PRICE FIXING (SPECIALITY GRAPHITES): THE SGL CASE

Subject: Price fixing
Market sharing
Information exchanges
Fines
Leniency

Industry: Speciality graphites
(Implications for other industries)

Parties: SGL Carbon AG and seven other companies listed below

Source: Commission Statement IP/02/1906, dated 17 December 2002

(Note. As in the report on the food flavouring case, the speciality graphites case reflects a trend in which the Commission is unearthing cartels in a number of relatively unknown industries. By the standards of twenty years ago, the present case would have been noted for its stiff fines; by recent standards, the level of fines is low to medium.)

The Commission has fined seven companies a total of €60.6m for participating in two price-fixing cartels in the market for speciality graphites, which are used to make industrial tools for the aerospace, electronics and other industries.

The investigation begun in the spring of 1999 during the graphite electrodes cartel probe, when GraphTech (formerly known as UCAR) revealed information about anti-competitive practices in the related market of speciality graphite products in return for immunity under the Commission's 1996 Leniency policy. On the basis of this information, the Commission opened a new investigation in March 2000, which has been concluded with the finding that eight companies participated in a worldwide cartel between 1993 and 1998, through which they fixed the price for isostatic speciality graphite products, exchanged sensitive commercial information and occasionally shared out the market.

The eight are : SGL Carbon AG of Germany, Carbone-Lorraine SA of France, Japanese firms Ibiden Co Ltd, Tokai Carbon Co Ltd, Toyo Tanso Co Ltd and Nippon Steel Chemical Co Ltd, US company GrafTech International Ltd and Dutch company Intech EDM BV. SGL and GrafTech were also found to have participated in a parallel price-fixing cartel for extruded graphite products.

"Speciality graphites" describe a group of graphite products for diverse applications. Isostatic graphite (produced through isostatic moulding), is used in EDM electrodes, continuous casting dies, hot press moulds and semiconductor applications; extruded graphite (produced through extrusion), is used in electrolytic anodes and cathodes, boats, sintering trays, crucibles. During the

infringement period, the companies concerned accounted for most of the EEA-wide market for both products.

The isostatic cartel began with a "Top Level meeting" in Gotenba (near Tokyo) in Japan, on 23 July 1993, at which the major producers agreed on the basic operating principles of the worldwide market. A monitoring and enforcement scheme was set up, which entailed the holding of regular multilateral meetings from top-executive level (always in Japan) to regional and national executives level. The cartel functioned for a period of more than four and a half years until 1998.

A meeting in Paris on 24-25 February 1993 also marked the beginning of price collusion between UCAR and SGL in the market of unmachined extruded speciality graphites. Throughout the duration of the cartel, the parties regularly discussed prices, including who would announce what price on which date. These arrangements went on for more than three and a half years. In each case the companies' conduct was a serious infringement of the competition rules, as set out in Article 81 of the Treaty establishing the European Community.

Individual amounts of the fines (in € million) amounted to: SGL, 27.75 (18.94 for isostatic graphite and 8.81 for extruded graphite); Toyo Tanso, 10.79; Carbone-Lorraine, 6.97; Tokai Carbon, 6.97; Ibiden, 3.58; Nippon Steel Chemical, 3.58; Intech, 0.98. For three of the companies: SGL, Tokai Carbon and GraphTech this was the second infringement to be uncovered by the Commission after the graphite electrodes decision of 2001. However, as the infringements were contemporaneous the Commission took the view that this did not qualify as recidivist behaviour and did not increase the fine for SGL and Tokai Carbon. GraphTech was granted full immunity because it revealed the cartel to the Commission.

The fine on SGL, however, reflects an increase of 50% on the basic amount calculated by the Commission because it was the ringleader in the isostatic cartel. But it also includes a 35% reduction for co-operating in the investigation before the Statement of Objections (SO) was sent. LCL, Ibiden, Tokai, Toyo Tanso and Nippon Steel Chemical were also given a reduction of 35% as they provided additional information before the SO was sent. In the case of Intech, the Commission established that it had acted to a considerable extend under instructions from Ibiden, for which it is the main distributor in Europe, and this justified a reduction of 40% in its basic amount. It benefited of a further reduction of 10% for not contesting the facts.

To calculate the fines in cartel decisions, the Commission takes account of the gravity of the infringement, its duration and the existence of any aggravating or mitigating circumstances. It also takes account of a company's share of the market concerned and of its overall size to ensure that the punishment is proportional and is sufficiently deterrent. Although a new leniency notice was adopted in February 2002, the 1996 notice is applicable to the present case because the infringement took place before February 2002. ■