



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.12.2002  
COM C(2002)5083 final

**Commission Decision**

**Of 17/12/2002**

**relating to a proceedings under Article 81 of the EC Treaty and Article 53 of the EEA  
Agreement**

**(Case COMP/E-2/37.667- Specialty Graphite)**

**(Only the German, English, French and Dutch texts are authentic)**

**(Text with EEA relevance)**

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**(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty<sup>1</sup> as last amended by Regulation (EC) No 1216/1999<sup>2</sup>, and in particular Article 3 and Article 15 thereof,

Having regard to the Commission decisions of 1 October 2001 and 17 December 2001 to open proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 19(1) of Regulation No 17 and Commission Regulation (EC) No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles 85 and 86 of the EC Treaty<sup>3</sup>,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the report of the hearing officer in this case,

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<sup>1</sup> OJ L 13, 21.2.1962, p. 204/62.

<sup>2</sup> OJ L 148, 15.6.1999, p. 5.

<sup>3</sup> OJ L 354, 30.12.1998, p. 18.

WHEREAS:

## 1. THE FACTS

### 1.1. Summary of the infringement

(1) This Decision concerns two separate infringements of Article 81 of the Treaty and Article 53 of the EEA Agreement:

(a) On account of an infringement regarding the market for isostatic specialty graphite, this Decision concerns the following undertakings:

- SGL Carbon AG
- Le Carbone-Lorraine S.A.
- Ibiden Co., Ltd.
- Tokai Carbon Co., Ltd.
- Toyo Tanso Co., Ltd.
- GrafTech International, Ltd.
- NSCC Techno Carbon Co., Ltd.
- Nippon Steel Chemical Co., Ltd.
- Intech EDM B.V.
- Intech EDM AG

(b) On account of an infringement regarding the market for extruded specialty graphite, this Decision concerns the following undertakings:

- SGL Carbon AG
- GrafTech International, Ltd.

(2) For the periods specified in this Decision, the manufacturers and/or distributors of isostatic and extruded specialty graphite supplying the Community and EEA entered into and participated in continuing agreements contrary to Articles 81(1) of the Treaty and Article 53 of the EEA Agreement, by which they fixed prices and exchanged commercial information in respect of those products. In the infringement concerning the isostatic specialty graphite market, they further fixed trading conditions and occasionally divided customers.

(3) The undertakings participated in the two infringements for the following periods:

(a) Infringement concerning the isostatic specialty market:

SGL Carbon AG (SGL)	From July 1993 to February 1998
Le Carbone-Lorraine S.A. (LCL)	From July 1993 to February 1998
Ibiden Co., Ltd. (Ibiden)	From July 1993 to February 1998
Tokai Carbon Co., Ltd. (Tokai)	From July 1993 to February 1998
Toyo Tanso Co., Ltd. (Toyo Tanso)	From July 1993 to February 1998
GrafTech International, Ltd. (UCAR)	From February 1996 to May 1997
NSCC Techno Carbon Co., Ltd. (NSCC) Nippon Steel Chemical Co., Ltd. (NSC)	From July 1993 to February 1998
Intech EDM B.V. (Intech) Intech EDM AG	From February 1994 to May 1997

(b) Infringement concerning the extruded specialty market:

SGL Carbon AG (SGL)	From February 1993 to November 1996
GrafTech International, Ltd. (UCAR)	From February 1993 to November 1996

## 1.2. The specialty graphite industry

### 1.2.1. The product markets

- (4) “Specialty graphites” is the general term widely used in the industry to describe a group of graphite products for diverse applications (other than steel making graphite electrodes, graphite anodes for the chemical industries, carbon electrodes for the refining of ferrous alloys and cathodes for aluminum reduction cells). Specialty graphite products are often categorised by the way the graphite is produced<sup>4</sup>:
- Isostatic graphite (produced through isostatic moulding): typical applications include electrodes for electrical discharge machining (EDM), continuous casting dies, hot press moulds, semiconductor applications (see recital (10) below).
  - Extruded graphite (produced through extrusion): used in electrolytic anodes and cathodes, boats, sintering trays, crucibles (see recital (12) below).

<sup>4</sup> This is however not an absolute classification, and some suppliers may consider particular kinds of products as falling within one or the other category (see SGL(3), p.2).

- Moulded graphite (produced through unidirectional moulding): used in tube sheets for heat exchangers, pressure casting moulds, large crucibles, furnace susceptors.
- (5) Isostatic graphite has superior mechanical characteristics (two or three times higher density, higher strength and finer grain) than extruded and moulded graphites. The prices of each graphite category differ according to those mechanical characteristics<sup>5</sup>.
  - (6) From the production point of view, a partially different machinery is necessary for each type of production process –there is no supply-side substitutability among the 3 categories<sup>6</sup>- and the production cost difference between isostatic graphite and extruded or moulded graphite is at least [...] %<sup>7</sup>. From the demand side point of view, the end use determines which of the three types of graphite to select. Customers usually prefer the graphite type whose physical characteristics conform to what is required for the production of the final product<sup>8</sup>. There may be very substantial switching costs between different categories of specialty graphite and customers typically do not switch among extruded, moulded and isostatic categories<sup>9</sup>.
  - (7) The collaboration among specialty manufacturers reported in this Decision mainly concerned unmachined isostatic graphite products<sup>10</sup>. To a more limited extent, it also extended to unmachined extruded graphite products. The Commission has no evidence that similar agreements have existed relating to moulded graphite. Moulded graphite is therefore not the subject of this procedure. Furthermore, the collaboration in respect of both isostatic and extruded specialty graphite focussed on products the form of standard blocks and cut blocks, but not on “machined” products. Products for semiconductor applications, which are machined and therefore “customised”, were not part of the arrangements<sup>11</sup>.

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<sup>5</sup> Typically, extruded is the lowest price material; moulded prices are similar to extruded, but have inferior properties due to the large block sizes. Current representative prices to European machine shops are:

- isostatic graphite: Eur 9 to 50 per kg.
- extruded graphite: Eur 4 to 15 per kg.
- moulded graphite: Eur 7.5 to 15 per kg.

<sup>6</sup> Some graphite processing equipment (forming, baking, graphitization) is “category-specific”; other equipment (impregnation, machining, purification) can be used for any of the three categories (UCAR(3), p.2).

<sup>7</sup> In contrast to the more conventional extrusion and unidirectional moulding method, the isostatic moulding method employs cold isostatic press to impart graphite with isotropic and homogeneous characteristics (TTSS, p.1). The production of isostatic graphite also requires higher priced cokes and requires more time for baking and graphitizing (TC(2), p.2).

<sup>8</sup> Extruded is the lowest cost material, so if it meets the application requirements it will be the material of choice. Moulded is generally selected only for applications requiring larger sizes, because moulded properties are typically inferior to extruded grades. Isostatic is used for applications for which higher physical characteristics and finer grain size are required. However, in the United States isostatic graphite grades at the low end -which were offered for sale in the US but not in Europe- compete with extruded graphite grades (see e.g. UCAR(3), p.1; TC(2), p.2; TCSS, p.1).

<sup>9</sup> See e.g. UCAR(3), p.2; TC(2), p.2.

<sup>10</sup> The product is called isotropic graphite, rubber pressed graphite, isomolded graphite or isostatic graphite, depending on the producer's choice of name.

<sup>11</sup> Specialty graphite products are supplied to customers either directly from the manufacturing plants as finished machined products or through intermediary “machine shops” or “distributors”. These machine shops (which are either affiliated with the graphite supplier or are independent from it) buy unmachined graphite materials (in blocks or rods), machine them (i.e. customise the product according to the client’s

- (8) There is a high degree of physical similarity between grades belonging to the same category (isostatic or extruded graphite). They differ, among other things, with respect to grain size, assigned raw material (coke), impregnation, dimension and purity<sup>12</sup>. Grades are classified based on their physical properties<sup>13</sup>.
- (9) The possibility of switching between grades of the same category thus depends on the physical characteristics -and the balance of such characteristics- which are required for the final application, and on the price of graphite. Grades with a grain structure within a certain range have similar physical characteristics and therefore customers may have the choice between several grades to machine the same graphite part<sup>14</sup>. From a supply-side perspective, it is possible to switch production from one grade to the other as the processing equipment for the different grades is the same<sup>15</sup>.
- (10) **Isostatic graphite** materials are used for different applications where its superior mechanical characteristics compared to the conventional graphite materials are required. Typical applications of isostatic graphite are:
- Electrodes for electrical discharge machining (“EDM”) used in metal mould making for the automobile and electronics industries<sup>16</sup>;
  - Dies for continuous casting (“CC”) of non-ferrous metals such as copper and copper alloys<sup>17</sup>;

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needs) and sell the machined products to the “end user” customer. The machining process is often based on customer drawings. Some end users are equipped with in-house machining capability, and purchase unmachined graphite blocks or rods directly from graphite producers (see e.g. TCSS, p.3). See p. 1307 of the file for an example of how the prices of cut blocks were established on the basis of standard block prices.

<sup>12</sup> SGL(3), p.6.

<sup>13</sup> Apparent density, flexural strength, shore hardness, electrical resistivity (I(3), p.6).

<sup>14</sup> The preference for a certain grade results from the recommendations of technical designers and from the performance of a grade after appropriate tests at the customer. This testing procedure can be lengthy and expensive. Once this selection process has been completed, customers are generally reluctant to switch from one grade to another, as it is uncertain whether another grade will be as suitable for the intended application. Therefore, should a customer wish to switch grades as a result of price increases by any individual specialty graphite producer, the customer will generally seek to replace its supply with a competitor's grade that is as close to physically identical to the original as possible. (SGL(3), p.6-7; TC(3), p.8; NSCC(3), p.3). However, Toyo Tanso states that “*there are many possibilities for switching between grades for a given application at no cost; (...) several grades of the same producer are suited for the same application, only their durability and machining speed may vary. Switching between grades therefore regularly occurs, for example when one grade cannot be delivered in the short term or the price of one grade is higher than the price of another*” (TT(3), p.4). According to UCAR, “*the cost to the customer of switching grades varies greatly with the sensitivity and technology of the end use application*” (UCAR(3), p.6).

<sup>15</sup> NSCC (3), p.3.

<sup>16</sup> The Electro Discharge Machining process, also called spark-erosion, is a precise although slow method of shaping or “machining” cold metal. It is used to manufacture dies and moulds for metal casting, forging and plastic injection operations. Isostatic graphite is used as an electrode to transfer electric currents from the power source to the metal work piece. This process involves the carving of the exact shape of the machined graphite electrode (such as an aluminium car wheel) into the metal piece reversely, which involves removing surplus metal from the mould in order to form the cavity that will later be used to produce the actual parts. Therefore, electrodes have different shapes and sizes, which are often customised to the customer requirements. As the work piece is eroded, the EDM electrode also erodes (this is known as electrode wear). Common materials used as EDM electrodes are graphite and copper (as they are excellent conductors of electrical currents), but copper and copper alloys are more and more replaced by graphite. (see e.g. NSCC(3), p.4; TC(3), p.10).



- Segments for pressure sintering of diamond saw blades or diamond wheels;
  - Hot zone parts for mono-crystal silicon growing.
- (11) There is no industry standard for the grade classification to compare the grades of different producers. Generally, grades having a finer grain structure have higher mechanical characteristics (such as strength and hardness) and are more expensive. For EDM application, only isostatic graphite is used. As to graphite used for continuous casting, the properties required vary depending on the alloy that will be casted: although specialty graphite as a whole satisfies the required conditions<sup>18</sup>, isostatic graphite is a specifically suitable material<sup>19</sup>.
- (12) **Extruded graphites** usually have lower resistance and higher thermal conductivity than isostatic grades. They are typically classed by density; higher density is attained by pitch impregnations, which also improve other properties (strength, porosity, thermal conductivity). In general, higher density materials perform better than lower density materials, and will be higher priced because of the additional impregnation processing<sup>20</sup>. Although from the customer’s perspective there are individual grades that are exchangeable with each other, there is no industry-wide classification for extruded graphite. However, two dominant grades have been the *de facto* standard for extruded graphite and operated as a benchmark for the calculation of the prices of other extruded graphite grades in Europe: “HLM” from SGL and “CS” from UCAR. These two grades are quite similar to each other in terms of physical properties (strength, grain size) and most of the extruded graphite produced by other suppliers broadly have the same properties<sup>21</sup>.

### 1.2.2. *Supply of specialty graphite*

- (13) The major producers of specialty graphite in the Western world are multinational corporations. The business is essentially a global one and is characterised by an oligopolistic structure.
- (14) According to the estimates provided by the parties<sup>22</sup>, the size of the specialty graphite sales at world-wide level in the year 2000 was about EUR 900 million. Out of this figure, isostatic specialty graphite accounted for around EUR 500 million and extruded specialty graphite for EUR 300 million.

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<sup>17</sup> The Continuous Casting process is commonly used in metal processing to manufacture certain shapes (e.g. billets, round bars, etc.) from molten metals. Specialty graphite has both a high heat transfer rate, which allows quicker forming from the molten metal, and high heat resistance, which is necessary for the severe conditions occurring in this operation. The process of continuous casting essentially consists of pouring molten metal into a graphite die which is water-cooled. The metal solidifies and is then continuously extracted from the other side of the die (see e.g. NSCC(3), p.4; I(3), p.8; TC(3), p.10).

<sup>18</sup> The characteristics that are required from the graphite grade include resistance to thermal shock, thermal expansion and conductivity, gas permeability (TC(3), p.8).

<sup>19</sup> See e.g. I(3), p.8.

<sup>20</sup> See UCAR(3), p.3.

<sup>21</sup> TC(3), p.3; SGL(3), p.4, UCAR(3), p.7.

<sup>22</sup> See e.g. SGL(3); UCAR(3); TC(2), I(2). Some companies consider their brush and seal businesses as part of their “specialty” business. Therefore, the respective estimates of the specialty market size may differ significantly among companies.

- (15) At Community/EEA level, the size of the sales in 2000 was of EUR 100-120 million for isostatic products and EUR 60-70 million for extruded products. Unmachined products accounted for about EUR 35-50 million in the isostatic market and about EUR 30 million in the extruded one.
- (16) The largest producers of isostatic specialty graphite in the Community/EEA are SGL and LCL. Together, they account for about two thirds of the market. Toyo Tanso is ranked third. It is followed at a certain distance by other Japanese companies (Tokai, Ibiden, NSCC) and UCAR. As regards the sales of isostatic graphite in blocks and cut blocks (as opposed to machined products), Toyo Tanso is second in the European market after SGL.

**Table 1:** The size of the addressees of this Decision and their relative importance in the global/EEA isostatic graphite market<sup>23</sup>.

Undertaking	World-wide total turnover (all activities) of the relevant company or group of companies involved for the year 2001 (in million Eur)	World-wide isostatic specialty graphite: turnover for the year 1997 (in million Eur)	World-wide isostatic specialty graphite <i>in blocks and cut blocks</i> : turnover for the year 1997 (in million Eur) and estimated market share	EEA isostatic specialty graphite: turnover for the year 1997 (in million Eur)
SGL	1233	80.4	[30-40 (30-40%)]	40.3
LCL	803.7	51.3	[10-14 (10-14%)]	20.1
Ibiden	1950	35.5	[6-10 (6-10%)]	3.1
Tokai	588	29.3	[9-14 (9-14%)]	3.4
Toyo Tanso	166.2	99.6	[21-27 (21-27%)]	11.39
UCAR	720	7.9	[2-5 (2-5%)]	2.6
NSC/ NSCC	1809/ 26.5	9	[4-7 (4-7%)]	0.9
Intech EDM B.V./ Intech EDM AG	11.3/ 4.2	2.3	[1-3 (1-3%)]	2.3

**Table 2:** The companies have declared that blocks and cut blocks have the following relative weight as a proportion of their total isostatic turnover:

Undertaking	Relative weight of isostatic turnover in blocks and cut blocks within total isostatic turnover
SGL	[...]

<sup>23</sup> For a description of these undertakings, cf. section 1.2.6 below.

LCL	
Ibiden	
Tokai	
Toyo Tanso	
UCAR	
NSCC	
Intech	

- (17) In the year 2000, the main participants in the global market for extruded specialty graphite were<sup>24</sup> UCAR (40%), SGL (30%), the Carbide Graphites Group<sup>25</sup> (8%) and Graphite India (8%). The European market was essentially dominated by UCAR and SGL, which accounted for 2/3 of the sales. The Japanese producers together had about 10% of the world market (5% at Community level).

**Table 3:** The relative importance of the addressees in the global/EEA extruded graphite market:

Undertaking	World-wide extruded specialty graphite: turnover for 1995 (million Eur)	World-wide extruded specialty graphite <i>in blocks and cut blocks</i> : estimation of turnover for 1995 (million Eur) and estimated market share	EEA extruded specialty graphite: turnover for 1995 (million Eur)
UCAR	45.8	[12-17 (25-35%)]	20.6
SGL	31.7	[12-17 (25-35%)]	24.5

According to the replies provided by the companies to the Commission's request for information, the proportion of sales of extruded products in form of blocks or cut blocks (unmachined products) is of [20-30]% for UCAR and [40-50]% for SGL<sup>26</sup>.

### 1.2.3. Demand for specialty graphite

- (18) According to the calculations of the manufacturers, the global demand of specialty products in the year 2000 was 80,000 tons. At Community/EEA level, the demand for isostatic and extruded products was estimated for the same year at around 5,000 and 16,000 tons respectively.

