



Information exchange under Article 101: the *Bananas* case

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Structure

- Information exchange: the basic building blocks
- The *Bananas* case : background
- *Bananas*: contribution to the case-law



Information exchange: the basic building blocks

- Types of information exchange : ancillary versus standalone
- The form: structured or unstructured
- Agreement/ Concerted practice
 - Direct or indirect "contacts"
 - Reduction of uncertainty
- Object/effect



Restriction by object

2011 Horizontal Guidelines

- **Paragraphs 72-74**

Useful clarifications in the case-law

- **One-way communication is enough**
- **No need for the Commission to show any "actual plan" regarding future behaviour : disclosing commercially sensitive information is enough**
- **Commission does not have to show that the recipient of the information will actually take it into account when setting its own commercial policy: that link is presumed but can be rebutted**



Restriction by object

The Bananas case - background

- **Chronology of events:** Bilateral discussions on price setting factors on Wednesday-Thursday. Quotation prices set on Thursday mornings, announced to customers, rapidly transmitted and exchanged by the parties, reported in trade press. Negotiations with customers after setting quotation prices.
- **Commission decision** October 2008
- **GC Judgments** 2013
- **ECJ** 2015



Bananas: contribution to the case-law

1. Can be "by object" if standalone?
2. Past v. future information
3. Difference between quotation prices and final prices
4. Public and allegedly harmless information
5. Impact of sector regulation
6. Importance of market shares/market concentration
7. Regularity/frequency of communications