

## Summary of Commission Decision

of 27 March 2012

relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement

(Case COMP/38.695 — Sodium Chlorate)

(notified under document C(2012) 1965 final)

(Only the English text is authentic)

(Text with EEA relevance)

(2012/C 162/07)

On 27 March 2012, the Commission adopted a decision 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. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003<sup>(1)</sup>, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.

### 1. INTRODUCTION

- (1) The Decision is addressed to one legal entity: Uralita SA.
- (2) A non-confidential version of the decision is available on the Directorate-General for Competition's website at the following address: [http://ec.europa.eu/comm/competition/index\\_en.html](http://ec.europa.eu/comm/competition/index_en.html)

### 2. CASE DESCRIPTION

#### 2.1. Procedure

- (3) In Decision C(2008) 2626 final (hereinafter 'the 2008 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.
- (4) In its judgment of 25 October 2011 in Case T-348/08 *Aragonesas v Commission*<sup>(2)</sup> (the 'Aragonesas judgment'), the General Court considered, based on the evidence before it, that Aragonesas had participated in the cartel from 28 January 1998 until 31 December 1998. Although the Court upheld the 2008 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.
- (5) In parallel, in Case T-349/08 *Uralita v Commission*<sup>(3)</sup> (the 'Uralita judgment'), the General Court entirely dismissed

the application brought by Uralita against the 2008 Decision. It therefore left in place the EUR 9,9 million fine imposed by the Decision on Uralita.

- (6) 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. By letter dated 23 January 2012, Uralita informed the Commission that it, inter alia, accepted to be the sole addressee of any amendment decision.

- (7) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on 12 March 2012.

#### 2.2. Summary of the Decision

- (8) The Decision reduces the infringement period for Uralita to the period from 28 January 1998 until 31 December 1998, in the light of the *Aragonesas* judgment and despite the dismissal of Uralita's action for annulment against the 2008 Decision in the *Uralita* judgment.
- (9) The fine on Uralita is determined on the basis of the same parameters that were used and explained when setting the original fine in the 2008 Decision except the multiplier for duration which was set at 0,91 to reflect the shorter infringement period.
- (10) 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 Decision concludes 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 is therefore retained by the Commission.

<sup>(1)</sup> OJ L 1, 4.1.2003, p. 1.

<sup>(2)</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 has appealed that judgment which is now definitive.

<sup>(3)</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.

**3. DECISION**

(11) The 2008 Decision 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.'

(12) 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 is retained by it.

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