



EUROPEAN COMMISSION  
Competition DG

## ***CASE COMP/38695-Sodium Chlorate (amendment)***

(Only the English text is authentic)

### **CARTEL PROCEDURE**

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

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Article 7 Regulation (EC) 1/2003

Date: 27/03/2012

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EUROPEAN COMMISSION

Brussels, 27.3.2012  
C(2012) 1965 final

**COMMISSION DECISION**

**of 27.3.2012**

**amending Decision C(2008)2626 final of 11 June 2008 relating to a proceeding under Article 81 of the EC Treaty (now Article 101 of the Treaty on the Functioning of the European Union) and Article 53 of the EEA Agreement to the extent it was addressed to Uralita SA  
(COMP/38.695 - Sodium Chlorate)**

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(COMP/38.695 - Sodium Chlorate)**

(Only the English text is authentic)

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 Treaty<sup>1</sup>, and in particular Article 7 and Article 23(2) thereof,

Having regard to Commission Decision C(2008)2626 final of 11 June 2008 relating to a proceeding under Article 81 of the EC Treaty [now Article 101 of the Treaty on the Functioning of the European Union] and Article 53 of the EEA Agreement (COMP/38695 - Sodium Chlorate)<sup>2</sup>,

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

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

Having regard to the final report of the Hearing Officer in this case<sup>3</sup>,

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<sup>1</sup> OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the EC Treaty 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.

<sup>2</sup> OJ C 137, 17.06.2009, p. 6.

<sup>3</sup> To be published

## WHEREAS:

- (1) In Decision C(2008)2626 final (hereinafter "the Decision"), the Commission imposed a fine of EUR 9.9 million jointly and severally on Aragonesas Industrias y Energía S.A.U. ("Aragonesas") and Uralita SA ("Uralita") based on a finding that they had participated in the infringement from 16 December 1996 until 9 February 2000.
- (2) Uralita was held jointly and severally liable with Aragonesas in the Decision for two reasons. Firstly, it actually exercised decisive influence over Aragonesas, the direct cartel participant, during the period of the infringement. Uralita therefore constituted one undertaking with Aragonesas within the meaning of Article 101 of the Treaty, as well as Articles 7(1) and 23(2) of Regulation (EC) No 1/2003. Secondly, Aragonesas was controlled by an intermediary company called Energia y Industrias Aragonesas EIA SA (hereinafter "EIA") during the period of the infringement and, after the infringement, EIA merged into Uralita. As a result of the merger, Uralita, as EIA's legal successor, assumed EIA's liability for the infringement which EIA had incurred as part of the undertaking that committed the infringement. Uralita provisionally paid the fine to the Commission on 16 September 2008 on behalf of both companies.
- (3) In its judgment of 25 October 2011 in Case T-348/08 *Aragonesas v Commission*<sup>4</sup> (the "Aragonesas judgment"), the General Court partly annulled the Decision with respect to Aragonesas, on the ground that Aragonesas' participation in the Sodium Chlorate cartel had been proven for a shorter time-period than the one specified in Article 1(g) of the Decision. Based on the evidence before it, the Court considered that Aragonesas had participated in the cartel from 28 January 1998 until 31 December 1998. Although the Court upheld the Decision as regards Aragonesas' participation for that shorter period, and dismissed all claims concerning the fine calculation (except for the multiplier for duration), it annulled the fine imposed on Aragonesas in its entirety.
- (4) In parallel, in Case T-349/08 *Uralita v Commission*<sup>5</sup> (the "Uralita judgment"), the General Court entirely dismissed the application brought by Uralita against the Decision. It therefore left in place the EUR 9.9 million fine imposed by the Decision on Uralita.
- (5) On 12 December 2011, the Commission was informed that Aragonesas had ceased to exist as of 31 May 2010 following its merger with Ercros SA.
- (6) By letter of 23 January 2012, Uralita informed the Commission [...].
- (7) Furthermore, in that letter, Uralita [unreservedly accepted its responsibility for the infringement from 28 January 1998 until 31 December 1998 as regards the Commission

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<sup>4</sup> Case T-348/08 *Aragonesas Industria y Energía SAU v European Commission*, not yet reported, judgment of 25 October 2011. Neither Aragonesas nor the Commission have appealed that judgment which is now definitive.

<sup>5</sup> Case T-349/08 *Uralita SA v European Commission*, not yet reported, judgment of 25 October 2011. Uralita has not appealed that judgment which is now definitive.

procedure in case 38.695 –Sodium Chlorate and that it may be the sole addressee of any amendment decision in that procedure].

- (8) Although the General Court dismissed Uralita's action for annulment against the Decision, the Commission nevertheless finds it appropriate, in the light of the *Aragonesas* judgment, to reduce the infringement period for Uralita to the period established in that judgment, namely from 28 January 1998 until 31 December 1998.
- (9) Moreover, in view of the particular circumstances of this case, including Uralita's declarations as contained in its letter of 23 January 2012 (see recitals (6) and (7)) and the fact that Uralita has already provisionally paid to the Commission within the deadline as set in the Decision the full amount of the fine for which *Aragonesas* and Uralita were held jointly and severally liable, the Decision should be amended to the extent that it was addressed to Uralita, as follows:
  - (i) the duration of Uralita's participation in the infringement should be reduced to the period from 28 January 1998 until 31 December 1998; and
  - (ii) the fine imposed under Article 23(2) of Regulation (EC) No 1/2003 should correspond to the revised infringement period for which Uralita is to be held liable.
- (10) The fine to be imposed on Uralita should be calculated on the basis of the same parameters that were used and explained when setting the original fine in the Decision (see in particular sections 8.2., 8.3., 8.5. and 8.7 of that Decision) except that the multiplier for duration should be set at 0.91 which reflects the shorter infringement period.
- (11) With respect to the interest that has accrued on the original EUR 9.9 million fine provisionally paid by Uralita on 16 September 2008, the Commission considers that, since the General Court has confirmed Uralita's participation in the infringement for the period from 28 January 1998 until 31 December 1998, the interest on the amount of the fine to be imposed on Uralita pursuant to this Decision (that is to say, the interest on EUR 4 231 000) has accrued to the benefit of the Commission and should therefore be retained by the Commission,

HAS ADOPTED THIS DECISION:

*Article 1*

Decision C(2008)2626 final of 11 June 2008 is amended as follows:

(1) In Article 1, point (h) is replaced by the following:

"(h) Uralita SA, from 28 January 1998 until 31 December 1998."

(2) In the first paragraph of Article 2, point (f) is replaced by the following:

"(f) Uralita SA : EUR 4 231 000."

*Article 2*

The interest which has accrued on the sum of EUR 4 231 000 since it was provisionally paid on 16 September 2008 has accrued to the benefit of the Commission and shall be retained by it.

*Article 3*

This Decision is addressed to

Uralita S.A.  
Paseo de Recoletos 3  
28004 Madrid  
Spain

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

Done at Brussels,

*For the Commission*

*Vice-President*