) No 1/2003 regarding its financial situation and the specific social and economic context it is in.

(136) Accordingly, in the […], the financial position of that undertaking and the impact of the fine is assessed in its specific social and economic context.

(137) The financial situation of […] has been assessed at the time of the adoption of the Decision and on the basis of the information submitted by it.

(138) In assessing the financial situation of […], the Commission considers the annual financial statements of the last (usually five) financial years, as well as its projections for the current financial year and the next (usually) three financial years. The Commission takes into account a number of financial ratios to measure the solidity (e.g. the proportion which the expected fine would represent of the undertaking's equity and assets), profitability, solvency and liquidity, all of which are commonly used when evaluating risks of bankruptcy. The analysis is both prospective and retrospective but with a focus on the present and immediate future of the undertaking concerned. In addition, the Commission takes into account possible restructuring plans and their state of implementation, relations with external financial partners such as banks and relations with shareholders (to assess the ability of those shareholders to financially assist the undertaking concerned)[62].

(139) The fact that an undertaking may go into liquidation as a result of the imposition of a fine does not necessarily mean that there will be a total loss of the value of the assets of that undertaking and, therefore, this may not, in itself, justify a reduction of the fine which would have otherwise been imposed on that undertaking. This is because liquidations sometimes take place in an organised, voluntary manner, as part of a restructuring plan in which new owners or new management ensure the continuity of the undertaking and of its assets. Therefore, an applicant claiming an inability to pay must demonstrate that viable alternative solutions are not available. If there is no credible indication of alternative solutions being available within a reasonably short period of time, which would ensure keeping the undertaking as a going concern, there is a high risk that its assets would lose a significant part of their value if, as a result of the fine to be imposed, that undertaking was to be forced into liquidation.

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61 See, to that effect, judgments of 8 November 1983, *IAZ* v *Commission*, C-96/82 to C-102/82, C-104/82, C-105/82, C-108/82 and C-110/82, ECLI:EU:C:1983:310, paragraphs 54 and 55; of 28 June 2005, *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, ECLI:EU:C:2005:408, paragraph 327; of 29 June 2006, *SGL Carbon* v *Commission*, C-308/04 P, ECLI:EU:C:2006:433, paragraph 105; of 2 June 2016, *Moreda-Riviere Trefilerías and Others* v *Commission*, T-426/10 to T-429/10 and T-438/12 to T-441/12, ECLI:EU:T:2016:335, paragraphs 492 and 493.

62 By analogy with the assessment of 'serious and irreparable harm' in the context of interim measures, the Commission bases its assessment of the undertaking's ability to pay on the financial situation of the undertaking as a whole, including its shareholders, irrespective of the finding of liability (see, to that effect, judgments of 14 December 1999, *HFV and Others* v *Commission*, C-335/99 P(R), ECLI:EU:C:1999:608, paragraphs 35-71; of 23 March 2001, *FEG* v *Commission*, C-7/01 P(R), ECLI:EU:C:2001:183, paragraphs 29-46).

(140) The Commission also assesses the specific social and economic context in case the undertaking's financial situation, including the situation of its assets, is found to be critical following the analysis described in Recitals (138) and (139).

(141) Consequently, where the conditions laid down in point 35 of the Fines Guidelines are met, the Commission may reduce the final amount of the fine on the basis of the financial analysis of the undertaking, as described in Recitals (138) and (139), and taking into account its ability to pay the fine imposed on it and the likely effect that such a payment would have on the economic viability of that undertaking.

(142) The ITP claim submitted by […] should be partially accepted for the reasons set out in […].

(143) On the basis of the evidence described in […], and in order to avoid the imposition of a fine that would seriously jeopardise the economic viability of […], the final amount to be imposed on […] should be reduced by […] to the amount of EUR […], in application of point 35 of the Fines Guidelines.

(144) […] should also be granted payment conditions.

8.8. Final amount of the fines

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

Table 5: Final amount of the fines

Undertaking	**Fine (EUR)**
Bonduelle	0
Coroos	13 647 000
Groupe CECAB	18 000 000

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings have infringed Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement by participating, during the periods indicated, in a single and continuous infringement covering the whole of the EEA and consisting in price coordination, market sharing and the exchange of commercially sensitive information in relation to the sale of certain types of canned vegetables to retailers and/or the food service industry in the EEA:

(a) Bonduelle SCA, Bonduelle SA and Bonduelle Europe Long Life SAS, from 19 January 2000 until 11 June 2013;

(b) Coroos International NV, Coroos Beheer BV and Coroos Conserven BV, from 19 January 2000 until 1 October 2013;

(c) Centrale Coopérative Agricole Bretonne SCA, Compagnie Générale de Conserve SAS and GIE Groupe d'aucy, from 19 January 2000 until 1 October 2013.

Article 2

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

(a) Bonduelle SCA, Bonduelle SA and Bonduelle Europe Long Life SAS, jointly and severally liable: EUR 0;

(b) Coroos International NV, Coroos Beheer BV and Coroos Conserven BV, jointly and severally liable: EUR 13 647 000;

(c) Centrale Coopérative Agricole Bretonne SCA, Compagnie Générale de Conserve SAS and GIE Groupe d'aucy, jointly and severally liable: EUR 18 000 000.

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

Banque et Caisse d'Épargne de l'État
1-2, Place de Metz
L-1930 Luxembourg

IBAN: LU02 0019 3155 9887 1000
BIC: BCEELULL
Ref.: EC/BUFI/AT.40127

After the expiry of that period, interest shall 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 108 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[63].

Article 3

The fine imposed on the undertakings as listed in Article 2[…] may be paid in instalments provided that one-sixth of the fine amount is paid within three months of the date of notification of this Decision. The remaining amount, including interest calculated for the whole payment period in accordance with paragraph 2 of this Article, shall be paid in three annual instalments, the amount of which being equal to one-sixth of the fine amount on the anniversary of the first payment including the interest calculated on the outstanding amount for the period until the day of the payment and one-third of the fine amount respectively on the second and third anniversary of the first payment including the interest calculated on the outstanding amount for the period until the respective day of the payment.

The interest shall be calculated 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 1.5 percentage points.

Article 4

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

63 Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rues applicable to the general budget of the European Union (OJ L 193, 30.7.2018, p. 80).

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 5

This Decision is addressed to:

(a) Bonduelle SCA, La Woëstyne, 59173 Renescure, France;

(b) Bonduelle SA, La Woëstyne, 59173 Renescure, France;

(c) Bonduelle Europe Long Life SAS, La Woëstyne, 59173 Renescure, France;

(d) Coroos International NV, Schout Bij Nacht Doormanweg 40 Damacor Office Bldg 2nd Floor, Curaçao;

(e) Coroos Beheer BV, Middenweg 1, 4421 JG Kapelle, Netherlands;

(f) Coroos Conserven BV, Middenweg 1, 4421 JG Kapelle, Netherlands;

(g) Centrale Coopérative Agricole Bretonne SCA, Saint-Léonard Nord - Kerlurec, 56450 Theix-Noyalo, France;

(h) Compagnie Générale de Conserve SAS, Kerlurec - Saint-Léonard Nord, 56450 Theix-Noyalo, France;

(i) GIE Groupe d'aucy, Saint-Léonard Nord - Kerlurec, 56450 Theix-Noyalo, France.

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

Done at Brussels, 27.9.2019

(Signed)
For the Commission
Margrethe VESTAGER
Member of the Commission