The specialty graphite price-fixing cartels

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On 17 December 2002 the Commission fined SGL Carbon AG, Le Carbone-Lorraine S.A., Ibiden Co., Ltd., Tokai Carbon Co., Ltd, Toyo Tanso Co., Ltd., NSCC Techno Carbon Co., Ltd., Nippon Steel Chemical Co., Ltd., Intech EDM B.V. and Intech EDM AG a total of €51.8 million for participating in a price-fixing cartel in the market of isostatic specialty graphite. In addition, SGL Carbon AG was fined €8.81 million for its involvement in another price-fixing collusion affecting the market of extruded specialty graphite. GrafTech International, Ltd. (formerly UCAR), which was also found liable for both infringements, benefited from a 100% reduction of the fines because, it revealed the cartel’s existence to the Commission and provided decisive evidence on its operation.

In the course of an investigation on the graphite electrodes market, UCAR approached the Commission in order to submit an application under the ‘Leniency notice’. The submission concerned alleged anticompetitive practices in the neighbour market of specialty graphite products. On the basis of the information provided by UCAR, the Commission opened a new investigation in March 2000, as a result of which it has found that SGL Carbon AG, Le Carbone-Lorraine S.A., Ibiden Co., Ltd., Tokai Carbon Co., Ltd, Toyo Tanso Co., Ltd., GrafTech International, Ltd. (former UCAR), NSCC Techno Carbon Co., Ltd., Nippon Steel Chemical Co., Ltd., Intech EDM B.V. and Intech EDM AG participated in a world cartel between 1993 and 1998, through which they fixed the price, exchange sensitive commercial information and occasionally shared out the market for isostatic specialty graphite products. SGL and GrafTech were also found responsible of participating in a parallel price-fixing cartel in the market of extruded products.

‘Specialty graphites’ is the general term widely used in the industry to describe a group of graphite products for diverse applications. Specialty graphite products are often categorised by the way the graphite is produced: isostatic graphite (produced through isostatic moulding), used in EDM electrodes, continuous casting dies, hot press moulds, semiconductor applications; and extruded graphite (produced through extrusion), used in electrolytic anodes and cathodes, boats, sintering trays, crucibles. During the infringement period, the annual market of isostatic products in the European Economic Area was worth around €35-50 million. Extruded products amounted to about €30 million. 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 (Japan) on 23 July 1993, where the major producers of isostatic graphite -SGL, LCL, Ibiden, Tokai, Toyo Tanso, and NSC/ NSCC- agreed the basic principles by which they would cartelise the world market. They agreed on the target of establishing an appropriate product-grouping standard, the principle for sustained price increases and the creation of committees at management level in order to fine-tune and implement the general agreement. This plan was subscribed by all the participants and subsequently adhered to by Intech (February 1994), and UCAR (February 1996). A monitoring and enforcement scheme was set up, that entailed the holding of regular multilateral meetings, at 4 levels: ‘Top Level meetings’ (attended by the top executives, that defined the main principles of collaboration); ‘International meetings’ (senior management, that discussed the classification of products and established minimum prices for each group); ‘Regional’ (European) meetings and ‘Local’ (national) meetings (both meant to implement the principles agreed at the International meetings, and attended by local managers). The Top Level meetings were hosted in Japan. The International meetings were hosted at different locations, in turn. None of the 4 categories of meetings took place within any specific framework, organisation or forum. The parties subsequently implemented their plan over a period of more than four and a half years.

A meeting in Paris on 24-25 February 1993 marked the starting date of a regular collusion between UCAR and SGL in the market of unmachined extruded specialty. Throughout the duration of the cartel, the parties regularly discussed prices and classification of products in order to compete on quality and service, while avoiding competition on price levels. They closely monitored the implementation of their agreements through the organisation of regular meetings. They further agreed who would announce what price on what date and the order of announcement. In order to carry out the price agreements, the representatives at the meeting usually passed internal notes to
local managers at country level, who ‘fine tuned’ the price lists before sending them to the customers. This arrangements went on for more than three and a half years.

In each case the companies’ conduct was a very serious infringement of the competition rules, as set out in Article 81 of the European Union Treaty and Article 53 of the EEA-Agreement.

**Individual amount of the fines**

The following is a list of the individual fines (in million Euro):

— SGL: 27.75 (18.94 for the infringement affecting the isostatic specialty market, 8.81 for the infringement affecting the extruded specialty market)
— Toyo Tanso: 10.79
— Carbone-Lorraine: 6.97
— Tokai Carbon: 6.97
— Ibiden: 3.58
— Nippon Steel Chemical: 3.58
— Intech: 0.98

In setting the amount of the fines, the Commission took account of the gravity of the infringements, their duration, and the existence of aggravating and mitigating circumstances. The role played by each undertaking was assessed on an individual basis. The Notice on the non-imposition or reduction of fines in cartel cases (‘the Leniency notice’) was applied.

All the undertakings concerned in each cartel were found to have committed a very serious infringement. Within this category, the undertakings involved in the isostatic cartel were divided into five groups, according to their relative importance in the market. The cartels were of medium duration (between one and five years). The Commission identified SGL as ringleader of the isostatic cartel, since it took the initiative to launch the cartel and steered its development, and on that ground it increased the fine to this company by 50%. The Commission also found that the involvement of Intech in the isostatic cartel was particular in that it was to a considerable extent under instructions from Ibiden; this circumstance led to a reduction of 40% of Intech’s fine. As the infringements took place before the Commission had the occasion to find UCAR, SGL or Tokai responsible for their participation in the cartel of Graphite Electrodes, there was no ground to establish an aggravating circumstance of recidivism.

**Application of the Leniency notice**

Part of the evidence on the cartel was provided to the Commission by the companies involved, in the context of the leniency policy.

UCAR disclosed the cartels to the Commission, and was granted a 100% reduction of the fine. The Commission also granted a reduction of 35% in the fine imposed on SGL, LCL, Ibiden, Tokai, Toyo Tanso and NSC/ NSCC, because they provided additional information on the cartel before the statement of objections was sent. Intech did not cooperate in the Commission’s investigation and only received a 10% reduction for not contesting the facts.

Although the new leniency notice was adopted in February 2002, it is the old notice (18 July 1996) that was applicable in this proceedings, since the cooperation took place before February 2002.

**Section 5.b of the Guidelines on fines**

According to section 5.b of the 1998 Guidelines on fines, the Commission should, depending on the circumstances of a given case, take into account certain objective factors, when fixing fines. In this respect the Commission considered that SGL was both in a delicate financial position and had recently been imposed an important Commission fine (Euro 80.2 in the Graphite Electrodes cartel (1)), which should have had already a deterrent effect on its own. The Commission considered that, in these particular circumstances, imposing the full amount of the fine did not appear necessary in order to ensure effective deterrence, and reduced SGL’s fine in this case by 33%.