On 3 December 2003, the Commission imposed fines ranging from €1 million to €43 million on five producers of electrical and mechanical carbon and graphite products for participating between 1988 and the end of 1999 in a cartel covering the entire European Economic Area. The total of fines imposed was €101 million. The cartel practised price-fixing and market sharing. It also undertook co-ordinated actions against competitors. A sixth company received immunity from fines for having been the first to denounce the cartel to the Commission. Four of the five fined companies obtained reductions of fines ranging from 40% to 20% for co-operating with the Commission after having received a request for information.

Summary of the infringement

Electrical carbon products are primarily used to transfer electricity to and in electrical motors. The most important products in this group are carbon brushes and electrical current collectors. Applications are in the automotive, consumer products, industrial and traction (public transport) markets. Examples of applications in the automotive area are starters, alternators, fuel pumps, air conditioning and powered windows in cars and trucks. Consumer product brushes are used in power tools like drills, in vacuum cleaners, electric shavers, mixers and many other domestic appliances and consumer durables. Industrial applications are for instance in assembly lines and elevators. Traction brushes are used in railway and other public transport applications, mainly in locomotives and in auxiliary electrical motors.

Mechanical carbon and graphite products can withstand high friction, are non-reactive, resistant to wear and, if they contain graphite, may also have a lubricating function. They are primarily used to seal gases and liquids in vessels and to keep low-wear parts in machines lubricated. Carbon and graphite products are also sold in blocks, which require further processing. The Commission's investigation and Decision cover this entire product group, which was found to have been the object of a single complex infringement.

Following an investigation which started in September 2001 with an immunity application by Morgan Crucible Company plc, the Commission concluded that the latter plus Carbone Lorraine S.A., Schunk GmbH and Schunk Kohlenstofftechnik GmbH (which are treated as one company for the purpose of this decision), SGL Carbon A.G., C. Conrady Nürnberg GmbH and Hoffmann & Co. Elektrokokhle AG (now part of the Schunk Group) participated in a cartel in the European Economic Area between 1988 and 1999.

More than 140 reported cartel meetings took place during the infringement period. The functioning of the cartel was essentially unchanged throughout this period:

— The senior executives for carbon and graphite products in the member companies met in periodic European Summit meetings. Summit meetings were held twice per year.

— Technical Committee meetings at European level were in principle also held twice a year, in spring and autumn, preceding the Summit meetings. The main purpose of Technical Committee meetings was to agree on price levels and percentage price increases for the different products in different countries. They were also used to reach agreement on 'policy' aspects of companies' sales strategies, such as (upward) harmonisation of prices across Europe, the price levels to be applied in respect of large customers, how to handle competitors, and surcharges for different alleged purposes.

— Local meetings were held on an ad hoc basis in Italy, France, the United Kingdom, the Benelux, Germany, and Spain (covering also the Portuguese market). These meetings discussed price increases in the country concerned, as well as the accounts of single local customers.

— Regular contacts between representatives of the cartel members were necessary to ensure that the agreements made in the meetings were upheld in daily practice by all parties. Representatives also kept regular contact to co-ordinate specific bids made to large customers. Such contacts occurred on a weekly and sometimes daily basis, by phone, fax, or, occasionally, meetings.
In 1998, the last full year in which all members participated in the cartel, the cartel covered more than 90% of the EEA market for the product concerned, this market having a total estimated value in that year of €291 million, including the value of captive use.

**Calculation of fines and application of the Leniency Notice**

The Commission considered that the undertakings concerned had committed a very serious infringement of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement. The nature of the infringement and its geographic scope were such that the infringement must qualify as very serious, irrespective of whether or not the impact of the infringement on the market could be measured.

Within the category of very serious infringements, the scale of likely fines makes it possible to apply differential treatment to undertakings in order to take account of the effective economic capacity of the offenders to cause significant damage to competition, as well as to set the fine at a level which ensures that it has sufficient deterrent effect. Carbone Lorraine and Morgan were the largest sellers of electrical and mechanical carbon and graphite products in the European Economic Area in 1998, with market shares of more than 20%. They were therefore placed in a first category. Schunk and SGL, with market shares between 10% and 20%, were placed in a second category. Finally, Hoffmann and Conradty, with market shares below 10%, were placed in a third category.

Most of the undertakings concerned participated in the infringement during the entire period from October 1988 to December 1999. The only exceptions were Hoffmann, which participated from September 1994 to October 1999, when it was acquired by Schunk, and Carbone Lorraine, which participated from October 1988 to June 1999.

The Commission considered that there were no aggravating or attenuating circumstances in this case.

The 10% worldwide turnover limit mentioned in Article 15(2) of Regulation 17 was applied to Hoffmann and Conradty to limit the fines imposed on these small companies.

As Morgan’s immunity application was made to the Commission before the entry into force of the 2002 Leniency Notice, the 1996 Leniency Notice was applied. Morgan was granted immunity from fines for having been the first undertaking to report the cartel to the Commission. Carbone Lorraine was granted a 40% reduction for its co-operation in the Commission’s investigation. Among the companies qualifying for a significant fine reduction, Carbone Lorraine was the first company to co-operate with the Commission and provided the most useful contribution. Like the other companies that co-operated with the Commission, it also did not substantially contest the facts on which the Commission based its allegations. Schunk was granted a 30% reduction for its co-operation in the Commission’s investigation. The evidence it provided arrived later and its co-operation was more limited than that of Carbone Lorraine. Hoffmann, now part of the Schunk Group, co-operated in the same manner as Schunk. It was also granted a 30% reduction. SGL, which was the last company to co-operate, was granted a 20% reduction. Conradty did not cooperate with the Commission.

The arguments of Carbone Lorraine regarding inability to pay were rejected, as were those of SGL. The latter company was, however, granted a 33% reduction of its fine for the reason that it was both undergoing serious financial constraints and had relatively recently already been imposed two significant fines by the Commission for participation in simultaneous cartel activities. Carbone Lorraine argued that it was in the same position as SGL, but this claim was found incorrect.