<sup>24</sup> Market shares based on estimates made by SGL, UCAR and Tokai (SGL(3), p.5; UCAR(3), p.4; TC(3), p.4.).

<sup>25</sup> The Carbide Graphites Group (CGG) sold its specialty graphite business to SGL in 1995. It currently sells extruded graphite to machine shops (no own machining). About 80% of its production is sold in the US (UCAR(3), p.5).

<sup>26</sup> SGL(3); UCAR(3).

- (19) Within the **isostatic** category, EDM grades represent about **[10-30]** % of the sales of the three main producers in the Community/EEA market<sup>27</sup>, whereas grades for continuous casting applications account for **[10-30]** % of that turnover. The remainder is constituted of grades used in a multiplicity of applications, including those (about **[20-40 %]** of global shipments, or **[10-30]** % at the Community/EEA level) used as components of chips in the semiconductors industry (machined products).
- (20) Sales of isostatic graphite products had been relatively minor until the 1980s, when the main applications were dies for continuous casting of non-ferrous metals, segments for pressure sintering and EDM electrodes. A major new demand was created in the 1980s in the field of semiconductor applications: isostatic graphite started to be used in critical hot zone parts for the mono-crystal silicon growing process to replace parts made of extruded graphite or moulded graphite. Mono-crystal silicon is an indispensable material for “LSI Chips”, used in the semiconductor industry<sup>28</sup>.
- (21) **Extruded** products are also used in a wide range of industrial applications. In particular, UCAR grade CS and SGL grade HLM, which are considered benchmarks or standards, find some of their main uses in the iron and steel industries, the aluminium industry, the chemical industry and in metallurgy. Some of the frequent applications are as resistor rods and heating elements, dies and cores for centrifugal casting, heat exchangers, moulds and boats for sintering, trays or crucibles.

#### 1.2.4. *The relevant geographic market for specialty graphite*

- (22) The Commission considers that the market for specialty graphite as a whole, and in particular the markets for isostatic and extruded specialty, are world-wide markets. There are several indicators that point in this direction.
- (23) The restructuring process in the worldwide specialty graphite industry which took place in the late 1980s and early 1990s led to a significant reduction in the number of world producers. During the time period referred to in this Decision (1993-1998), the isostatic specialty market was dominated by eight global leaders – Toyo Tanso, Tokai, SGL, LCL, Ibiden, NSC/ NSCC, UCAR and Poco Graphite (POCO)- that controlled 80% of the world market. Likewise, in the market for extruded specialty there were only three main players (UCAR, SGL and the Carbide Graphites Group) that held more than 75% of the market at both the world and Community/EEA levels.
- (24) Transportation costs and tariff barriers might well lead to somewhat higher costs, but they do not prevent the producers from trading on a worldwide basis. This is demonstrated by the fact that the Japanese producers, without having any production sites outside Japan, were able to trade in Europe and to obtain a market share of more than 20% in the market of isostatic specialty graphite in blocks and cut blocks.
- (25) Finally, the worldwide character of the market for specialty graphite is also confirmed by the structure, organisation and operation of the cartel itself. The producers involved

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<sup>27</sup> (SGL(3), LCL(3), TT(3). The sales for EDM purposes have historically been developed by wholesalers specialised in the distribution of various parts and consumables needed for the EDM tasks. They are called EDM distributors. They purchase and stock isostatic graphite blocks and cut out the dimension of graphite specified by customers to make on-time delivery. The majority of them are equipped only with a limited machining capability. Such processing is usually not called machining.

<sup>28</sup> TCSS, pp.3-5.

in the infringement agreed on an overall scheme by which the world market for specialty graphite was cartellised and held regular meetings that covered the world market.

#### 1.2.5. *Interstate trade*

- (26) In the period 1993-1998 the markets of isostatic and extruded specialty graphite were characterised by important trade flows between the current Member States as well as between the Contracting Parties to the EEA Agreement.
- (27) Specialty graphite producers had (and still have) sales in virtually all Member States. The Europe-based production plants of SGL, are located in Germany, Italy, France, Spain, Austria and Belgium, those of LCL are in France, Germany, the United Kingdom, Spain and Italy, whilst UCAR's production of specialty is located in France. From these units the three companies supplied specialty products (both isostatic and extruded graphite) to the whole Community/EEA market. This implies that there are important inter-State specialty graphite trade flows within the Community
- (28) Toyo Tanso, Tokai, Ibiden and NSC/ NSCC do not produce specialty graphite in Europe. However they sell their specialty products in almost every Member State.

#### 1.2.6. *The producers*

##### 1.2.6.1. Restructuring of the industry

- (29) Towards the end of the 1980s and in the early 1990s the Japanese producers started to compete increasingly in Europe and in the US, as a new market appeared for isostatic products in the semiconductor industry. At the same time, coinciding with the consolidation in the graphite electrode industry, a major consolidation took place in the isostatic graphite sector. At the beginning of the decade LCL acquired Stackpole Carbon. In 1992, Great Lakes Carbon and Sigri merged to form SGL Carbon; Ringsdorff became a part of SGL as part of this merger. Tokai Carbon and Toyo Carbon merged in 1992. SGL acquired Pechiney's graphite specialties operations in November 1993. Also Carbide/Graphite Group (formerly Airco Carbon) sold its specialty graphite unit to SGL Carbon in 1995. At the same time, graphite producers acquired many independent machine shops, creating significant vertical integration across the industry<sup>29</sup>.
- (30) As mentioned in section 1.2.4 above, there are eight main producers of isostatic specialty graphite and two main producers of extruded graphite that supply the Community/EEA market. The European suppliers, SGL and LCL, sell most of their graphite products via subsidiaries in Europe. The Japanese producers, and in particular Tokai and Ibiden, sell via independent distributors and machine shops. Toyo Tanso's commercial chain in the European market has a mixed nature, composed of both own subsidiaries and independent distributors.

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<sup>29</sup> TCSS, pp.3-5.

#### 1.2.6.2. SGL

- (31) SGL is the world's largest producer of carbon and graphite products. The company results from two mergers in 1992 and 1993. In February 1992, Sigri GmbH (as it was then), which was at the time wholly owned by Hoechst AG, merged its activities in the field of carbon and graphite production with the Great Lakes Carbon Group (GLC). Ringsdorff-Werke GmbH -active in the business of specialty graphite- became a 100% subsidiary of the resulting Sigri Great Lakes Carbon GmbH. In October 1993 the graphite activities of Pechiney SA, a major French packaging and aluminium producer, were transferred to SGL. In December 1994 SGL was transformed from a private limited liability company (GmbH) into a public company (AG). Ringsdorff-Werke GmbH was merged into SGL Carbon AG in October 1995. Since June 1996 the later has been fully independent of Hoechst AG. It has its headquarters in Wiesbaden, Germany.
- (32) SGL's has 8 500 employees world-wide, of which 5 253 in the Community/EEA. Its total world-wide turnover in 2000 was DEM 2 560 million (approximately EUR 1 262 million).
- (33) SGL's production facilities in the EEA are located in Germany, Italy, France, Spain, Austria and Belgium. SGL's structure focuses on three business areas: carbon and graphite, speciality graphite and technical products. The company produces extruded as well as isostatic graphite.
- (34) The SGL group has a sales director responsible for each Member State in which it has subsidiaries including France, Italy, the United Kingdom and Spain. The company operates through external distributors in the countries where it does not have its own subsidiaries.

#### 1.2.6.3. Carbone Lorraine

- (35) Carbone Lorraine is a group of companies composed of a mother company, Le Carbone-Lorraine S.A. (LCL), and about 60 industrial or commercial subsidiaries established in 39 countries, most of them 100% owned, either directly or indirectly, by LCL. LCL was established with the merger, in 1937, of "Compagnie Générale Electrique de Nancy" (an electric engines manufacturer created in 1891) and "Le Carbone" (created in Paris in 1892). The company subsequently expanded its activities to other European countries, South America and the US. The shares of Carbone Lorraine are quoted on the Paris stock exchange since 1938.
- (36) Up to 1995 Pechiney owned 61.2% of LCL's capital. In June 1995, Pechiney transferred 21,4% of that capital to Compagnie Financière de Paribas, which resulted in the privatisation of LCL. At the beginning of 1997 Pechiney transferred the remainder of its stockholding -37,7% of the capital- in the framework of an international private operation. Paribas is currently the company's main shareholder, with 22% of the capital.
- (37) The main industrial sites of LCL in Europe are located in France, Germany, the United Kingdom, Spain and Italy. The group has 8 300 employees world-wide, 4 000 in Europe, 2500 in France. The total world-wide consolidated turnover of the group Carbone Lorraine at 31 December 2000 was EUR 876m. Since 1995, the group has

grown considerably through a policy of acquisitions (its turnover has doubled in the period 1994-1999).

- (38) LCL does not manufacture extruded graphite. The company has traditionally commercialised its products in Europe through its subsidiaries in the group Carbone Lorraine: Il Carbonio (Italy), Deutsche Carbone AG (Germany), Le Carbone GB (UK) are wholly owned by LCL; Sofacel (Spain) is owned at 51%. LCL has also worked with distributors and machine shops not belonging to the group, through distribution agreements.

#### 1.2.6.4. Ibiden

- (39) Ibiden was established on 25 November 1912 under the name Ibigawa Electric Power Co., Ltd. In 1918, it absorbed three companies, namely Ibigawa Electrification Industry Co., Tokai Electrification Industry Co., and Nippon Denki Steel Manufacturing Co. In 1980 the company changed its name to Ibiden Co., Ltd.
- (40) Ibiden is a publicly-owned company whose stock is listed on the Tokyo, Osaka and Nagoya stock exchanges. The company does not have any majority or controlling shareholder, the main shareholders being Japanese Trust Funds and banks. It has a certain number of subsidiaries, in Japan and overseas. All Japanese and overseas subsidiaries are directly owned by Ibiden<sup>30</sup>. Three overseas companies have their head office in Europe: Ibiden Netherlands B.V. (the Netherlands), Ibiden Europe B.V. (the Netherlands) and Ibiden DPF France S.A.S (France).
- (41) As of 31 March 2001 Ibiden had [...] employees worldwide, including [...] employees in the Community (EEA). In the year 2000 Ibiden registered a non-consolidated world-wide turnover (for all activities) of JPY 130,877 (EUR 1,315m).
- (42) All Ibiden's specialty graphite production facilities are located in Japan. The company manufactures and sells a variety of products including printed circuit boards, plastic IC packaging substrates, graphite specialties (which include block sales and processed products), ceramic fibres and high-tech ceramics. It started exporting certain carbon products to the Community market in the 1960's. Isostatic graphite is the only specialty graphite manufactured by Ibiden<sup>31</sup>.
- (43) Up to [...], Ibiden had some sales direct to distributors and machine shops, but sold mostly through the trading companies [...] [...] <sup>32</sup>. Ibiden Europe was established on 23 March 1993 in order to sell Ibiden's electronic and ceramic products within the Community.

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<sup>30</sup> Except the Japanese company Carrier Create Corp, whose main shareholders are three directly-owned subsidiaries of Ibiden, and the American companies owned by the holding company Ibiden International Inc., itself wholly owned by Ibiden (I(2), p.5-6).

<sup>31</sup> While the company's sales of isostatic specialty graphite in blocks have been primarily to customers outside Japan, Ibiden exported a small quantity of processed specialty graphite products pursuant to specific customer requests, although these transactions have been negligible. Conversely, sales of unprocessed isostatic specialty graphite to customers in Japan have been negligible (I(2), p.2).

<sup>32</sup> Ibiden holds 85% of the shares of Ibiden Europe, whose directors are all Ibiden employees (I(2), p.3).

#### 1.2.6.5. Tokai

- (44) Tokai was established on 8 April 1918. The company's head office is in Tokyo. In 1990 its European Representative Office was established in Düsseldorf (Germany). In 1992 Tokai merged with Toyo Carbon Co., Ltd. In 1994 Tokai Carbon Europe S.R.L. was established in Milan (renamed to Tokai Carbon Italia S.R.L in 1999). In 1999 Tokai Carbon Europe Ltd. was established in Birmingham (UK)<sup>33</sup>.
- (45) Tokai is the parent company of the Tokai Carbon Group, with 11 consolidated subsidiaries, including Tokai Carbon Europe Ltd. Tokai Carbon Europe Ltd. currently has the following 6 subsidiaries, which are distributors/machine shops of specialty graphite: Tokai Carbon Italia S.R.L. (Italy), Svensk Specialgrafit AB (Sweden), Graphite Technologies plc (UK), Graphite Technologies LDA (Portugal), Graphite Technologies Electrodo, LDA (Portugal) and Graphite Technologies Ireland Ltd. (Ireland).
- (46) As of 31 December 2000 the Tokai Carbon Group had 1,559 employees. As of 31 March 2001, Tokai Carbon Europe Ltd. and its European subsidiaries had [...] employees in total. The world-wide consolidated group turnover for all activities in the year 2000 was of JPY 64,900m (EUR 652m).
- (47) Tokai is a producer of carbon products. It supplies carbon black, graphite electrodes, carbon and engineered products (including specialty graphite) and friction and sintered materials. The company has 9 production facilities in Japan and Thailand (specialty graphites are produced in the Tanoura plant, Japan). It entered the Community/EEA isostatic graphite market for the first time at the end of 1989 (exports of extruded graphite products to the Community/EEA started sales in 1998).
- (48) Tokai has sold its isostatic graphite products in Europe through independent distributors and machine shops, with the exception of its subsidiary Tokai Carbon Europe S.R.L. (distributor of Tokai products in Italy)<sup>34</sup>.

#### 1.2.6.6. Toyo Tanso

- (49) Toyo Tanso was founded under the name “Kondo Carbon Factory” in Osaka, Japan, in 1941. In 1949 the company was renamed Toyo Tanso Co. Ltd. In 1988 Graphite Technologie et Industrie S.A. (“GTI”) was established in France as a wholly-owned subsidiary of Toyo Tanso. In 1991 Graphit Technologie GmbH (“GTD”) was established in Germany
- (50) Toyo Tanso is the parent company of a group of companies engaged in the production and sale of specialty graphite. Today, Toyo Tanso has ten subsidiaries world-wide, including the European Graphites Technologie et Industrie S.A. in France (“GTI”)<sup>35</sup>, Graphit Technologie GmbH in Germany (“GTD”)<sup>36</sup> and Toyo Tanso Europe S.p.A. in

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<sup>33</sup> It acquired [...] Graphite Technologies plc in the UK and [...] Svensk Specialgrafit AB, in Sweden (TC(2), p.4).

<sup>34</sup> Apart from Tokai Carbon Europe S.R.L., Tokai was not related in a corporate sense to other undertakings which intervened in Tokai's distribution of isostatic graphite in Europe in the period 1993-1998 (TC(2), p.1).

<sup>35</sup> Wholly-owned subsidiary of Toyo Tanso, established in 1988 (TT(2), p.7).

<sup>36</sup> Established in 1991. Toyo Tanso has sole control over GTD (TT(2), p.7).



Italy (“TTE”). Prior to 1997, the Italian company was a joint venture called Graphite Technology Application S.R.L. (“GTA”).

- (51) Toyo Tanso has 1,270 employees world wide and 145 employees Community/EEA wide. In the year 2000 it had a world wide turnover (for all products) of EUR 200.43m.
- (52) Toyo Tanso is active in the production and sale of specialty graphite, primarily isostatic specialty graphite, which is sold as blocks and as machined parts. In addition to isostatic graphite, the other graphite sold by Toyo Tanso is mechanical carbon (conventionally pressed carbon), graphite sheet (thin sheet for gasket applications) and carbon composite (carbon-fibre reinforced carbon for high-temperature furnaces).
- (53) Toyo Tanso started selling graphite blocks to European graphite producers at the beginning of the 1980s. In 1988 the company established its own European sales company in France, in order to serve directly its European customers. With the exception of one small production facility in the USA, all Toyo Tanso specialty graphite is produced in Japan. The European subsidiaries do not manufacture graphite, but purchase graphite blocks from Toyo Tanso and resell them either as blocks or as machined parts. In the EEA, Toyo Tanso mainly sells isotropic (isostatic) specialty graphite through one of the three European subsidiaries (GTI, GTD and GTA/TTE)<sup>37</sup> or through independent distributors<sup>38</sup>.

#### 1.2.6.7. UCAR

- (54) UCAR is one of the world’s leading manufacturers of graphite and carbon products, with sales in virtually all consuming countries and manufacturing facilities in North and South America, Europe and Asia. The company had its principal place of business in Danbury, Connecticut, USA; the corporate headquarters are now located in Nashville, Tennessee. Its European headquarters are in Rungis, France.
- (55) UCAR was formerly the Carbon Products Division of Union Carbide Corporation. In February 1991 a 50% interest in the company was sold by Union Carbide to Mitsubishi Corporation. In 1995 UCAR carried out a leveraged recapitalisation and completed an initial public offering of common stock. On 7 May 2002, UCAR changed its name to GrafTech International Ltd. (for the purposes of this Decision, it will be still referred to as “UCAR”).

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<sup>37</sup> In the period 1993-1998, TTJ held a 100% interest in GTI (France) and a majority interest of around 74% in GTD (Germany). The Italian company, GTA, was formed in 1991 as a joint venture between TTJ (50% interest) and four Italian individuals. In January 1997, TTJ purchased Rognoni S.p.A., another Italian company, and renamed it Toyo Tanso Europe (“TTE”). By the end of 1997, TTJ acquired the other 50% interest in GTA and GTA was merged into TTE. TTE is now a wholly-owned subsidiary of TTJ. TTJ sold and delivered specialty graphite blocks to its three European subsidiaries (GTI, GTD and GTA/TTE), which resold the products to dealers, machine-shops and end-users in Europe. The blocks were either resold as such (original blocks), as cut-to-size blocks or, to a smaller extent, as machined parts. TTJ had sales contracts with each of the three European subsidiaries under which the subsidiaries were allowed also to buy and resell specialty graphite from other producers (TT(2), pp.1-2).

