



Press and Information

General Court of the European Union

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Judgments in Cases T-348/08 and T-349/08  
Aragonesas Industrias y Energia, SAU v Commission  
Uralita SA v Commission

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## **The General Court annuls the €9.9 million fine imposed on Aragonesas and Uralita for participation in the sodium chlorate cartel**

*The Commission only produced sufficient evidence of Aragonesas's participation in the infringement for one year rather than three*

By decision of 11 June 2008<sup>1</sup>, the Commission fined several undertakings, including the Spanish company Aragonesas and its parent company at the material time, Uralita, for anticompetitive conduct on the market for sodium chlorate (a paper whitening product). The cartel consisted, inter alia, in the allocation of sales volumes, the fixing of prices and the exchange of commercially sensitive information. According to the Commission, Aragonesas had participated in the cartel from 16 December 1996 to 9 February 2000. A fine of €9.9 million was imposed jointly and severally on those two companies.

Aragonesas brought an action before the General Court for the annulment of the decision in so far as concerned it, arguing in particular that the Commission had not adequately proved that it had participated in the infringement. Uralita, its parent company, also brought an action before the General Court. Uralita contested the imputation to it of the conduct of Aragonesas, but not the accusations levelled at Aragonesas.

So far as concerns Aragonesas, the Court finds that most of the evidence adduced by the Commission in its decision is unreliable and excessively sporadic and fragmented. Taken as a whole, the evidence adduced is not sufficiently precise and conclusive and does not found a firm conviction that Aragonesas participated in the infringement throughout the period in question, namely from 16 December 1996 to 9 February 2000.

Only the acknowledgement by Aragonesas that it participated in an unlawful meeting on 28 January 1998 and the statements and notes of the other participants in that meeting are sufficiently reliable evidence that can be used against Aragonesas.

The Court concludes that the Commission has only proved that Aragonesas participated in the cartel in 1998. Consequently, it annuls the decision in part, inasmuch as it finds that Aragonesas participated in the infringement between 16 December 1996 and 27 January 1998 and between 1 January 1999 and 9 February 2000.

It follows that the Commission also erred in calculating the fine so far as concerns the duration of the infringement. The Court therefore annuls the decision in so far as it sets the fine to be paid jointly and severally by Aragonesas and Uralita at €9.9 million.

With regard to the arguments submitted by Uralita, the Court finds, first of all, that the undertaking that participated in the infringement consisted of a single economic unit composed of Aragonesas and EIA, a company which wholly owned Aragonesas. Uralita has not shown that Aragonesas determined its course of conduct on the sodium chlorate market independently of EIA. The Court concludes that the Commission was entitled to find both of those legal persons responsible for the

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<sup>1</sup> Commission Decision C (2008) final of 11 June 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the Agreement on the European Economic Area (EEA) (Case COMP/38.695 – Sodium chlorate).

unlawful conduct of that undertaking. Next, the Court observes that, after the period of the infringement in which that undertaking was found to have participated, Uralita absorbed all the assets of EIA, as a result of which EIA ceased to exist. The Court concludes that Uralita, as legal successor to EIA, ensured legal continuity of its rights and obligations and assumed its liability for unlawful conduct in the infringement in question.

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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*The full text of the judgments ([T-348/08](#) & [T-349/08](#)) is published on the CURIA website on the day of delivery*

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