PRICE-FIXING (GRAPHITE ELECTRODES): THE SGL CARBON CASE

Subject: Price-fixing
Market sharing

Industry: Graphite electrodes
(Implications for most industries)

Parties: SGL Carbon AG (and other members of the cartel, listed below)

Source: Commission Statement IP/01/1010, dated 18 July 2001

(Note. This case shows that classic cartels are still alive in the world: their aims, in price-fixing and market sharing, are typical. If the full report of the case reveals points of special legal interest, they will be discussed in a future issue. Meanwhile, the two main points of interest are the hefty fines imposed and the descriptions of the "Top Guy" meetings.)

The Commission has fined Germany's SGL Carbon AG, UCAR International of the United States and six other companies a total of €218.8m for fixing the price and sharing the market for graphite electrodes, which are ceramic-moulded columns of graphite used primarily in the production of steel in electric furnaces. The Commission's decision comes after a thorough investigation, which established that the eight producers, which together account for virtually all production world-wide, operated a secret cartel during most of the 1990s, resulting in considerably higher prices than if the companies had competed against each other.

Following an investigation, which started in 1997, the Commission has established that SGL Carbon AG (Germany), UCAR International Inc. (USA), Tokai Carbon Co. Ltd. (Japan), Showa Denko K.K. (Japan), VAW Aluminium AG (Germany), SEC Corporation (Japan), Nippon Carbon Co. Ltd. (Japan) and The Carbide Graphite Group Inc. (USA) participated in a worldwide cartel between 1992 and 1998 through which they fixed the price and shared out the market for graphite electrodes. These are ceramic-moulded columns of graphite used primarily in the recycling of scrap steel into new steel in electric arc furnaces, also referred to as 'mini-mills'. The electric arc process accounts for some 35% of steel production in the European Union. The market at stake in 1998 was worth €420m in the European Economic Area.

The cartel started in 1992 at the instigation of SGL and UCAR, which together supply more than two thirds of European demand, and continued until 1998, despite the fact that competition authorities in the United States, Canada and the EU had begun investigations. The companies held regular meetings, some at chief executive level (dubbed "Top guy" meetings), to agree concerted price increases usually triggered by the "home producer" or market leader and then followed in other parts of the world. The Commission has evidence of the secret

meetings, often held in Switzerland, and of the illegal agreements which was provided by some of the companies involved under Commission rules which provide for full or partial immunity from fines for companies that supply information on cartels. The companies were well aware that they were infringing anti-trust law as they took great pains to conceal meetings hotel and travel expenses were paid in cash with no explicit reference to those meetings in expense claims; to avoid keeping any written evidence of the meetings and agreements; and, when the documents existed, to use code names to refer to the cartel participants, such as "BMW" for SGL, "Pinot" for UCAR and "Cold" for the group of Japanese companies.

In the period in which the cartel operated, prices of graphite electrodes increased 50 percent. The concerted price increases became less regular as the companies became aware of the anti-trust investigations. The Commission characterised the companies' behaviour as a serious infringement of the EC competition rules and adopted a decision imposing fines totalling €218.8m. The following is a list of the individual fines in € millions: SGL Carbon, 80.2; UCAR International, 50.4; Tokai Carbon, 24.5; Showa Denko, 17.4; VAW Aluminium, 11.6; SEC, 12.2; Nippon Carbon, 12.2; Carbide Graphite, 10.3.

The Commission takes into account the gravity of antitrust violations, their duration and the existence, if any, of aggravating or mitigating circumstances to calculate fines. It also bears in mind the companies' share of the market concerned and their overall size. The calculation of the fines is not made by reference to the companies' turnover rather according to the Commission's guidelines for setting fines of 1998; but the final figure cannot be higher than 10% of a company's annual sales.

SGL and UCAR were the driving forces behind the cartel. They initiated the contacts in 1991, developed the whole plan to set up a cartel and organised the first "Top Guy" meeting in May 1992 at which they adopted a "common position" vis-a-vis the other producers; hence the highest fines. Most of the cartel members committed an infringement of long duration (more than five years). Aggravating circumstances were taken into account for several of them (role of ringleader, continuation of the infringement after the Commission started its investigation and attempts to obstruct the Commission's investigation). The Commission's case started in 1997 when it carried out "surprise" investigations.

At the beginning of 1998, Showa Denko co-operated with the Commission under the terms of the Leniency Notice. This is the first time that the Commission has granted a substantial reduction of a fine (70%) under the terms of the Leniency Notice. Showa Denko benefited from this reduction, having been the first company to co-operate and provide decisive evidence of the cartel to the Commission. UCAR also co-operated with the Commission at an early stage of the investigation. The Commission therefore granted a reduction of 40%. In the US, the major parties to the cartel pleaded guilty and paid substantial fines, including $110 million for UCAR and $135 million for SGL. Two former executives of the largest US producer, UCAR, were jailed for several months. ■