<sup>38</sup> In several European countries, Toyo Tanso sold its specialty graphite to independent distributors on the basis of either exclusive or non-exclusive distribution contracts. Other than the distribution contract with Toyo Tanso, there were no links between companies of the Toyo Tanso group and the independent distributors. Only very few sales were made by Toyo Tanso directly to European customers other than independent distributors (TT(2), pp.1-2).

- (56) UCAR employs approximately 4 240 people world-wide, including 1 347 people in the Community. The company's total turnover in 2000 was USD 776 million (approximately EUR 841 million). Its share of the European specialty graphite market was around [...] % in 2000.
- (57) The company is engaged in the development, manufacture and marketing of carbon and graphite products for the steel, ferroalloys, aluminium, chemicals, aerospace and transportation industries. Its principal products are graphite electrodes, carbon electrodes, graphite specialties, carbon specialties, cathode blocks and flexible graphite. The company is not active in the EDM market.
- (58) UCAR has operated its graphite specialties business in Europe since before 1970. In the EEA, UCAR has production facilities in France, Italy and Spain. The company's European graphite specialties production facility is located in La Lechère, France. This facility produces extruded products. UCAR does not produce isostatic or moulded products in Europe; it does, however, import isostatic and moulded products into Europe from its plant in Clarksburg, West Virginia, in the United States.
- (59) UCAR sells specialty graphite in Europe through sales offices and regional sales representatives. The main specialties sales office is located in France; others are located in Italy, the United Kingdom and Switzerland. Additional specialties sales representatives are located in Germany and Sweden. Distributors or agents are not used for European sales. While extruded products are produced in both Europe and the United States, isostatic products are produced only in the United States. The distribution chain is the same for both isostatic and extruded graphite.

1.2.6.8. NSCC Techno Carbon Co., Ltd. (NSCC) and Nippon Steel Chemical Co., Ltd. (NSC)

- (60) NSCC was founded in 1961 under the name Tohoku Kyowa Carbon. In 1988 NSC acquired 68% of Tohoku Kyowa Carbon's shares, and in 1992 Tohoku Kyowa Carbon entrusted NSC with its sales and marketing operations. In 1997, the sales and marketing operations reverted to Tohoku Kyowa Carbon, which was renamed NSCC Techno-Carbon, and NSC increased its holding to 90.7%.
- (61) NSCC is therefore a subsidiary of NSC. NSCC purchases both the raw materials and some research and development support for its specialty graphite products from NSC. NSC is a publicly traded company listed on the Tokyo Stock Exchange (First Section) and is affiliated with Nippon Steel Corporation, which controls 67% of its shares.
- (62) NSCC's total turnover in 2000 was EUR 31.3 million. Its world-wide workforce consists of 70 employees.
- (63) NSCC is active in the specialty graphite sector. In this sector, NSCC produces high and ultra high-density carbon products, general-purpose carbon products, artificial graphite powder, crucibles and heaters for crystal growing furnaces of semiconductors, jigs for glass-to-metal sealing, electrodes for electrical discharge machining, bearings and seals for machines, dies for continuous casting and graphite.
- (64) NSCC's only production facility is located in Miyagi, Japan. All of NSCC's specialty graphite sales (including isostatic specialty graphite) are made to two Japanese trading companies, [*NSCC's trading companies*], which then distribute those products world-

wide. NSCC as such is therefore not active in the Community/EEA. As NSCC does not maintain any presence in the Community/EEA, it does not have any employees in the Community/EEA.

- (65) NSCC's isostatic specialty graphite products have been distributed in the Community/EEA market through [*NSCC's trading companies*] since the middle of 1994. NSCC does not ship extruded specialty products to the Community/EEA<sup>39</sup>.

#### 1.2.6.9. Intech

- (66) Before July 1996 Intech EDM B.V., Lomm, Netherlands (formerly named Alectro B.V.) was fully owned by Intech Technology N.V., Helmond, Netherlands. At that time, Intech EDM B.V. had subsidiaries in the United Kingdom, Germany, France and Switzerland (including Intech EDM AG, Zug, Switzerland). On 15 July 1996 Georg Fischer Holding N.V. bought 100% of the shares of Intech EDM B.V. from Intech Technology N.V., and the latter was dissolved. Intech EDM AG was a fully owned Swiss subsidiary of Intech EDM B.V. when the latter was sold to Georg Fischer Holding N.V.. Following a group reorganisation after the sale, 100% of Intech EDM AG shares were transferred to AGIE Charmilles Holding AG, Zug, Switzerland. Therefore, since 1997 Intech EDM AG is the subsidiary of AGIE Charmilles Holding AG<sup>40</sup>.
- (67) The Intech companies (Intech EDM B.V. and its subsidiaries, generally referred to as "Intech" for the purpose of these proceedings) distribute accessories and expendable material (wires, graphite semi-finished materials, graphite electrodes, resins) for machine tools, in particular those using electrical discharge machining (EDM). Intech does not have production locations, since its business activity is almost exclusively based on trade. The services provided mainly consist of the cutting of graphite electrode according to the customer specifications, which is done at the location of Intech EDM B.V., in Holland. Its activities in the graphite sector in Europe are developed on the basis of a cooperation agreement between Intech EDM B.V. and Ibiden Co, Ltd.<sup>41</sup>.
- (68) Intech only sells isostatic graphite for EDM purposes (and no other forms of specialty graphite, like the ones used in the semiconductor industry or for continuous casting purposes). The isostatic specialty business accounts for approximately [...] of Intech's turnover.
- (69) Intech has about 40 employees in Europe and 98 world-wide. Its global turnover for all activities in 2000 was EUR 26.8m.
- (70) Since the early 1990s, Intech has been the distributor of Ibiden's EDM products on an exclusive basis in Germany, the Netherlands, Belgium, Luxembourg and Switzerland

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<sup>39</sup> NSCC(3), p.2.

<sup>40</sup> Which is owned at 80% by Georg Fischer AG, Schaffhausen, Switzerland. The latter is also the mother company of Georg Fischer Holding N.V. (to which Intech EDM B.V. belongs).

<sup>41</sup> On the basis of such cooperation agreement –that existed already before 1993- Intech EDM is a business partner of Ibiden in Germany, the Netherlands, Belgium, Luxembourg and Switzerland and, occasionally, the UK. In these countries Intech sells Ibiden's artificial graphite production for use in electrical discharge machining (EDM) on an exclusive basis; Intech may also sell those products on a non-exclusive basis under its own brand in other European countries (IntechS, pp.1-2).

(cooperation between Intech and Ibiden has occasionally existed in the United Kingdom market as well).

### 1.3.Procedure

#### 1.3.1. Previous Commission investigation

- (71) Beginning in June 1997 the Commission carried out an investigation on the graphite electrodes market. It eventually revealed that the major producers of graphite electrodes had agreed *inter alia* on price fixing, allocation of markets and market share quotas (the "*graphite electrode Decision*")<sup>42</sup>. The companies concerned were major participants in the graphite industry, including international corporations such as SGL Carbon AG, UCAR International Inc. and Tokai Carbon Co. Ltd.
- (72) In the course of the Commission's investigation, and in relation with it, UCAR International Inc. approached the Commission in order to submit an application under the Commission Notice on the non-imposition or reduction of fines in cartel cases<sup>43</sup> ("the Leniency Notice"). The application, which was submitted on 13 April 1999, concerned alleged anticompetitive practices in the markets of isostatic and extruded specialty graphite.

#### 1.3.2. Article 11 requests

- (73) In March 2002, on the basis of the documents submitted by UCAR, the Commission addressed requests for information under Article 11 of Regulation No 17 ("Article 11 requests") to SGL, Intech, POCO, LCL, Nippon Steel Corporation, Ibiden, Tokai and Toyo Tanso, requiring detailed explanations concerning contacts with competitors, evolution of prices and relevant turnover. A second set of letters was sent in July 2000 to Nippon Carbon, NSCC and Schunk, together with additional letters requesting further clarifications to SGL and Ibiden. The companies replied to the requests for information during the months of May to November 2000.
- (74) On this basis, a further set of requests for information was sent by the Commission to Ibiden, Tokai and Toyo Tanso in September 2001, and to LCL, UCAR, NSCC, SGL and Intech in October 2001. The replies were received between the end of October and the beginning of December 2001.
- (75) Upon receipt of those responses the Commission sent a final request for information to the same addressees on 22 November 2001, to which they replied in December 2001.

#### 1.3.3. The undertakings' reactions

- (76) In April and May 2000 (after receipt of the requests for information), Ibiden and Tokai approached the Commission and expressed their intention to cooperate fully with the Commission's investigations.
- (77) In its response of 30 May 2000 to the Commission's Article 11 request, Toyo Tanso confirmed its involvement in meetings with competitors and provided documentary

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<sup>42</sup> Commission Decision 2002/271/EC in Case COMP/E-1/36.490 - Graphite Electrodes, OJ L100, 16.4.2002, p.1.

<sup>43</sup> OJ C 207,18.7.1996, p.4.

evidence of it. However, it denied the impact of the arrangements under scrutiny and failed to provide detailed information on prices, claiming that the company had not announced any general price increases in the European market and that prices were individually negotiated.

- (78) Tokai provided a partial response to the Commission's request for information on 30 May 2000 and an exhaustive statement on 15 June 2000. The statement confirmed its intention of continuous and complete cooperation with the Commission. Tokai admitted being a participant in the collaboration, while claiming not to have initiated the arrangement or to have played a determining role in it. It also alleged that many of the price initiatives were not eventually effective.
- (79) POCO stated in its response of 31 May 2000 that it has never had meetings or understandings concerning market allocations or minimum prices with its competitors. In support of its assertion, POCO submitted further information on 27 June 2000, while expressing its intention to fully cooperate with the Commission.
- (80) LCL produced a detailed response to the Article 11 requests on 5 June 2000. In this reply LCL admitted its participation in the meetings and provided supporting documents, as requested. It also expressed its wish, in a "spirit of collaboration", to meet the Commission.
- (81) Intech's reply to the Commission request was received on 6 June 2000. The company claimed that its participation in the cartel meetings had always taken place on behalf and under instructions of Ibiden. It did not provide the requested documentary evidence on meetings or any information on price instructions.
- (82) SGL's reply to the Commission's request stressed the fact that the actions under scrutiny were directly linked with those under investigation in the graphite electrodes market. Furthermore, by entering into a plea agreement with the US Department of Justice the company claimed to be protected (in the US) against further criminal charges for any act or offence committed prior to the agreement. The company concluded that there is no room for further sanctions in Europe either. It also considered itself to be under no obligation to reply to questions in the Commission's request relating to meetings and contacts with competitors. Despite these arguments, SGL decided to reply to all questions and -as a precautionary measure- apply for the benefits of the Leniency Notice. In the submission it admitted participation in the infringement and provided supporting documentary evidence, as requested.
- (83) Ibiden submitted an exhaustive response to the Commission's request for information on 16 June 2000, also admitting participation in the infringement. In addition, the company reiterated its intention to cooperate to the greatest extent in the Commission's investigation, and to provide any evidence at its disposal.
- (84) In July 2000 the Commission met representatives of POCO, Toyo Tanso and LCL. The companies were encouraged to deliver their additional comments in writing. As a result, Toyo Tanso provided further information concerning the period of infringement prior to 1993 on 25 July 2000. It also expressed by letter dated 25 September 2000, its absolute willingness to fully co-operate with the investigation, while claiming that it played a passive role in the agreements and did not implement them. Likewise, LCL provided its additional observations on 22 September 2000.

- (85) The replies of Nippon Carbon (NCK)<sup>44</sup>, Schunk and NSCC were received in September 2000. NCK declared to have participated in just one cartel meeting (4 March 1997), where it kept a passive stance. Schunk also denied any participation in the arrangements. As to NSCC, it admitted having been a party in the meetings and offered full cooperation to the Commission. In February 2002 the company specified that its offer was made in accordance with the provisions of the Leniency Notice.
- (86) On 10 November 2000 Ibidem provided further information regarding the “early meetings” that took place before 1993.

#### 1.3.4. Administrative procedure

- (87) On 17 May 2002 the Commission sent a Statement of Objections (S.O.) to the addressees of this Decision. All parties submitted written observations in response to the Commission’s S.O. Nippon Steel Chemical Co., Ltd. and NSCC Techno Carbon Co., Ltd submitted a joint response. Similarly, Intech EDM B.V. and Intech EDM AG replied jointly to the Commission’s objections.
- (88) Replies to the S.O. were received between 19 and 25 July 2002. All the companies but Intech EDM AG and Intech EDM B.V. acknowledged the infringement. None of the companies substantially contested the facts. An Oral Hearing was held on 10 September 2002, during which all parties had the opportunity to be heard.

#### 1.3.5. Investigations in other jurisdictions

- (89) In the United States, the Antitrust Division of the Department of Justice (“DOJ”) and the Federal Bureau of Investigation conducted investigations on anticompetitive practices concerning the specialty graphite market. As a result, criminal charges under Section 1 of the Sherman Act were brought in March 2000 against Carbone of America Industries Corp. (a subsidiary of LCL) and its president and CEO, and in February 2001 against Toyo Tanso USA Inc. (a subsidiary of Toyo Tanso Co. Ltd, of Japan) and its CEO. Both companies and their President and Chief Executive Officers were charged of “*participating in a conspiracy to suppress and eliminate competition by fixing the price of non-machined and semi-machined isostatic graphite sold in the United States and elsewhere in unreasonable restraint of trade and commerce from at least as early as July 1993 and continuing until at least February 1998*”.
- (90) The accused pleaded guilty to the charges and agreed to pay fines totalling more than USD 7.15m for Carbone of America and USD 4.5 million for Toyo Tanso. In addition to the fine on the corporations, Carbone of America’s Chief Executive and Toyo Tanso USA’s CEO were personally fined and agreed to pay USD 100 000 and 10 000 respectively. All the accused agreed to cooperate with the Department of Justice’s ongoing investigation.
- (91) In October 2001, pursuant to a plea agreement with the DOJ, Ibidem pleaded guilty to the antitrust violation and paid the fine of USD 3,6m. Ibidem also agreed to cooperate with the DOJ’s investigation.

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<sup>44</sup> N.B.- not to be mistaken with NSC (Nippon Steel Chemical, Co., Ltd., which is the mother company of NSCC Techno-Carbon Co., Ltd. -see section 1.2.6.8 below-). Nippon Carbon (NCK) is not an addressee of the present Decision

(92) [...].

### 1.3.6. *The documentary evidence*

(93) The main documentary evidence obtained by the Commission consists of<sup>45</sup>:

- UCAR Corporate statement of 13 April 1999 (UCAR Corporate Statement, “UCS”);
- Statement of Toyo Tanso of 30 May 2000 in response to Article 11 request (Toyo Tanso Statement, “TTS”);
- Statement of Tokai of 30 May 2000 in response to Article 11 request (Tokai Carbon Statement, “TCS”);
- Statement of POCO of 31 May 2000 in response to Article 11 request (POCO Statement, “POCOS”);
- Statement of LCL of 5 June 2000 in response to Article 11 request (LCL Statement, “LCLS”);
- Statement of Intech of 6 June 2000 in response to Article 11 request (Intech Statement, “IntechS”);
- Statement of Tokai of 15 June 2000 (Tokai Carbon Supplementary Statement, “TCSS”);

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<sup>45</sup> The replies to the Commission’s second and third requests for information are indicated with the initials of the company and the number of the Commission’s request:

- Reply of Ividen of 24 October 2001 to the Commission’s second request for information (“I(2)”);
- Reply of Tokai Carbon of 31 October 2001 to the Commission’s second request for information (“TC(2)”);
- Reply of Toyo Tanso of 6 November 2001 to the Commission’s second request for information (“TT(2)”);
- Reply of LCL of 20 November 2001 to the Commission’s second request for information (“LCL(2)”);
- Reply of SGL of 22 November 2001 to the Commission’s second request for information, and supplement of 3 December 2001 to that reply (“SGL(2)”, “SGL(2S)”);
- Reply of UCAR of 22 November 2001 to the Commission’s second request for information and supplement of 12 December 2001 to that reply (“UCAR(2)”, “UCAR(2S)”);
- Reply of Intech of 3 December 2001 to the Commission’s second request for information (“Intech(2)”);
- Reply of NSCC of 5 December 2001 to the Commission’s second request for information (“NSCC(2)”);
- Reply of Tokai Carbon of 7 December 2001 to the Commission’s third request for information and supplement of 17 December 2001 to that reply (“TC(3)”, “TC(3S)”);
- Reply of SGL of 11 December 2001 to the Commission’s third request for information (“SGL(3)”);
- Reply of Intech of 14 December 2001 to the Commission’s third request for information (“Intech(3)”);
- Reply of NSCC of 14 December 2001 to the Commission’s third request for information (“NSCC(3)”);
- Reply of Ividen of 17 December 2001 to the Commission’s third request for information (“I(3)”);
- Reply of Toyo Tanso of 18 December 2001 to the Commission’s third request for information (“TT(3)”);
- Reply of UCAR of 19 December 2001 to the Commission’s third request for information (“UCAR(3)”).

- Statement of SGL of 16 June 2000 in response to Article 11 request (SGL Statement, “SGLS”);
- Statement of Ibiden of 16 June 2000 in response to Article 11 request (Ibiden Statement, “IS”);
- Statement of POCO of 27 June 2000 (POCO Supplementary Statement, “POCOSS”);
- Statement of Toyo Tanso of 25 July 2000 (Toyo Tanso Supplementary Statement, “TTSS”);
- Translation of Japanese documents contained in the Ibiden Statement, of 31 August 2000 (Ibiden Statement Translation, “IS(T)”);
- Statement of LCL of 22 September 2000 (LCL Supplementary Statement, “LCLSS”);
- Statement of NSCC of 26 September 2000 in response to Article 11 request (“NSCC Statement”);
- Statement of Ibiden of 10 November 2000 (Ibiden Supplementary Statement, “ISS”).

#### **1.4.Details of the infringement**

(94) This section provides a description of the facts in relation to each of the cartels in the two product markets concerned, namely the markets for unmachined isostatic and unmachined extruded specialty graphite.

##### *1.4.1. Unmachined isostatic specialty graphite*

###### 1.4.1.1. The basic principles of organisation

(95) The facts described in section 1.4.1.2 below show that the implementation of the cartel was organised along a few basic principles. The same features can be identified throughout the duration of the arrangements and draw a clear picture of the way it functioned.

###### l) Objectives

(96) The cartel pursued as its essential objective the fixing of target (minimum) prices. Secondary objectives were the fixing of trading conditions and the exchange of commercial information, occasionally on strategic customers.

###### *Target price fixing and price alignment strategy*

(97) Cartel members agreed on “minimum” or “target” prices to be implemented. During the meetings, the target prices were fixed with reference to DEM. They were based on



volume, not on the weight of the block. They were usually expressed in terms of “DEM/dm<sup>3</sup>”<sup>46</sup>.

- (98) Discussions concerned graphite blocks, i.e. full size blocks and cut blocks, but not processed or “machined” graphite parts<sup>47</sup>. Prices were broken down by product application, by geographic area (Europe or US) and in two different trade levels (distributors/machine shops and large end users with machining capability)<sup>48</sup>.
- (99) In order to be able to fix prices according to equivalent categories of products, the parties established an appropriate Product Grouping Standard. This classification of grades was done in accordance with the product applications: EDM (electro discharge machining), CC/GP (continuous casting/ general purpose<sup>49</sup>) and Semiconductors<sup>50</sup>. Much effort was devoted to obtaining a proper classification (the issue recurrently appeared on the agenda of meetings)<sup>51</sup>.

#### *Fixing of trading conditions and exchange of relevant information:*

- (100) The search for a harmonisation of trading conditions became a regular practice. It usually took the form of agreements on premiums for non standard blocks (including cut-to-size blocks and round shapes<sup>52</sup>), agreements on billing conditions<sup>53</sup>, agreements on discounts<sup>54</sup> and setting up of “standard” exchange rates<sup>55</sup>.
- (101) In addition, the frequent exchanges of shipment records among competitors<sup>56</sup> allowed a detailed monitoring of sales and the detection of possible deviations to the cartel instructions. In some occasions, in particular at local level, the exchanges of information concerned the repartition of major customers<sup>57</sup>.

#### II) Implementation

- (102) Successful implementation of the cartel agreements entailed the holding of regular multilateral meetings. There were 4 levels of meetings<sup>58</sup>:
- “*Top Level meetings*”, attended by the top executives of the companies. They defined the main principles of collaboration, to be subsequently implemented at lower managerial levels.

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<sup>46</sup> See e.g. TCSS, p.9.

<sup>47</sup> See e.g. TTS, p.1; LCLS, p.5; TCSS, p.8.

<sup>48</sup> See e.g. table of prices in p.1274-1277.

<sup>49</sup> Miscellaneous applications of isostatic graphite, including pressure sintering.

<sup>50</sup> Although “Semiconductors” was listed as a separate application, most of the efforts throughout the meetings were spent on EDM, CC and GP. Four categories were initially established to classify the CC and GP applications grades and seven categories for EDM applications grades (TCSS, p.9).

<sup>51</sup> See e.g. the product groupings shown at pp. 712, 1006,1049-1050, 1330.

<sup>52</sup> See e.g. recitals (135), (136), (147) and (154) below.

<sup>53</sup> See e.g. recitals (199) and (230) below.

<sup>54</sup> See e.g. recitals (136), (158), (210) and (213) below.

<sup>55</sup> See e.g. recital (135).

<sup>56</sup> See e.g. recitals (135), (147), (154) and (162) below.

<sup>57</sup> See e.g. recitals (130), (141), (143), (147), (199), (203), (219), (238), (246), (255), (262), (269), (270) below.

<sup>58</sup> See e.g. TTS, p.2; IS, p.2-3; TCSS, p.5-6; LCLS, p.5.

- “*International Working Level meetings*” (or International meetings) consisted of experts in the senior management. The people that attended used to be always the same. The producers discussed at this level the classification of graphite blocks into different categories or groups and established minimum prices for each group. These minimum prices (in DEM/dm<sup>3</sup> terms) were for Europe as a whole, not for individual European countries. Individual country prices were to be discussed at local meetings. A tentative agenda of the meeting was prepared by the host company, depending on the venue, and faxed to the other participants. There were no minutes.
  - “*Regional*” (European) meetings.
  - “*Local*” (national) meetings.
- (103) The Regional and Local meetings were meant to implement the principles agreed at the International meetings. They were attended by local managers.
- (104) The Top Level meetings were hosted in Japan<sup>59</sup>. The International meetings were hosted at different locations. Each participant hosted a meeting in turn and would arrange for a venue, most often in a hotel. Typically, the host, date and place for each meeting was arranged at the end of the previous one<sup>60</sup>. SGL states that the International meetings tended to become longer and longer due to internal differences among participants. Invitations were normally made by direct phone call to the attendants<sup>61</sup>.
- (105) None of the 4 categories of meetings took place within any specific framework, organisation or forum. They were held on an *ad hoc* basis.

### III) Participants in the meetings<sup>62</sup>

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<sup>59</sup> Tokai states: “*The Top Level meetings took place in Japan because three of the five participating companies were located in Japan. Mr [SGL employee], [member of top level management] of SGL Carbon, who took the initiative for these meetings, travelled to Japan on business on a regular basis. These meetings were organised on an ‘ad hoc’ basis when Mr [SGL employee] visited Japan. As a result, the participating Japanese producers did not have to travel overseas*” (TCSS, p.6).

<sup>60</sup> TCSS, p.6.

<sup>61</sup> SGLS, p.13.

<sup>62</sup> See e.g. SGLS, app.3; TCSS, p.7, p.19, p.25; TTS, p. 1-2, p.8; IS, p.3-4, p.9; ICS, p.6; LCLS app.10, p.1

	SGL	LCL	Ibiden	Tokai	Toyo Tanso	NSC/ NSCC <sup>63</sup>	UCAR	Intech
<b>Top and International Level meetings</b>	[...]	[...]	[...]	[...]	[...]	[...]		
<b>European meetings</b>	[...]	[...]	[...]	[...]	[...]		[...]	[...]
<b>Local (national) meetings</b>	Italy: (SGL/Risomessa): [...]  Germany: [...]  France: [...]  UK: [...]  Spain: [...]	Italy: (LCL/IL Carbonio): [...]  Germany: (LCL/ Deutsche Carbon): [...]  France: [...]  UK: [...]		Italy: [...]  Germany: [...] (Novotec) [...]  France (Novotec France): [...]  UK: (Graphite Technologies)	Italy: (GTA): [...]  Germany (GTD): [...]  France (GTD): [...]  UK: (Erodex)		Italy: [...]          UK: [...]	Italy [...]          UK: [...]

#### 1.4.1.2. The cartel story

##### Initial contacts: the “early meetings”

- (106) According to Toyo Tanso, cooperation on specialty block prices between the European graphite producers (LCL, Schunk and Ringsdorff (now SGL)) has existed since at least the mid-1970s. Toyo Tanso states that “Ringsdorff, which was the largest graphite block producer at the time, initiated that cooperation in the mid-1970s, after LCL and Schunk had also started to produce graphite blocks. The three European producers were in frequent telephone contact with each other to discuss their prices and they met at least twice a year. The cooperation mainly included an agreement on prices to be charged in Europe and on to the allocation of customers. In principle, the German market was reserved for Ringsdorff and Schunk and the French market for LCL. When a customer inquired about the price for a prospective order, the three companies first contacted each other by telephone in order to agree who would obtain that order”<sup>64</sup>.
- (107) Toyo Tanso alleges that the establishment of GTI in France in 1988 as the European sales company of Toyo Tanso and the fact that Ibiden had begun to sell blocks to

<sup>63</sup> NSCC has admitted (NSCC Statement) that it was represented at the Top Level and International Level meetings by Mr [...], Mr [...] and Mr [...], which were themselves NSC employees (Mr [...] for the entire period 1993-1998; Mr [...] and Mr [...] between January 1993 and June 1997). The Commission therefore concludes that until June 1997 Mr [...] and Mr [...] represented at the meetings both NSC and its subsidiary NSCC, and that also Mr [...] represented both companies when he participated at the Top Level meetings.

<sup>64</sup> TTSS, p.1

European customers were competitive threats to the incumbent European producers. This was because the prices for graphite blocks on the Japanese market were significantly lower than in Europe<sup>65</sup>.

- (108) Toyo Tanso says that in the summer of 1988 the *[member of top level management]* of Ringsdorff, Dr *[Ringsdorff employee]*, visited Toyo Tanso in Japan (Toyo Tanso was, at the time, the sole distributor for Ringsdorff in Japan). According to Toyo Tanso, “Dr. *[Ringsdorff employee]* strongly complained about the low prices offered by *Ibiden* in Europe and the establishment of GTI in France (...) Dr *[Ringsdorff employee]* therefore called for a meeting with Toyo Tanso and *Ibiden*, which was held at the offices of *Ibiden* in Japan around July 1988. At this meeting Dr *[Ringsdorff employee]* asked Toyo Tanso and *Ibiden* to cooperate with Ringsdorff, Schunk and LCL on prices to be charged in Europe. Dr *[Ringsdorff employee]* pointed out that Ringsdorff was in close contact with Schunk and LCL and would inform these companies”<sup>66</sup>.
- (109) *Ibiden* has not confirmed the July meeting, but states that initial contacts with *Ibiden* were made by Mr *[Toyo Tanso employee]*, *[member of top level management]* of Toyo Tanso, in late 1988. *Ibiden* alleges that it was requested to attend a meeting with certain European manufacturers of specialty graphite, and confirms that the rationale given for holding the meeting was to address the concerns of European manufacturers about the supposed increase in exports from Japan<sup>67</sup>.
- (110) Toyo Tanso also reveals that some time after Dr *[Ringsdorff employee]* visit to Japan, Dr *[Ringsdorff employee]* asked the *[member of top level management]* of Toyo Tanso, Mr *[Toyo Tanso employee]*, to meet with him and with Mr *[LCL employee]* of LCL in Europe. Toyo Tanso claims that “at this meeting, which took place at a hotel at Dusseldorf Airport, Mr. *[LCL employee]* strongly scolded Mr. *[Toyo Tanso employee]* for the low prices offered by GTI in France and said that Toyo Tanso should keep out of Europe”<sup>68</sup>.
- (111) According to Toyo Tanso, in autumn 1988 Ringsdorff called the first international meeting concerning price cooperation. The attendants were Ringsdorff, LCL, Schunk, *Ibiden* and Toyo Tanso<sup>69</sup>. The discussions focused on preparing a grouping of different block grades and establishing minimum prices for each group (Toyo Tanso states that after the meeting, Ringsdorff circulated a price list with minimum prices)<sup>70</sup>.
- (112) *Ibiden*’s statement differs from Toyo Tanso’s as to the date and location of the first group meeting: according to *Ibiden*, it was the meeting that took place on 14-16

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<sup>65</sup> TTSS, p.2. NB- The European producers have occasionally accused their Japanese counterparts of having developed dumping practices since the early 1980s (see e.g. SGLS, p.6)

<sup>66</sup> TTSS, p.2

<sup>67</sup> ISS, p.2

<sup>68</sup> TTSS, p.2

<sup>69</sup> Toyo Tanso recalls the following participants:  
- for Ringsdorff: Mr [...], Mr [...], Mr [...] (sales director)  
- for LCL: Mr [...] (sales manager)  
- for *Ibiden*: Mr [...] (assistant sales manager)  
- for Toyo Tanso: Mr [...] (sales manager)

<sup>70</sup> TTSS, p.2-3

December 1988 in Osaka. However, Ividen recalls the same attendants as stated by Toyo Tanso<sup>71</sup>.

- (113) In any event, both Ividen and Toyo Tanso declare that several international meetings on price cooperation were held between the autumn of 1988 and the middle of 1991. According to Toyo Tanso, in this period there were “*about two international meetings (...) per year*”, whereas Ividen recalls that they were six meetings in total. They took place in Europe and participant companies were the same as in Osaka<sup>72</sup>. Ividen states that these “*early meetings*” were informal in nature, and no date was set for subsequent meetings; on each occasion it was informed of the dates of upcoming meetings by Mr [...] of Toyo Tanso<sup>73</sup>. Precise dates and locations have not been provided, with some exceptions:
- The two companies mention a meeting held on 1-2 October 1989 in Frankfurt<sup>74</sup>.
  - Another meeting is recalled to have been held on 24-25 October 1990 (in Nice according to Ividen)<sup>75</sup>.
- (114) Therefore, Ividen’s and Toyo Tanso’s versions broadly coincide about the time in which the early meetings started and finished, on the rationale given for holding them<sup>76</sup>, on the participants, and on the general pattern in terms of number and frequency of meetings throughout the period.
- (115) The two companies confirm that the last early meeting took place in 1991 (at the latest August 1991, according to Toyo Tanso). After that date the meetings were discontinued. Ividen says that this was probably not the result of any particular action or decision by the participants, but of organisational changes in some of the companies

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<sup>71</sup> ISS, p.2; Ividen has provided a copy of the business cards received by [...] at the meeting. Reference to the Osaka meeting is also done in TTSS, app.4.

<sup>72</sup> ISS, p.2-3; TTSS, p.3-4

<sup>73</sup> ISS, p.3

<sup>74</sup> ISS, p.2-3; TTSS, p.3-4. References to this meeting are also contained in a letter from Toyo Tanso to Ringsdorff of 19 October 1989 and a letter from LCL to Toyo Tanso of 2 November 1989, provided by Toyo Tanso (TTSS, app.3-4).

<sup>75</sup> ISS, p.2-3; TTSS, p.3-4. A reference to this meeting is also contained in the letter from Mr. [*Toyo Tanso employee*] to Mr. [...] of Ringsdorff dated 19 October 1989, provided by Toyo Tanso (TTSS, app.7)

<sup>76</sup> As to the object of the contacts, Ividen has stated that “*the early meetings were requested by the European specialty graphite manufacturers, mainly in response to increased exports from Japanese manufacturers. At the meetings, therefore, the European companies tried to persuade TT and Ividen not to export specialty graphites to Europe at dumped prices, and in particular not to expand their market share in Europe based on a low-price policy. It is the general recollection of Ividen personnel that both TT and Ividen understood this position (...) Based on the recollection of the Ividen personnel who attended the meetings, the European companies attempted to confirm the sales prices of the Japanese companies, based on information obtained from distributors and some machine shops. It appeared to Ividen personnel that the general purpose of this line of questioning was to make the Japanese companies hesitant or reluctant to decrease prices to Europe. (...) According to the Ividen personnel who attended the Osaka meeting, the European companies expressed concern about the increased production capacity of TT and Ividen. However, the European companies did not request that TT or Ividen reduce production capacity or lower production, nor did Ividen carry out such reductions*” (ISS, p.3).

concerned. Toyo Tanso adds that it was also the consequence of the lack of success of the cooperation<sup>77</sup>.

- (116) LCL has admitted the existence of contacts among isostatic specialty graphite manufacturers prior to 1993. However, this company alleges that they had a totally different nature and that they focused on the compatibility of the products provided by the suppliers of graphite and the products provided by the suppliers of machines for EDM applications. LCL claims that discussions were not intended to reach any price agreement<sup>78</sup>.
- (117) Tokai alleges that it was not invited to and did not participate in any meeting between manufacturers of specialty graphite before 1993, and that it is not aware of any meeting before the First Top Level meeting held in early July 1993<sup>79</sup>.
- (118) Nevertheless, Toyo Tanso has provided some contemporaneous documents that prove the collusion among specialty graphite producers, in particular Toyo Tanso, LCL and Ringsdorff, in this period. In particular, the Commission is in possession of:
- (a) A letter from Mr [...] of Schunk to Mr [...] of Toyo Tanso dated 18 January 1989 where Schunk complains that the price offered by GTI to a French customer is below the minimum price set down in the price list prepared after the meeting in autumn 1988<sup>80</sup>.
  - (b) An exchange of messages between Toyo Tanso, Erodex (independent distributor in the United Kingdom for Toyo Tanso), Ringsdorff and LCL, in October-November 1989:
    - The fax of 11 October 1989 from Mr [...] of Toyo Tanso to Erodex shows that LCL confirmed to sell under the agreed price levels in France and the United Kingdom. However, a hand-written comment from Mr [...] of GTI notes that GTI cannot agree to the prices put forward by LCL<sup>81</sup>.
    - The letter from Mr [*Toyo Tanso employee*] to Mr [...] of Ringsdorff, dated 19 October 1989, complains about LCL's product classification and about LCL's unreasonably low prices in the United Kingdom. Mr [*Toyo Tanso employee*] claims that "*GTI never took initiative to offer lower price in France*" and warns that "*we are unable to respect any price arrangement and have to withdraw from such arrangement unless LCL change their unfavourable attitude as mentioned above*"<sup>82</sup>.

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<sup>77</sup> ISS, p.3; TTSS, p.3-4

<sup>78</sup> LCLSS, p.2.

<sup>79</sup> TC(2), p.9.

<sup>80</sup> TTSS app.1.

<sup>81</sup> TTSS, app.2.

<sup>82</sup> In addition, Mr [*Toyo Tanso employee*] says "*Please tell LCL to change classification as we proposed. If they do not agree, we cannot respect all what we discussed among 5 companies*" (underlining from the Commission). Regarding the Japanese market Mr [*Toyo Tanso employee*] explains: "*We have discussed about minimum price of Japan. However, to our regret, we, Toyo Tanso, should not be involved in this price agreement in Japan. Because we recently withdrew from all price talking in Japan. As mentioned before, we basically had intention to have such meeting and agreement in Japan*"

- The response from Mr *[LCL employee]* of LCL to Mr *[Toyo Tanso employee]* dated 2 November 1989 shows that a group local meeting took place in the United Kingdom on 23 October 1989 and reproaches Toyo Tanso of pushing French prices downwards<sup>83</sup>.
- (c) An internal letter dated 1 December 1989 where Mr [...] of Toyo Tanso informs Mr. [...] of GTI of the minimum prices for France as established in a general price list with product grouping for 1990<sup>84</sup>.
- (d) A Letter from Mr [...] of LCL to Mr *[Toyo Tanso employee]* dated 11 January 1990 where Mr *[LCL employee]* lists the prices offered to a French customer by several suppliers in order to defend the allegation that it was “breaking the market”<sup>85</sup>.
- (e) An internal letter From Mr *[Toyo Tanso employee]* to Mr [...] of GTI dated 27 November 1990 where Mr *[Toyo Tanso employee]* refers to the meeting of October 1990 with Ringsdorff (“European Friend”) and LCL (“French Friend”) and attaches the prices proposed at that meeting<sup>86</sup>.
- (f) An exchange of letters between Mr *[Toyo Tanso employee]*, MM [...] and [...] of LCL and Mr [...] of Ringsdorff, dated April-May 1991:
  - The letters from Mr *[Toyo Tanso employee]* to Mr [...] and Mr [...] (both LCL) and Mr [...] (Ringsdorff), dated 18 April 1991, where Mr *[Toyo Tanso employee]* complains that LCL has recently offered a low price to a French customer<sup>87</sup>.
  - The reply from Mr [...] of LCL dated 29 April 1991, where *[LCL employee]* accuses Toyo Tanso of offering low prices in France through GTI and attaches a list of French customers to which GTI has offered such low prices<sup>88</sup>.
  - Internal letter from Mr. *[Toyo Tanso employee]* to Mr. [...] of GTI dated 10 May 1991 where Mr *[Toyo Tanso employee]* refers to the problem in the French market and points out that Toyo Tanso cannot reach an agreement with LCL<sup>89</sup>.

#### l) “Top Level” and “International Level” meetings

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*and actually joined in the arrangement. However, there were always violation of an agreement by our competitors. Recently we had a very severe violation from our competitor whose name you know very well and we lost big old customer in Japan. After this problem our top management decided to withdraw all price arrangements in Japan. Therefore, we are sorry that we are not able to join this price arrangement”.* (TTSS, app.3)

<sup>83</sup> TTSS, app.4  
<sup>84</sup> TTSS, app.5  
<sup>85</sup> TTSS, app.6  
<sup>86</sup> TTSS, app.7  
<sup>87</sup> TTSS, app.8  
<sup>88</sup> TTSS, app.9  
<sup>89</sup> TTSS, app.10

- (119) It is apparent from Toyo Tanso's and Ibiden's statements that the cartel arrangements were discontinued in 1991. The Commission has no evidence pointing to any cartel activity between August 1991 and the beginning of 1993.
- (120) According to Toyo Tanso, at the beginning of 1993 SGL and Tokai made efforts to resume the international cooperation on specialty blocks that had been interrupted in 1991. According to Toyo Tanso they "*wanted to achieve the same collaboration with regard to graphite blocks as they had previously achieved with regard to graphite electrodes*"<sup>90</sup>. LCL confirms that "*the international meetings with the [member of top level management] of the companies concerned [took place] on the initiative of SGL (...)*"<sup>91</sup>.
- (121) Tokai recalls that "*in the spring of 1993 Mr [SGL employee] made a few courtesy calls to see executives of Toyo Tanso and Tokai Carbon, in order to exchange views on the isostatic graphite market (...). On 14 June 1993 Mr [SGL employee] visited Tokyo and met with Mr [...] (member of top level management) and Mr [...] (member of top level management) of Toyo Tanso, and with Mr [...] (member of top level management) and Mr [...] (member of top level management) of Tokai Carbon. Mr [SGL employee] made a proposal for restoring prices in the industry and mentioned that an agreement to this effect had already been reached between SGL and LCL*"<sup>92</sup>.
- (122) Toyo Tanso confirms Mr [SGL employee]'s visit and stresses that "*with the support of Tokai, Mr [SGL employee] insisted that Toyo Tanso participate in this cooperation*"<sup>93</sup>.
- (123) Ibiden states that it "*was first requested to attend the meetings by Mr [...] of Tokai, who telephoned Mr [Ibiden employee] in June or July 1993. Mr [Tokai employee] indicated that Mr [SGL employee] (...) was anxious to have a meeting among manufacturers to prevent further decline in the prices of specialty graphite blocks*"<sup>94</sup>. Tokai claims that it was not aware of Mr [SGL employee] making contact with Ibiden<sup>95</sup>.
- (124) According to Tokai "*in order to discuss Mr [SGL employee]'s proposal, a meeting at [member of top level management] level among five Japanese companies was held in early July 1993. Those five companies were Ibiden, Nippon Carbon, NSC, Tokai Carbon and Toyo Tanso. SEC did not attend the meeting*"<sup>96</sup>.
- (125) LCL reveals that at the same time, and at least on two occasions (on 5 July 1993 in Paris and 13 July 1993 in Bonn), it met with SGL in order to prepare the respective

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<sup>90</sup> TTSS, p.4.

<sup>91</sup> LCLS, p.5

<sup>92</sup> TCSS, p.6

<sup>93</sup> TTSS, p.4

<sup>94</sup> IS, p.2

<sup>95</sup> TCSS, p.6

<sup>96</sup> TCSS, p.6



positions of the two companies, as a first multilateral meeting had been called in Japan on 23 July 1993<sup>97</sup>.

- (126) Ibidem further states that some days before the meeting, on 20 July 1993, “Mr. [...], who was the [...] manager of Ibidem at the time, received a fax transmission from Mr [...] of SGL's Japan office outlining a proposed agreement to fix prices of specialty graphite products”<sup>98</sup>.
- (127) Four Top Level meetings (one of them with only a few participants) and twelve International Working Level Meetings took place between July 1993 and February 1998.
- (128) The First Top Level Meeting on 23 July 1993 was arranged by Tokai and took place at Tokai's Fuji Research Laboratory in Gotenba (Japan) The companies (with the exception of NSC/ NSCC) were represented by their [*members of top level management*]. The participants were SGL, LCL, Ibidem, Tokai, Toyo Tanso, Nippon Carbon (represented by Mr [...]), NSC/ NSCC (represented by Mr [...]) and SEC (SEC Corporation, Japan, represented by Mr [...])<sup>99</sup>.
- (129) Ibidem and Tokai recall that during the meeting Mr [*SGL employee*] indicated that thanks to the collaboration achieved in the market of graphite electrodes the parties had succeeded in increasing prices by 50 percent. He thus encouraged attendants to cooperate in the business of specialty graphite as well, with a view to stopping the existing decline of prices<sup>100</sup>.
- (130) Tokai recalls that beyond this general proposal there were further discussions on specific issues, namely the intention to establish an appropriate Product Grouping Standard for the first time in the industry (it was agreed that the question would be dealt with by a meeting of experts), arrangements in order to respect each other's existing customers, the target of a 20% price increase for unmachined isostatic graphite blocks and agreement that NSC/ NSCC's sales (one of the Japanese companies that had just started exporting) would be limited to 10% of the total worldwide sales of the Japanese producers<sup>101</sup>. LCL confirms that there was an “*agreement in principle to increase the price of isostatic graphite blocks and to freeze the respective market shares of the parties*”<sup>102</sup> and SGL does not deny that concrete details such as market shares, individual prices or individual customers were dealt with<sup>103</sup>.
- (131) LCL, Ibidem and Tokai mention that the meeting also discussed the creation of committees at management level (International Working Level meetings) to work out

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<sup>97</sup> LCLS, app.5, p.1 & app.6, p.1. LCL has provided working documents of the meeting of 13 July 1993, a graphite grades classification allegedly sent by Ringsdorff on 15 July 1993 as a result of the discussions, and the travel expense records of Mr [*LCL employee*].

<sup>98</sup> IS, p.3

<sup>99</sup> Date, place and participants in the meeting are confirmed by SGLS, app.6, p.10; LCLS, app.5, p.2; IS, p.3; TCSS, p.7; NSCC, p.2. LCL has provided a contemporaneous hand-written report by Mr [*LCL employee*] dated 27/07/1993 (File p.652).

<sup>100</sup> IS, p.3; TCSS, p.7

<sup>101</sup> TCSS, p.7-8

<sup>102</sup> LCLS, app.5, p.2

<sup>103</sup> It alleges however that the discussions on schemes with a view to compensate for the transfer of clients to competitors did not reach any conclusion (SGLS, p.11).

the details of the general agreement and its implementation. Representatives of Nippon Carbon, NSC/ NSCC and SEC were not to participate on those committees<sup>104</sup>. Tokai explains that it was due to their limited international sales of isostatic graphite, as “*the subject matter for these International Working Level meetings was expected to focus on unmachined isostatic graphite*”<sup>105</sup>.

- (132) The first International Working Level Meeting (31 August – 1 September 1993 in Paris) was hosted by LCL. Participants were SGL, LCL, Ibiden, Tokai and Toyo Tanso<sup>106</sup>.
- (133) The main topic concerned long discussions on product grouping of isostatic graphite materials, in accordance with their application (EDM, CC/GP, and Semiconductors). Minimum target prices would be made dependant not only on the product classification, but also on the specific geographic area (Community or US) and on their trade level<sup>107</sup>.
- (134) SGL states that a price harmonisation was sought in Europe as, due to exchange rate distortions, prices in countries such as the United Kingdom and Italy were around 30-40% lower than in Germany<sup>108</sup>. A time schedule for price increases was thus foreseen, with an initial growth of 20% in the US and Europe as from October 1993<sup>109</sup>. SGL would be the first to announce price increases and the other producers would follow in a planned sequence<sup>110</sup>. Contemporaneous internal notes provided by POCO confirm that “*the aim of this meeting was to discuss and negotiate a 20% increase for all graphite grades from each manufacturer for Europe and to fix a minimum below which they will not sell. This increase to be effective by October 1, 1993 along the entire month*”<sup>111</sup>.
- (135) Tokai further explains that there was an agreement on exchange rates<sup>112</sup> and on premiums for cut-to-size blocks and round shapes<sup>113</sup>, together with an exchange of the

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<sup>104</sup> According to Ibiden, the non-participants were “SNC” (probably meaning NSC) and SEC; according to Tokai Carbon they were Nippon Carbon and SEC. LCL mentions that “*NSC, NC and SEC are not part of the group but are represented by the 3 other Japanese companies*” (LCLS, app.5, p.2). In its reply to the S.O. Ibiden strongly refutes that it ever represented any Japanese company at the International meetings.

<sup>105</sup> LCLS, app.5, p.2; IS, p.3; TCSS, p.8

<sup>106</sup> See SGLS, p.12 & app.6; LCLS, app.5, p.3; IS, p.4, app.i.e; TCST, p.8; TTS p.1-2, app.1; POCOSS, app.a. In particular, Ibiden provides a contemporaneous pre-meeting proposal/agenda and a summary of the issues discussed. Toyo Tanso provides the travel expenses proving the attendance of Mr [Toyo Tanso employee]. N.B.: Ibiden states that SGL organised, whereas LCL acknowledges its hosting but recalls the meeting to have taken place at the end of September.

<sup>107</sup> SGLS, p.12 & app.6; LCLS, app.5, p.3; IS, p.4; TCST, p.8; TTS, p.4

<sup>108</sup> As a consequence of this, English prices tended to rise, whereas German prices were initially reduced (SGLS, p.12).

<sup>109</sup> SGLS, p.12 & app.6; LCLS, app.5, p.3; IS, p.4, app.i.e; TCST, p.8; TTS pp.1-2. Ibiden has provided the Commission with contemporaneous tables showing the cartel target prices that resulted from this meeting (file, pp. 1261-1263). Such prices coincide with those resulting from the first Top Level meeting, as submitted by LCL (pp. 647-651).

<sup>110</sup> SGLS, p.13

<sup>111</sup> POCOSS, app.a.

<sup>112</sup> “*Isostatic graphite producers invoiced in many different currencies due to the local market-oriented nature of this business. It was agreed that the rates would be subject to a quarterly revision. For the European market, DM was chosen as the benchmark currency*” (TCSS, p.8-9)

<sup>113</sup> +20% and +20%-40% respectively

1992 shipment records. In Tokai's view, "this was the first attempt to exchange this information [shipment records] within the industry". The outcome of the meeting was subsequently communicated to those responsible for its implementation at national or regional level<sup>114</sup>. SGL and LCL confirm the exchange of shipment records. SGL explains that the undertakings not involved in the agreement were taken into account in order to acquire a complete picture of the market<sup>115</sup>.

(136) The second International Working Level Meeting (18-19 November 1993, Singapore) was hosted by Toyo Tanso and involved SGL, LCL, Ibiden, Tokai, and Toyo Tanso<sup>116</sup>. The contemporaneous reports of Ibiden and Toyo Tanso show that the discussions focused on the product classification and grouping, with a reduction in the number of categories. There were new price targets<sup>117</sup> and the premiums for cut-to-size and round shapes were revisited. There were in particular discussions on the elimination of separate discounts for machine shops, as distributors were accused of jeopardising the harmonisation of prices<sup>118</sup>.

(137) In this regard Tokai states<sup>119</sup>:

*"Prices for machine shops (MS) in Europe were discussed at length during this meeting. SGL and LCL advocated a strict enforcement of minimum prices while the Japanese suppliers were not in favour of such drastic approach. SGL and LCL favoured eliminating a separate MS price for CC and CP and to have a price only for large end users. The Japanese suppliers which depended heavily on selling to independent machine shops disagreed with the arguments of the European producers.*

*The difference in the distribution methods of the respective producers appeared to be the major reason for this disagreement. SGL and LCL distributed its products through own subsidiaries throughout almost all of Europe and often directly to large end users with machining capability. Toyo Tanso distributed its products through subsidiaries in some countries and through distributors/machine shops in countries where they did not have subsidiaries. Tokai Carbon and Ibiden relied on sales to independent distributors and machine shops.*

*No conclusion was reached<sup>120</sup>. It was agreed that the subject was to be discussed again at the next meeting."*

(138) Tokai also points out that the organisation of local (national) meetings was eventually agreed in order to facilitate the full implementation of the price increases. According

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<sup>114</sup> TCSS, p.8-9

<sup>115</sup> SGLS, p.4; LCLS, app.5, p.3

<sup>116</sup> See SGLS, app.6, p.13; LCLS, app.5, p.4; IS, p.4, app.i.f; TCSS, p.10; TTS, p.2, app.2; POCOSS, app.B. Ibiden and Toyo Tanso provide an agenda and their respective contemporaneous reports of the meeting. SGL states that it was Tokai who organised.

<sup>117</sup> With validity as from 1 May 1994 according to Toyo Tanso's notes and as from January 1994 according to Ibiden's statement. Toyo Tanso and Ibiden have provided the Commission with contemporaneous tables showing the cartel target prices that resulted from this meeting (file, pp.358-360, 2381).

<sup>118</sup> IS, p.4, app.i.f; TTS, p.2, app.2

<sup>119</sup> TCSS, p.10

<sup>120</sup> This is confirmed at LCLS, app.5, p.4.

to Tokai's statement, after discussions on how to associate other producers to the meetings, LCL offered itself to contact POCO and SGL to contact UCAR<sup>121</sup>.

- (139) The third International Working Level Meeting (Ogaki, Japan, 8-9 February 1994) was hosted by Ibiden. The same participants as in the previous International meeting attended<sup>122</sup>. According to Toyo Tanso's contemporaneous report, there was a further revision of the product classification and a new price increase schedule with revised targets as from 1 April 1994<sup>123</sup>. Tokai's and Ibiden's statements confirm these points. In addition, Ibiden declares that the companies exchanged details of the sales volumes and the market situation in Asia and Europe<sup>124</sup>.
- (140) Tokai organised the second Top Level meeting at its head office in Tokyo on 15 April 1994. The participants were the same with the exception of NSC/ NSCC (Mr [...]), also present this time<sup>125</sup>.
- (141) According to Ibiden "*the participants discussed freezing the market shares of the companies producing specialty graphite, but did not arrive at an agreement. Mr. [SGL employee] complained that Toyo Tanso was not respecting the pricing arrangement which had been agreed. The participants at the meeting approved the presence of SNC<sup>126</sup> at future international meetings*"<sup>127</sup>.
- (142) Tokai states that "*the following points were discussed:*
- *Confirmation of collaboration;*
  - *Continuation of efforts to increase isostatic graphite prices by 20%;*
  - *NSC's increased imports into Europe through local distributors (the low prices quoted in Europe by NSC's agent were discussed); and*
  - *Approaching other players such as UCAR and POCO (SGL's relationship with UCAR was mentioned by Mr. [SGL employee]; POCO was viewed as a very difficult company to talk to)"*<sup>128</sup>.

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<sup>121</sup> TCSS, p.10. A contemporaneous internal note of POCO points out that "*it seems that Toyo is driving all and LCL and Ringsdorff have tough time to negotiate the new pricing action. At the beginning of the deal only 3 main areas were discussed: Roughing, semi-finishing and finishing which means 3 classification ,Toyo rejected all and came with the actual deal which is not finalised yet*" (POCOSS, app.B).

<sup>122</sup> See LCLS, app.5, p.5; IS, p.5, app.i.g; TCSS, p.10; TTS, p.3, app.3. Toyo Tanso provides contemporaneous report of the meeting. Contrary to LCL's, Ibiden's and Tokai's statements, Toyo Tanso alleges that the meeting took place in Frankfurt.

<sup>123</sup> TTS, p.3, app.3. Ibiden, Toyo Tanso and NSCC have provided to the Commission the contemporaneous tables showing the cartel target prices that resulted from the meeting (file pp.1274-1277, 358-360, 3879-3882).

<sup>124</sup> IS, p.5, app.i.g; TCSS, p.10

<sup>125</sup> LCLS, app.5, p.4; IS, p.3; TCSS, p.11; NSCC, p.2 & file pages 3874-3878. NSCC has provided contemporaneous hand-written notes of the meeting. LCL has provided travel records proving the attendance of Mr [LCL employee].

<sup>126</sup> Sic.

<sup>127</sup> IS, p.3

<sup>128</sup> TCSS, p.11

- (143) The contemporaneous hand-written notes of the meeting provided by NSCC corroborate these statements. In particular, they confirm Mr [SGL employee] proposal -echoed by Mr [...] of LCL and opposed by Mr [...] of Ibiden- to fix the relative market shares, and show the participants' concern regarding the behaviour of outsiders. Mr [SGL employee] is further mentioned to have defended a simplification in the classification of grades and the removal of discounts to machine shops<sup>129</sup>, whereas Mr [LCL employee] pledged to grant NSC/ NSCC a 10% of the share reserved to Japanese producers. The notes conclude:

*“1. None of us currently supplies to Poco  
For UCC and CGG, LCL and SGL will work  
2. Freeze the market shares  
Respect other companies' shares  
(...)  
4. EDM product categories will be focused on 3.  
5. CIP for continuous casting and general purpose  
Do not sell at a discount.  
Details [will be discussed at a] practical [meeting].  
6. Japanese producers NSCC  
Continuous discussion Europe, North America  
Fix the quantity among the Japanese companies and submit at the meeting in May  
Rectify extremely cheap price  
Decide among the Japanese companies  
Reasonable price for listed customers”<sup>130</sup>.*

- (144) The fourth International Working Level Meeting (Frankfurt, 19-20 May 1994) was attended by SGL, LCL, Ibiden, Tokai and Toyo Tanso<sup>131</sup>. According to Tokai it was hosted by SGL. Tokai also alleges that *“the meeting did not produce any significant results, except that the members discussed whether NSC should be invited to future International Working Level meetings (...) Some thought that NSC should participate in these meetings and make its own commitment to other members. Others were of the opinion that NSC's participation would give them information on the European market which was only available to those who already had a business there. They feared that NSC would attend meetings, take note of names of distributors and end users and use this information for its own business purpose. After consideration, it was decided to invite NSC to the next meeting in Hong Kong”*. Ibiden adds that *“the parties also presented sales volume for 1993 and 1994 (January to September)”*.
- (145) SGL, LCL and Toyo Tanso refer to an additional International Working Level meeting held in Japan<sup>132</sup> in 1994<sup>133</sup>.
- (146) The fifth International Working Level Meeting (Hong Kong, 3-4 November 1994) was hosted by Tokai. For the first time, Mr [...] and Mr [...] of NSC/ NSCC *[members of*

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<sup>129</sup> This topic would be the object of extensive discussions as from end 1995 in the context of the European meetings (cf. recital (208) below).

<sup>130</sup> File, pp. 3874-3878.

<sup>131</sup> Ibiden's and Tokai's statements converge in this regard (IS, p.5, app.i.h; TCSS, p.11).

<sup>132</sup> Osaka according to SGL, Ogaki according to LCL, Nagoya according to Toyo Tanso.

<sup>133</sup> July 1994 according to Toyo Tanso, 2<sup>nd</sup> half of 1994 according to SGL (SGLS, app.6, p.11; LCLS, app.5, p.5; TTS, p.3).

*NSC/ NSCC's top level management*] joined the group<sup>134</sup>. NSC/ NSCC's contemporaneous report on the meeting shows that "Mr [...] from NSCC Techno-Carbon will participate in the ongoing international meetings. Mr [...] committed NSCC Techno-Carbon to follow the actions by other members, and this was approved by the other members"<sup>135</sup>.

- (147) The same report further proves that "according to the western suppliers, an average 8% price increase has been implemented in EDM, CC and GP applications. However, French and Southern European markets, such as the Italian and Spanish ones, were still a problem". It was concluded that:

*"(1) The pricing levels for distributors in North America and Europe shall be achieved<sup>136</sup> to the minimum target levels within 1994.*

*(2) The pricing to end customers (EU) and distributors (DB) shall be increased from March 1, 1995 by 5% (10% for EDM Group II)<sup>137</sup>.*

*(3) (...)*

*(4) Local meetings shall be organised in the US, Germany, France, Italy and Spain to discuss the details.*

*(5) Confirmed "Share freeze concept" again.*

*In Europe, compensation due to share movement shall be discussed at the European local Meeting".*

*(...)*

*Outstanding issues in EDM and CC+GP were the same as at the previous meeting.*

*Cut-to-size premium and round bar premium are the same as the previous confirmation".*

The report also shows that there was exchange of shipment records.

- (148) Tokai confirms that an agreement was reached for the introduction of a new (simpler) product classification in early 1995. In addition, it alleges that SGL and LCL claimed to have achieved approximately a [5-15] % increase in European sales<sup>138</sup>.
- (149) Tokai alleges to have hosted a new meeting on the occasion of a visit by Mr [SGL employee] to Japan on 22 November 1994. According to Tokai, Mr [...] of Toyo Tanso also attended that meeting, whereas Ibiden could not be represented due to

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<sup>134</sup> SGLS, app.6, p.3; IS, p.5, app.i.i; TCSS, p.12; TTS, p.4; NSCC, p.4, app.1. NSCC has provided a contemporaneous report allegedly prepared by Mr [...] of Tokai Carbon and sent to NSC/ NSCC's Mr [...] together with a contemporaneous hand-written note allegedly prepared by Tokai Carbon at the meeting.

<sup>135</sup> NSCC, p.4, app.1

<sup>136</sup> (Sic)

<sup>137</sup> NSCC has provided the Commission with the table of prices agreed during this meeting (file, p.2519). The prices as from March are also shown in p. 136 (submitted by UCAR).

<sup>138</sup> TCSS, p.12

previous appointments of [...]. However, Tokai claims that no concrete decisions were taken on that occasion<sup>139</sup>.

- (150) The sixth International Working Level meeting took place in Paris on 29-30 May 1995. LCL hosted. Other attendants were SGL, Ibiden, Tokai, Toyo Tanso and NSC/ NSCC (Mr [...])<sup>140</sup>.
- (151) NSC/ NSCC's contemporaneous internal report of the meeting shows that there was consensus that "*market circumstances of specialty graphite are quite favourable for the suppliers. A price raise action at the moment is considered to be just the right time for implementation by most of the participants. (...) All attendants agreed that the price increase has been steadily implemented in European countries as a result of the local meeting arrangements*", although Spain and Italy were price-problem areas<sup>141</sup>. The contemporaneous minutes provided by Ibiden confirm this reinforced confidence of the participants and the call for immediate action (local meetings) in Spain and Italy<sup>142</sup>.
- (152) Furthermore, according to NSC/ NSCC's notes "*(...) Ibiden pointed that the price raise action should be strictly and quickly implemented. According to Ibiden, although the effort for such action has been observed, the actual result was still marginal. Europeans suppliers stated that the current price levels have just reached the level as when Toyo Tanso originally entered the European market*". The notes also mention that Toyo Tanso and Tokai reported that local meetings had been organised in Asian countries such as Taiwan and Korea<sup>143</sup>.
- (153) NSC/ NSCC's and Ibiden's notes show the participants' concern as the prices being charged by UCAR and POCO in Europe were about 20% lower than the agreed minimum prices<sup>144</sup>. The notes provided by Ibiden mention that, as a result, "*Mr [...] (SGL) and Mr [...] (LCL) will meet with Mr [...] (fmember of top level management) of UCC in USA and negotiate to force them to increase price of ATJ and CGW*"<sup>145</sup>.

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<sup>139</sup> TCSS, p.12

<sup>140</sup> See IS, p.5, app.i.j; TCSS, p.13; TTS, p.4; NSCC, p.4, app.2. NSCC has provided a contemporaneous agenda of the meeting, the contemporaneous internal notes prepared by Mr [NSC/NSCC employee] and a table prepared by Mr [NSC/NSCC employee] for internal use on 2 June 1995 showing the companies' shipment volumes in 1993-1994. Ibiden has provided contemporaneous minutes of the meeting although "*Ibiden cannot recall which company prepared the minutes*". Toyo Tanso recalls this meeting to have been held on 15-16 April 1995. LCL gives 1996 as likely date, and mentions another meeting in Frankfurt in April 1995 for which no further evidence exists (LCLS, app.5, p.5).

<sup>141</sup> NSCC, p.4, app.2

<sup>142</sup> "*Due to the world-wide strong economy all graphite manufacturers have increased their graphite supply than previous year. Prices in the world market are gradually increasing. In Europe, local meeting in the northern countries are successfully held and prices are increasing but still problem in the southern countries. In Italy some improvement can be seen through the local meeting. But need urgent action for Spain. (...) Trust among 6 manufacturers are becoming better than before. Although there are some variations from country to country world economy is still strong and now is the time to increase price*". (IS, p.5, app.i.j)

<sup>143</sup> NSCC, p.4, app.2

<sup>144</sup> "*Current common problem for price increase is UCC and POCO. Especially price of ATJ and CGK in Europe are much lower than minimum level. POCO is increasing their market share in USA taking advantage of lower price but capacity will be limited. Action not possible to POCO*". (IS, p.5, app.i.j)

<sup>145</sup> IS, p.5, app.i.j

(154) Again according to both NSC/NSCC and *Ibiden*, a new target price was fixed for January 1996 (“*Japanese suppliers shall initiate a price raise announcement in or around December 1995*”<sup>146</sup>), with higher percentage increase in the US in order to adjust the price differential with Europe<sup>147</sup>. The participants also provided the shipment volumes for 1994 (NSC/ NSCC notes mention that they showed an important growth in Toyo Tanso’s and Tokai’s business), and discussed cut-to-size premiums. The next meeting was fixed in Seoul for 30 November- 1 December 1995.

(155) NSCC’s contemporaneous notes provide the following impressions of the meeting:

*“Our basic stance is to watch and check other suppliers’ actions and behaviours at the meeting, not to present our own ideas. My comments are as follows as an observer:*

*TT and TC other than IBI intended to check the other suppliers to focus on specific issues.*

*Specific strong interest from European suppliers could not be observed because the action has been relatively successful in the European home market.*

*I feel that the strongest interest of TT and TC is to increase their market shares because TT has expanded by 70 tons/month*”<sup>148</sup>.

(156) The seventh International Working Level Meeting took place in Seoul on 30 November and 1 December 1995. It was hosted by Toyo Tanso and attended by the same companies as the previous International meeting<sup>149</sup>.

(157) Toyo Tanso’s notes of the meeting describe a favourable market situation:

*“Generally price increase in northern Europe is efficiently going on but southern Europe is slow, especially in Italy. Measure reason of this slowness is UCAR. SGL took action to UCAR to persuade them to participate in European local meeting. Early next year UCAR will join European supplier meeting. This is a good progress*”<sup>150</sup>.

(158) The same minutes show the operative conclusions agreed:

*“Measure Decision*

*1- New price valid from Jan. 1, 1996 as per attached Note*<sup>151</sup>.

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<sup>146</sup> NSCC, p.4, app.2

<sup>147</sup> *Ibiden* has provided the Commission with the table of target prices resulting from this meeting (file, p.1281). The same prices are shown in the tables referred to the European meeting of 17 October 1995 (file, p. 1016) and the Italian market meeting of 26 July 1995, provided by Tokai (file, p.1078). See also p. 1463 from *Ibiden*.

<sup>148</sup> NSCC, p.4, app.2

<sup>149</sup> See IS, p.5, app.i.k; TCSS, p.13; TTS, p.4, app.4; NSCC, p.5, app.3 Toyo Tanso and NSCC have provided contemporaneous notes of this meeting.

<sup>150</sup> TTS, p.4, app.4. NSC/ NSCC’s hand-written notes contain the same market assessment.

<sup>151</sup> See file, p.367. The same prices as from January 1996 are shown in the documents relating to the European meetings (see pp. 82, 688, 710, 1017, 1047-1048, 1463).



Europe:

- EDM price should be increased 10% in June 1996.

- Discount to machine shop for CC/GF will be cancelled gradually. Like UCC, price to user and machine shop will be identical.

(...)

2- European supplier meeting will be held during Jan.-Feb.'96 including UCAR. Attendees are as follows:

LCL (Mr [...]) SGL (Mr [...]) Toyo (Mr [...])

T.C.(Mr [...]) IBI ([...]), UCAR(Mr [...])

3- Italian supplier meeting will be held including UCAR for the price for machined parts for CC/GP after the above European meetings.

4- All Europe EDM meeting will be held in France on March 26 1996.

5- UCAR is selling 5200-A to POCO (...) SGL and LCL will talk with UCAR to follow the price rule.

(...)

7- Decision made by international meeting should be implemented to local meeting. If change is needed locally acceptance from international meeting should be needed”.

The market analysis and operative conclusions are confirmed by Ibiiden’s statement<sup>152</sup> and by NSC/ NSCC’s contemporary hand-written notes<sup>153</sup>. In addition, Ibiiden mentions that the parties exchanged their shipment volume for the period January to September 1995. Mr [...] of NSC/ NSCC also wrote down as a personal impression that “Mr [...] of IBI often blocks and disturbs the discussion (...) IBI has problems in controlling the pricing levels of primary, secondary and end-customers”<sup>154</sup>.

(159) The eight International Working Level Meeting (Berlin, 15-16 April 1996) had the same six attendants. It was hosted by SGL<sup>155</sup>.

(160) A contemporary report of the meeting produced by Mr [...] of Toyo Tanso<sup>156</sup> shows the development of the discussions. Firstly, there was an exchange of market information:

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<sup>152</sup> IS, p.5, app.i.k

<sup>153</sup> NSCC, p.5, app.3

<sup>154</sup> NSCC, p.5, app.3

<sup>155</sup> See SGLS, app.6, p.4; IS, p.6, app.i.1; TCSS, p.13; TTS, p.5, app.5; NSCC, p.5, app.4. NSCC provides the agenda of the meeting. Toyo Tanso provides a contemporary meeting report, prepared by Mr [*Toyo Tanso employee*]. Also Ibiiden provides a summary of the discussions.

<sup>156</sup> TTS, p.5, app.5

*“In general prices are increasing but still many problems depend on customer or country.*

*All manufacturers are increasing production capacity by the expansion of production capacity of isomoulded graphite. At present, economy in Europe is slow but graphite demands is very strong for semi-con, EDM and refractory use.*

*Still there is a chance of price increase due to shortage of graphite, however shortage will not continue due to capacity increase.*

*Very good progress in local meetings and UCAR is also attending the meeting in Europe.*

*ET-10 (ED-11) of Ibiden are sold with low price in Europe and USA. Ibiden will take action.*

*All manufacturers should recognise to maintain price levels even capacity has been increased’.*

(161) Secondly, the following measures were decided:

*“1- As to the large users who are still supplied with lower price level, action should be taken to specific customers by the local meeting. Ex. large forging customers.*

*2- Further price rise should be discussed seeing the result of current price level made by previous meeting in Korea.*

*3- Ibiden can control the price to Alectro (...).*

*4- SGL will take action to UCAR to stop offering extruded graphite to con-cast customers in UK.*

*5- Further price increase should be applied to Asia around October 1996 to adjust the price gap between USA and Europe.*

*6- Price in USA should be increased acc. to the decision of USA local meeting in March 1996 (increase in April and October 1996)”*

The notes also prove UCAR’s agreement as to the price schedule for CC/GP in June 1996 and January 1997<sup>157</sup>.

(162) Ibiden’s summary of the meeting further specifies that it was NSC/ NSCC who complained about Ibiden’s lower prices in Korea and France, and that Ibiden did not agree. It also mentions that Tokai referred to the "currency problem" between the Yen and DEM and discussed a price increase in April. Toyo Tanso indicated that there was not much price competition in the market, and that it was concerned about prices charged by UCAR and Conrady. Ibiden’s opinion was that the price in Europe had

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<sup>157</sup> “UCAR agreed above price level” (TTS, p.5, app.5). Toyo Tanso has submitted to the Commission the table of prices that resulted from this meeting for the same period (file, p. 370). They are coherent with the target prices fixed at the European meetings (see pp. 1052, 710-711).

increased slightly, but this had only occurred in 1996<sup>158</sup>. The summary of the meeting provided by *Ibiden* likewise confirms SGL's announcement that UCAR would join local meetings in Europe and the discussions held on price levels, groupings and the shipments during 1995<sup>159</sup>.

- (163) The ninth International Working Level Meeting (Honolulu, 5-6 November 1996) was hosted by *Ibiden*. The same six producers attended<sup>160</sup>.
- (164) Toyo Tanso's contemporaneous notes of the meeting, produced by Mr [*Toyo Tanso employee*], show that the analysis of the market situation repeated to a large extent the concerns already expressed in Berlin:

*“Demand for graphite has been decreasing world-wide, especially in semiconductor field (...)*

*Although graphite demand is low all graphite manufacturers are increasing production capacity, which will cause over-capacity of isomoulded graphite. Therefore, every manufacturer should have good understanding not to decrease price level and should control distributors and/or agents based on this policy.*

*Generally price level in Europe is reasonably going up through the local meetings. However the price level in southern Europe is still low.*

*Comparing with Europe, price level in USA and Asia is still low, about 10-15% in USA and 20-30% in Asia. Because of this price difference there are material flow from USA/Asia to Europe. Price levels in Asia and USA should be increased to avoid such material flow.*

*Everybody should agree to adjust the price level world-wide, especially price level of Asia and USA to European level.*

*In many cases price levels are still lower than the agreed level. Many uncontrolled area and customers (big customers). These price levels should be improved first before talking about further price increase.*

*The success of past price increase is based on the strong demand for graphite. However, future price increase is not easy due to slowdown for the demand. Tight price discipline is crucial not to cause the loss of the benefit achieved since 1993”.*

- (165) As to the main decisions adopted:

*“1- a price increase around June 1997 will be targeted. Until then all should keep current price level and should try to increase prices which are lower than agreed*

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<sup>158</sup> IS, p.6, app.i.1

<sup>159</sup> *Idem*

<sup>160</sup> See SGLS, app.6, p.5; IS, p.6, app.i.m; TCSS, p.13; TTS, p.6, app.6; NSCC, p.6, app.5. Toyo Tanso has provided the contemporaneous report of the meeting, prepared by Mr [...]. NSCC has provided the agenda of the meeting and the contemporaneous internal note prepared by Mr [...]. *Ibiden* has provided a summary of the meeting and the agenda. SGLS has provided travel expenses proving the attendance of Mr [...].

level. Percent of price up in June 1997 will be settled at the next meeting in April 1997. 5% is not fixed yet.

2- Korean local meeting should be held by the end of 1996. Host will be Le Carbone Korea.

3- Surcharge on round block for concast should be added in USA. Le Carbone and UCAR will work on this.

4- Toyo and Ibiden should control the price war in Sweden. Meeting in Sweden including distributors is proposed.

5- Ibiden will take action against Intech UK not to reduce price level in UK.

6- Nippon Steel should take action not to reduce price level in Spain thru ONA (subdistributor of Albert Denis).

7- Toyo will check situation in Brasil- Competition among distributors is becoming severe in Brasil.

8- Next meeting will be April 5/6 1997”.

(166) NSC/ NSCC’s contemporaneous internal report, prepared by Mr [NSC/NSCC *employee*]<sup>161</sup>, confirms the accuracy of Toyo Tanso’s minutes. In addition, it gives further details on the specific problems which had arisen among distributors in France, Spain, the Scandinavian countries, United Kingdom and North America. In particular, and since Tokai and LCL were taking steps to raise prices in France and Spain, Mr [...] suggests potential NSC/ NSCC action to solve the problem created by the low prices of Albert Deni’s subcontractor. It also confirms that the conflict between Intech and Erodex in the United Kingdom would be settled at the next local meeting (“*IBI understands this problem and they will instruct Intech to make a compromise*”). As to the Scandinavian countries, Toyo Tanso and LCL would arrange a local meeting to achieve a compromise.

(167) Moreover, NSC/ NSCC’s report makes clear that the producers had to stick to the scheduled prices, as “*the price target achievement is the most important priority*” and that SGL had intended to purchase POCO. The deal was not successful because of the high value of POCO. As a result, SGL and LCL would try to persuade POCO to establish market discipline<sup>162</sup>.

(168) The summary of the meeting provided by Ibiden<sup>163</sup> reveals that Tokai complained about Intech-UK’s aggressive behaviour on the market and that Ibiden itself subsequently complained about NSC/ NSCC not controlling its distributor (an Albert Denis’ subcontractor) in France. It also mentions that the companies reviewed their shipment volumes.

(169) Tokai has made the following assessment of the Honolulu meeting:

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<sup>161</sup> NSCC, p.6, app.5

<sup>162</sup> NSCC, p.6, app.5

<sup>163</sup> IS, p.6, app.i.m

*“The meeting in Honolulu late in 1996 was a turning point. A strong price increase advocator, SGL, started to take a more realistic position. For the first time, it seemed to agree with the plan for a 5% increase for 1997. This 5% attempt, however, never materialized. In fact, generally speaking, prices were well below the target level, so further price increases were futile. By the time of the Honolulu meeting, everybody had come to realize that the conditions for a further common price increase had gradually become very difficult”<sup>164</sup>.*

(170) The third Top Level meeting was organised by SGL in Tokyo on 4 March 1997. This was the only time that Nippon Carbon (NCK) attended (the company sent three representatives, including the *[member of top level management]* Mr [...] <sup>165</sup>. The other participants were SGL, LCL, Ividen, Tokai, Toyo Tanso and NSC/ NSCC (Mr [...] and Mr [...] <sup>166</sup>.

(171) Tokai has summarised the content of the meeting:

*“Mr. [SGL employee] made an opening speech. He warned that demand in the semiconductor segment was falling since late 1996 and warned of a widening supply/demand imbalance. Tokai recalls that SGL delivered a sheet of paper listing the estimated total worldwide capacity of isostatic graphite. Mr. [SGL employee] warned that the global isostatic graphite capacity after expansion would exceed 24,000 tons per annum, while the total estimated demand for 1997 was only 18,000 tons.*

*Tokai recalls that there was a heated discussion between Mr. [SGL employee] and Mr. [Toyo Tanso employee] over Toyo's increased shipments to North America and Europe. Mr. [SGL employee] questioned if there was any policy change at Toyo Tanso. Mr. [Toyo Tanso employee] replied that there was no such policy change and noted that the increase of shipments was based on Toyo's service and product quality performance. Mr. [SGL employee] insisted that Toyo increased the share in North America and Europe, while SGL lost share. With regard to the dispute between SGL and Toyo, Mr. [SGL employee] accused Mr. [Toyo Tanso employee] of not behaving as the leading isostatic graphite producer.*

*The participants agreed also to maintain prevailing price levels rather than to attempt an increase, in view of the widening supply-demand imbalance. By this time, the gap between the target prices and actual prices had widened significantly, fuelling distrust and scepticism amongst producers. In this context, NSC was urged to behave more carefully in Europe”<sup>167</sup>.*

(172) Tokai's version is confirmed by Nippon Carbon's statement as regards the dispute between Mr *[SGL employee]* and the representatives of Toyo Tanso. Nippon Carbon explains that *“representatives from Toyo Tanso stood against SGL's complaint and flatly denied that by saying they had never done such discount sales”*. As to its own

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<sup>164</sup> TCSS, p.13

<sup>165</sup> Nippon Carbon is not an addressee of the present Decision

<sup>166</sup> SGLS, app.6, p.5; LCLS, app.5, p.5; TCSS, p.14; NSCC, p.3; NCKS, p.2. SGL has provided the travel expense reports proving the attendance of Mr *[SGL employee]* and Mr *[SGL employee]*. LCL has provided the travel expense reports of Mr *[LCL employee]* and Mr *[LCL employee]*.

<sup>167</sup> TCSS, p.14

participation in the meeting, Nippon Carbon alleges that it followed Tokai's invitation. However, as "NCK did not sell specialty graphites in block because we could not assure quality guarantee of finished products if we ship by blocks, and NCK had not shipped specialty graphite products to the EC market for years (...), NCK kept quiet and did not say a word during the meeting"<sup>168</sup>.

(173) The tenth International Working Level Meeting (Kuala Lumpur April 3-4,1997) was hosted by NSC/ NSCC. The same six companies as in the previous International meeting were represented<sup>169</sup>.

(174) The contemporary meeting report produced by Mr [...] from Toyo Tanso shows that the information exchanged on market conditions and on shipment results created a common impression of slowdown. The report also mentions the concern created by NSC/ NSCC's increasing shipments in the non-semiconductor field<sup>170</sup>. However NSC/ NSCC "agreed not to decrease price level despite their production increase"<sup>171</sup>.

(175) According to the same report, the conclusions of the meeting were the following:

*"1- No price increase in 1977<sup>172</sup>, although 5% price increase in June 1977 decided during last meeting. Because of too big price difference between area and country.*

*2- Instead, all have to try to increase price which are far below the minimum level by controlling distributors.*

*3- Following local meeting will be held to proceed the action decided above 2:*

*Spain mid April host DME*

*Italy asap host SGL*

*Brasil mid April host SGL*

*USA mid May host LCL*

*Korea asap host Toyo*

*4- Due 'to the increased problems in terms of price war almost everywhere, decided to have international meeting more frequently.*

*5- Next meeting Sept 1 1997 host Tokai"<sup>173</sup>*

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<sup>168</sup> Nippon Carbon (NCK) Statement, p.2

<sup>169</sup> See SGLS, app.6, p.6; IS, p.7, app.i.n; TCSS, p.14; TTS, p.6, app.7; NSCC, p.6, app.6. Toyo Tanso has provided a contemporary report of the meeting prepared by Mr [*Toyo Tanso employee*] that includes hand-written notes on block shipment results and forecast for 1995-1997. NSCC has provided the agenda of the meeting and a contemporary note by Mr [*NSC/NSCC employee*] on shipments in the period 1995-1997. Ibidem has provided a summary of the discussions. SGL has provided the travel expense reports proving the attendance of Mr [*SGL employee*].

<sup>170</sup> Attached to the meeting report there is a "block shipment result and forecast" that shows a 43% increase in shipments 1997/1996 for this company.

<sup>171</sup> TTS, p.6, app.7

<sup>172</sup> Sic. It undoubtedly means 1997

<sup>173</sup> TTS, p.6, app.7

- (176) The summary of the meeting provided by *Ibiden* confirms the exchange of market information, together with the agreement on pricing behaviour, the review of shipments and the organisation of meetings among European distributors. It further points out that the parties discussed the currency in which they should price, with the European companies suggesting that they would sell in local currency in Europe. However, the Japanese companies insisted that they would price in Japanese yen in some cases<sup>174</sup>.
- (177) The eleventh International Working Level meeting was held in London on 15 September 1997. The same six companies as in the previous International meeting were represented. Tokai hosted<sup>175</sup>.
- (178) The contemporaneous report prepared by Mr [...] of Toyo Tanso describes in detail the content of the meeting:

*“1- General situation:*

*(...) Nippon Steel renamed Isomoulded div. as NSCC Techno Carbon<sup>176</sup>. They are still increasing market share by just lowering price. Nippon Steel should control their area to prevent lowering price level.*

*2- Major Decision*

*2.1- In Europe no price increase was made in the last 12 months. However, first of all, before deciding new price increase extreme low price levels should be adjusted to minimum price level by end Feb 1998. Then, next price increase of 5% should be discussed at the next summit meeting in end Feb.1998.*

*2.2- (...)*

*3- Information:*

*SGL: (...) SGL are purchasing machining companies recently to kill the competition.*

*LCL: In France, target prices are applied for EDM and General purpose since Sept.97 (...)*

*T.T.: In Italy, UCC machined dies for concast is still too low. SGL should take action to talk to them. (...) In Portland Oregon, SGL and *Ibiden* decided to build plant. All people should agree not to lower price levels in Portland area (SGL, TC, *Ibiden*, LCL, all agreed)*

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<sup>174</sup> IS, p.7, app.i.n

<sup>175</sup> SGLS, app.6, p.6; LCLS, app.5, p.6; IS, p.7, app.i.o; TCSS, p.15; TTS, p.7, app.8; NSCC, p.7, app.7. . Toyo Tanso has provided a contemporaneous report of the meeting prepared by Mr [...] that includes notes on block shipment results for 1996-1997. NSCC has provided the agenda of the meeting, a contemporaneous note by Mr [...] on market shares and shipments and a contemporaneous note correcting shipment data for 1995-1997. *Ibiden* has provided a summary of the discussions. SGL has provided travel expense reports proving the attendance of Mr [...]. N.B.: LCL does not specify the precise date of the meeting in its statement. It is therefore possible that the 1997 meeting mentioned therein rather refers to the Kuala Lumpur or the Osaka meetings.

<sup>176</sup> N.B.: Mr [...], NSCC's representative at this meeting, and Mr [...] ceased as NSC employees in June 1997 (file, p. 6398).

*IBI: (...) IBI wants to maintain price level in Portland as TT said. (...)*

*NSCC: Company structure changed. (...)*

*TC: (...) During last European meeting, IBI promised to increase price of ET-10, 33 to 45DM/dm<sup>3</sup>. But no result. IBI will check.*

*Next meeting will be Feb 27”<sup>177</sup>.*

(179) Broadly the same topics are shown at Ibiden’s summary of the meeting. In particular it clarifies that *“Toyo Tanso indicated that UCAR had approximately 80% of the CC market in Italy; as a result, SGL said that it would ask UCAR to increase its price”*. According to Ibiden, *“LCL and SGL announced a change of the proposed price of G-1, from DM 51 to DM 57 (which was to be further discussed at the next meeting on November 5-6, and to be finalised in April). Each company was to achieve the price level by the end of 1997. The parties reviewed the shipment volume for January to June 1997, and the projection for July to December 1997. It was noted that Toyo Tanso had altered its shipment volume, and that the volume sold by NSC was unusual”<sup>178</sup>.*

(180) In this regard, Tokai remarks:

*“The issue of shipments became the major topic of discussion in London. SGL and LCL both complained that all Japanese suppliers had increased shipments in 1996 and 1997. They felt this has been done at their expense.*

*In addition, at the London meeting, Toyo Tanso revised all of its previously reported shipment records upward, saying they had been reporting trimmed block weight instead of black skin weight. Other members felt they had been misled”.*

*In London, the participants spent most of their time exchanging views on future demand and supply as well as isostatic graphite expansion plans. After the Honolulu meeting, the pricing situation was not brought up again since nobody could come up with an effective solution”<sup>179</sup>.*

(181) It results from all the above that participants at the London meeting reached an agreement that an alignment of prices with the existing targets was required in 1997 before any further increase could be envisaged for 1998. They decided to discuss a further 5% price increase in February 1998. They also exchanged information and decided to take action as to the prices in Italy and the prices for Group I products.

(182) A new meeting of [members of top level management] took place in Osaka in September or October 1997 ; the companies’ statements differ as to the precise date. NSCC and Tokai statements show that LCL was not represented. However, NSCC mentions Mr [...] of Nippon Carbon among the attendants. Nippon Carbon does not

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<sup>177</sup> TTS, p.7, app.8

<sup>178</sup> IS, p.7, app.i.o

<sup>179</sup> TCSS, p.15



acknowledge such participation. SGL, *Ibiden*, Toyo Tanso, Tokai and NSCC (Mr [...]) were represented<sup>180</sup>.

- (183) According to *Ibiden*, this meeting was not considered a “Top Level” meeting because it was hastily arranged by Mr [*SGL employee*], who was in Japan for other business<sup>181</sup>. According to Tokai, the discussion dealt largely with Japan, although no concrete decisions were reached<sup>182</sup>.
- (184) The Osaka meeting seems to have been the last meeting attended by top executives. It appears that no further such meeting has been held since October 1997<sup>183</sup>.
- (185) The twelfth and last International Working Level meeting was hosted by LCL in Paris on 27-28 February 1998. It was attended by the six companies (LCL, SGL, *Ibiden*, Tokai, Toyo Tanso, NSCC). Prior to that date US and Community antitrust authorities had started investigations against the graphite electrodes producers. As a result, the six companies agreed to discontinue their arrangements. All the companies stress that no further International Working Level meetings took place<sup>184</sup>.
- (186) LCL, however, states that bilateral contacts took place in October 1998 and February 1999 between LCL and the Japanese producers (Toyo Tanso, Tokai, *Ibiden* and NSCC) when Mr [*LCL employee*] and Mr [*LCL employee*] visited Tokyo<sup>185</sup>.
- (187) As regards the involvement of UCAR in the agreements on isostatic graphite, SGL states that although UCAR did not participate in the top level and international level meetings (in particular due to its concerns on the possible consequences under US antitrust law), SGL systematically reported on them. Conversely, SGL also reported the other participants on the fact that it was keeping UCAR informed. According to SGL, UCAR showed interest in adhering to the conclusions of the group meeting, and for the other companies it was important that UCAR would align to their conclusions. The meetings between SGL and UCAR, in which SGL conveyed the agreed lists of minimum prices, normally took half a day<sup>186</sup>.

## II) European meetings

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<sup>180</sup> See IS, p.3; TCSS, po.15; NSCC, p.3. According to Tokai, the meeting took place on 24 October 1997; according to *Ibiden* and NSCC, it was on 15 September 1997.

<sup>181</sup> IS, p.3

<sup>182</sup> TCSS, po.15

<sup>183</sup> TCSS, po.15

<sup>184</sup> SGLS, p.14 & app.6, p.7; LCLS, app.5, p.6; IS, p.8, IS(T) app.A.1.i.q; I(3), app.1; TCSS, p.16; TTS, p.7, app.9; NSCC, p.7, app.8. *Ibiden* provides contemporaneous internal correspondence in preparation for the meeting, a summary of the meeting and a contemporaneous table allegedly prepared by Tokai Carbon on capacities and shipments 1995-1997. This table is also submitted by NSCC, which confirms that it was distributed by Tokai; NSCC also provides the agenda of the meeting. Toyo Tanso provides a fax request for a hotel reservation proving the attendance of Mr [*Toyo Tanso employee*]. LCL provides the travel expense report proving the attendance of Mr [*LCL employee*].

<sup>185</sup> LCLS, app.5, p.6. LCL provides the respective travel expense reports.

<sup>186</sup> SGLS, p.15.

- (188) According to Tokai and LCL, as from February 1994 there were meetings between the main suppliers of isostatic specialty graphite active in Europe: SGL, LCL, Intech, Tokai and Toyo Tanso<sup>187</sup>.
- (189) Toyo Tanso reveals the existence of such meetings as from 18 October 1994. This company explains that the discussions mainly concerned the EDM applications for graphite because that segment focused the attention of the participants<sup>188</sup>.
- (190) Tokai points out that Intech was [...] and attended on behalf of Ibiden. However, as from the fifth meeting in Mönchengladbach on 26 September 1995 Ibiden started to attend itself. UCAR joined the group as from the seventh meeting in Paris on 7-8 February 1996<sup>189</sup>.
- (191) Tokai explains that the objective of the European meetings -whose representatives were appointed at the International Working Level- was to implement in the European market, what had been decided at the International meetings and to monitor the results of such implementation<sup>190</sup>. SGL points out, in particular, that the prices fixed at those meetings were flexibly applied in each country due to the exchange rates fluctuations. Other topics of discussion were the introduction of new European grades within the international product classification and the general market conditions<sup>191</sup>.
- (192) Tokai states:

*“As part of the follow-up, discussions took place on regions and customers as regards which little success had been achieved in implementing decisions. During the meetings, the traditional European producers (SGL and LCL) often complained about the other producers not increasing prices sufficiently. In this respect, it should be recalled that SGL and LCL sold most of their graphite products via subsidiaries in Europe. As a result, they were able to control the price to the end users. On the other hand, producers like Ibiden and Tokai sold via independent distributors and machine shops and did not have detailed knowledge of the end users prices charged by these distributors or machine shops, nor were they able to control these prices.*

*Furthermore, the European producers (SGL and LCL) felt threatened by the growing presence of the Japanese producers on the European market (Toyo Tanso, Ibiden and Tokai Carbon). Therefore, the European producers sought to stabilise market shares of all the attending companies and to allocate customers”<sup>192</sup>.*

- (193) According to Tokai, the main coordinator of the European meetings was SGL; Toyo Tanso however alleges that this role was shared with LCL. Tokai admits, in any event, that LCL and Toyo Tanso frequently intervened in the preparation of the agenda and

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<sup>187</sup> LCLS, app.6, p.2; TCSS, p.17. LCL provides a contemporaneous internal report “Information Exchange meeting, Frankfurt, 25/2/94/ EDM Market / Concast Europe” prepared by Mr [LCL employee], together with the travel expense report of the first meeting.

<sup>188</sup> TTS, p.8

<sup>189</sup> TCSS, p.17; I(3), p.4.

<sup>190</sup> “The decisions taken at International Working Level meetings were not always carried out as such. Specific circumstances were considered and it was discussed to what extent the decisions could actually be implemented on the European market” (TCSS, p.17)

<sup>191</sup> SGLS, p.17; TCSS, p.17

<sup>192</sup> TCSS, p.17

the supporting documentation for the discussions. It further declares that practically all the meetings were chaired by representatives of SGL, namely Mr [...] and Mr [...] <sup>193</sup>.

- (194) Again according to Tokai, after the first meeting each participant would arrange in turn a venue for the following one. At the end of each meeting it was decided who would arrange the next one and where/ when it would take place <sup>194</sup>.
- (195) The last European meeting was held on 26 November 1997 in Strasbourg <sup>195</sup>. Tokai alleges that the participants decided to discontinue them when the Commission started its investigation on graphite electrodes <sup>196</sup>. However, LCL mentions that “informal” contacts between SGL, LCL and Toyo Tanso took place on at least one further occasion during the semiconductors fair in Geneva on 31 March 1998 <sup>197</sup>.
- (196) The first European meeting took place on 25 February 1994 in Frankfurt. According to Tokai, it was arranged by SGL (LCL states that LCL itself organised) <sup>198</sup>. Participants were SGL, LCL, Intech, Tokai and Toyo Tanso.
- (197) The conclusions of the meeting are shown in LCL’s contemporaneous report “Information exchange meeting, Frankfurt, 25/2/94/ EDM Market / Concast Europe”

*“Conclusions*

*1. Prices are tending to increase throughout Europe. Only the France and Italy markets seem to be a problem.*

*2. RW lost large customers in Germany during its policy of price increases. It might react.*

*3. Ibiiden/Tokai are competing suppliers of several processors/ retailers in Europe : Atal (Italy), CSI (Germany), Graphite Technology (GB) . There is a high risk that they compete and bring prices down. ” <sup>199</sup>.*

- (198) The second European meeting took place in Düsseldorf on 20 June 1994 and was hosted by Tokai <sup>200</sup>. The participants were the same as in the previous European meeting.

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<sup>193</sup> TCSS, p.17; TTS, p.8

<sup>194</sup> TCSS, p.17

<sup>195</sup> See LCLS, app.6, p.6; IS, p.11, app.ii.e; IS(T), app.a1.i.q; TCSS, p.24, app.12; TTS, p.13, app.15; UCS, p.6

<sup>196</sup> TCSS, p.17

<sup>197</sup> LCLS, app.6, p.7. LCL provides the corresponding travel expense reports.

<sup>198</sup> LCLS, app.6, p.2; TCSS, p.18. LCL provides a contemporaneous internal report “Réunion d’échange d’informations, Francfort, 25/2/94/ Marché EDM/ Concast Europe” prepared by Mr [LCL employee], together with the travel expense report.

<sup>199</sup> LCLS, app.6, p.2

<sup>200</sup> LCLS, app.6, p.3; TCSS, p.19, app.5, app.6; I(3), app.4. LCL has provided a contemporaneous internal report “Information Exchange meeting, Dusseldorf, 20/6/94/ EDM Market / Concast Europe” prepared by Mr [LCL employee], together with his travel expense report. Ibiiden has provided a contemporaneous meeting report allegedly sent by Tokai. Tokai has provided a summary of its notes, together with:

- An agenda (allegedly prepared by SGL);
- A list of registered agents, distributors and machine shops (Tokai internal record on the basis of information obtained at the meeting);

- (199) It is apparent from the contemporaneous meeting report provided by Ibiden and the summary submitted by Tokai that the participants agreed to register the name of their respective agents, distributors and machine shops, as well as the standard size and weight of their products<sup>201</sup>. They also amended partially the target prices and premiums<sup>202</sup>. SGL suggested freezing market shares in Europe and, together with LCL, warned against actions of non-participants. NSC/ NSCC in particular was blamed of hindering price increases in France. Further topics included an unsuccessful proposal on the establishment of common contractual and payment terms, and particular problems in local markets. Intech was in particular accused of lowering prices in the United Kingdom, where “*the price and market share have been fixed so far, and a rise in price has been well*”<sup>203</sup>.
- (200) LCL’s contemporaneous meeting report also shows the operative conclusions that this company drew from the discussion. As a result of the information received on the price behaviour of its competitors, LCL decided to match its EDM and CC prices to the cartel standards<sup>204</sup>.
- (201) SGL hosted the third European meeting in Bonn on 18 October 1994<sup>205</sup>. The same 5 companies as in the previous meetings attended.
- (202) The contemporaneous meeting report provided by Ibiden and the summary provided by Tokai show that the meeting was convened with the object of improving the implementation of decisions and the communication among manufacturers. Price increases were not showing good progress, particularly in France<sup>206</sup>, and LCL, UCAR and Ibiden grades were perceived to be at the origin of the problem. The participants

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- A list of EDM distributors' trade names (Tokai internal record); and

- A list of Tokai’s blocks standard size and weight (Tokai internal record).

<sup>201</sup> NB: the registration of standard sizes was limited to eight sizes per each grade. Other sizes were defined as cut-to-size (CTS) blocks.

<sup>202</sup> Tokai has provided the Commission with the cartel target prices that resulted from this meeting (file, p. 1011).

<sup>203</sup> TCSS, p.19, app.5, app.6; I(3), app.4.

<sup>204</sup> “1. *evolution of prices- EDM Forges Germany*

*CSI and some large clients buy directly to the USA. e.g. Peddinghaus buys ATJ at 33-34 DM/dm3 directly to USA (uses against EK82/Ellor+15 in forge).*

*conclusion we keep Ellor+15 at 46 DM/dm3 and Ellor+18 at 55 DM/dm3 with possibilities to decrease until 46 DM/dm3 if necessary.*

*2. evolution of prices- concast Europe*

*Ucar Europe offers same prices to end users and distributors.*

*France/ Germany*

*about 40 DM/dm3 for ATJ*

*about 58-59 DM/dm3 for CGW*

*UK/ Italy*

*About 55 DM/dm3 for CGW by SGS*

*18000-20000 lira/dm3 for ATJ*

*conclusion*

*we keep 65 DM/dm3 for end users and 55 DM/dm3 for machine shops for 2230.*

*we keep 47 DM/dm3 for end users in 2020/2191 » (LCLS, app.6, p.3).*

<sup>205</sup> LCLS, app.6, p.3; IS(T), app.iii.d; I(3), app.4; TCSS, p.19, app.5; TTS, p.9. LCL has provided the travel expense reports of Mr [LCL employee] and Mr [LCL employee]. Ibiden has submitted a contemporaneous report on the meeting allegedly obtained from Tokai. Tokai has provided a summary of the meeting. NB: Toyo Tanso possibly mistakes this meeting and the precedent one in Dusseldorf.

<sup>206</sup> It performed better in the UK (I(3), app.4).

therefore decided to monitor better the sales channels and the prices by taking further control of local agents. Local meetings would thus be held in Germany, France, Italy and Spain, with SGL being appointed as coordinator for Germany, LCL for France and Spain and Tokai for Italy.

- (203) Toyo Tanso remarks that Mr [...] of SGL gave a presentation on the principles of cooperation among graphite block producers, as envisaged by the participants in the Top Level meetings. According to Toyo, the freezing of market shares defended by Mr [*SGL employee*] aimed at reserving European customers for the incumbent European producers (SGL and LCL), which had traditionally supplied them before the entry of the Japanese producers. Toyo Tanso states that no agreement to freeze or limit market shares was ever reached<sup>207</sup>.
- (204) The fourth European meeting took place in Frankfurt on 14 March 1995<sup>208</sup>, with the same participants.
- (205) According to the contemporaneous meeting report provided by Ibiden and to the summary provided by Tokai the discussions included an analysis of the implementation of the agreed price increases, with the conclusion that the one scheduled for 1 March 1995 had been substantially achieved. It was a common opinion that local meetings were starting to function and that the moment was good for increases (“*we confirmed that this year was the best time to raise price and that we wouldn’t have another chance if we missed it*”). Due to exchange rate fluctuations an emergency increase of 5-10% was decided, to be effective from 1 June 1995. Other topics included a new proposal from SGL to revise the premiums for round materials and a review of particular problems in local markets (France, Italy, Germany, United Kingdom, North Europe, Spain, Portugal, other regions)<sup>209</sup>.
- (206) The problem of keeping the secrecy of the meetings was raised in the following terms:
- “Keeping secrets*
- *To call companies in codes (T=TC, S=Intech, P=LCL, G=TT, B=SGL)*
  - *To confirm Tel & Fax No. of participants’ own home*
  - *Participants at local meetings have to be limited and settled (1 participant per company in principle)”*<sup>210</sup>.

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<sup>207</sup> TTS, p.9

<sup>208</sup> See LCLS, app.6, p.3; TCSS, p.20, app.5, app.7; TTS, p.10, app.10; I(3), app.4. SGLS, app.6, p.3 most probably refers to this meeting as well. The host would have been SGL according to LCLS; Toyo Tanso according to TCSS; LCL according to TTS. LCL has provided a contemporaneous internal report “Situation des prix en Europe, 14/3/95” prepared by Mr [*LCL employee*], together with his travel expense report. Toyo Tanso has provided a copy of the invoice for the hotel room of Mr [*Toyo Tanso employee*]. Ibiden has provided a contemporaneous meeting report allegedly obtained from Tokai. Tokai has provided a summary of the discussions, together with:

- A list of independent distributors (allegedly prepared by SGL);
- A list of EDM distributors’ trade names (allegedly prepared by SGL); and
- A price calculation formula for round materials (allegedly prepared by SGL).

<sup>209</sup> I(3), app.4; TCSS, p.20, app.5.

<sup>210</sup> I(3), app.4.

- (207) LCL's contemporaneous report of the meeting confirms the success of price increases in different European countries and the adjustment due to exchange fluctuation reasons. It further recommends an increase of LCL prices for the first of April and comments on the problems created in Italy with the low prices of UCAR<sup>211</sup>.
- (208) The fifth European meeting was held in Mönchengladbach on 25-26 September 1995<sup>212</sup>.
- (209) Other than the five participants present in the previous meetings, Ibiden was directly represented for the first time. The summary of the meeting provided by Tokai (based on contemporaneous hand-written notes) and the contemporaneous minutes provided by Ibiden show that EDM price increases were reported to be a success in Germany, France, Italy and United Kingdom, whereas CC and GP increases in Scandinavia revealed only limited success. A local meeting was thus convened in this market in order to deal with the problems which had arisen between Ibiden and Toyo Tanso distributors.
- (210) According to these notes, the main focus of the meeting was the proposed discount to machine shops and distributors. SGL's proposal to abolish the 20% discount granted to machine shops was accepted; however, its proposal to decrease the 20% discount granted to EDM distributors was rejected by the Japanese companies<sup>213</sup>. It was agreed that the issue would be discussed in a small committee specific for this question on 17 October and reported to the International Level meeting in Seoul in December 1995. Also postponed was LCL's proposal to revise the premium for cut-to-size blocks and rod materials. The next (proper) European meeting was scheduled for 26 March 1996 in Strasbourg (in fact, the meeting would take place on 7-8 February 1996)<sup>214</sup>.
- (211) According to Tokai's notes, LCL proposed to write the minutes of the meetings in order to have a record of the decisions, but the idea was considered too risky. SGL announced that UCAR was also committed to follow the agreed price increases, and that it (SGL) would keep Conrady informed of the cartel discussions<sup>215</sup>.
- (212) The special meeting (the sixth European meeting) was organised by SGL in Frankfurt on 17 October 1995. Ibiden and Intech did not attend<sup>216</sup>.

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<sup>211</sup> LCLS, app.6, p.3

<sup>212</sup> SGLS, app.6, p.4; LCLS, app.6, p.4; IS, p.9, app.ii.a; IS(T), app.b.6.iv; TCSS, p.20-21, app.5, app.8; TTS, p.10, app.11. Ibiden provides the contemporaneous minutes of the meeting, various tables on the dimensions and the physical properties of specialty graphite, and on the sales channel, as well as the agenda forwarded by Intech. SGL, LCL and Toyo Tanso have provided travel expense records of their respective representatives. Tokai has provided a summary of the meeting together with:

- A revised list of independent distributors (allegedly prepared by SGL);
- A price calculation formula of CTS blocks and round materials (allegedly prepared by LCL); and
- A list of sales channels (Tokai internal record based on information acquired at the meeting).

<sup>213</sup> Ibiden's contemporary minutes point out "SGL and LCL ideas seem to be nearly same. Since Japanese manufacturers are relying on local DB and/or MS, it will be needed serious consideration for Japanese manufacturers" IS, p.9, app.ii.a

<sup>214</sup> IS, p.9, app.ii.a; TCSS, app.5

<sup>215</sup> TCSS, p.20-21, app.5

<sup>216</sup> IS, app.ii.a; TCSS, p.21, app.5, app.9. Tokai has submitted a summary of the meeting based on contemporaneous hand-written notes, together with documents from the meeting (a list of independent machine shops allegedly prepared by SGL and a diagram of Group 1 target and actual sales price trend allegedly prepared by Toyo Tanso).

- (213) According to Tokai's summary of the meeting (based on contemporaneous hand-written notes), this was an emergency meeting convened with a view to recapitulating on the discounts for machine shop and EDM distributors. The conclusion was to phase out the 20% discount granted to machine shops by January 1997 and to decrease the discounts granted to EDM distributors from 20% to 15% in January 1996<sup>217</sup>. Agreement from both UCAR and Ibiden would be required for implementation<sup>218</sup>. It was also decided to report the decisions to the next International meeting in Seoul. