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TRADE

Banana battle heads to court

Produce buyers and consumers have filed a bunch of class-action lawsuits in Miami, alleging banana price fixing by big multinationals such as Chiquita, Dole and Fresh Del Monte.

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Suspicions of banana price fixing in Europe have touched off a rash of U.S. class-action suits against the biggest names in bananas -- Chiquita, Dole and Del Monte -- alleging the corporations conspired to hike the price of the world's most popular fruit.

At least eight complaints have been lodged in U.S. District Court in Miami against Chiquita Brands International, Dole Food Co., Fresh Del Monte Produce and Grupo Noboa, alleging the four companies and subsidiaries exchanged information in order to fix banana prices.

With a worldwide market topping \$5 billion annually, bananas are not only the bestselling fruit in the world, but the most important food crop after rice, wheat and corn. Chiquita, Del Monte and Dole, among the best-known brand names in the world, control almost three-quarters of the world banana market.

Filed by several law firms, including Hanzman & Criden of Coral Gables, and Shepherd, Finkelman, Miller & Shah of Fort Lauderdale, seven produce buying companies and three consumers have sued for overcharges since late July.

The lawsuits allege the companies formed a cartel, exchanged information about prices and sales volumes, arranged to sell bananas at agreed-upon prices and reached accords to reduce production capacity.

ALLEGATIONS

The lawsuits noted that the price of bananas ranged from \$5.40 a box to more than \$10 a box from May of 2003 to September 2004.

The banana companies themselves have rejected the allegations. Both Chiquita and Dole are U.S. companies. Fresh Del Monte is registered in the Cayman Islands, with management offices in Coral Gables. The fourth company, Grupo Noboa, the largest banana producer in Ecuador, is run by the Noboa family out of Guayaquil.

"We do believe that these lawsuits are without merit," said Mike Mitchell, spokesman for Chiquita, headquartered in Cincinnati. "We are contesting them vigorously."

RECENT REVELATIONS

The lawsuits have their roots in revelations last June by Chiquita that some of its employees had shared information with competitors in Europe.

The information touched off a probe by the European Commission into possible price fixing by the large banana firms.

On June 3, European anti-trust officials raided the European offices of Chiquita, Fyffes, Dole, Fresh Del Monte and other rival produce companies.

According to Chiquita financial statements filed with the Securities and Exchange Commission, the banana firm informed European authorities that "some employees had shared pricing and volume information with competitors in Europe over many years in violation of European competition laws and company policies."

IMMUNITY

Chiquita said that it had been granted immunity from any fines by agreeing to cooperate with an anti-trust investigation carried out by the European Commission.

"The European investigation is ongoing," Chiquita's Mitchell said, but added that the European probe has not touched off any regulatory investigations in the United States where the banana market is estimated at \$1 billion a year.

Bruce A. Jordan, vice president and general counsel to Fresh Del Monte Produce, declined to comment on the litigation.

Michael Carter, Dole vice president and general counsel, dismissed the lawsuits as actions by "the usual suspects of opportunistic lawyers" and suggested they were "triggered . . . by the disclosures relating to the European Commission investigation into alleged competition law violations in the European Union."

DOLE'S POSITION

Carter said that Dole, headquartered in Westlake Village, Calif., had filed financial statements with the SEC saying "it believes that it has not violated [EU] competition laws."

But Dan Karon, an attorney who represents three consumers, Susan Jockers of Florida, Joelle Prochera of Arizona and Tim McGraw of Kansas, said the European events have had an impact on the American market.

"What we typically find in these price-fixing cases is that they tend to be global in nature," said Karon, who is with Goldman Scarlato & Karon in Cleveland. He added that world prices tend to converge, otherwise wide price disparities would allow buyers to purchase bananas in areas where prices are low and ship them to higher price zones.

It was not possible to locate a lawyer for Grupo Noboa, which markets its bananas under the name Bonita in the United States. No lawyer has yet appeared to contest the lawsuits that were filed in July and August.

BANANA SUITS

Some of the biggest names in the banana world face class-action lawsuits alleging the companies engaged in price fixing in the U.S. market. The produce companies and private consumers that have sued so far:

- **Harvin Foods** of Pennsylvania
- **RBest Produce** of the Bronx, N.Y.
- **Susan Jockers**, a Florida resident
- **Joelle Prochera**, an Arizona resident
- **Tim McGraw**, a Kansas resident
- **Syracuse Banana Co.** of Syracuse, N.Y.
- **Brookshire Ltd.** of Lufkin, Texas
- **Brigiotta's Farmland Produce and Garden Center** of Jamestown, N.Y.
- **VIP Sales**, Tulsa, Okla.
- **Christopher Farms** of Wimauma, Fla.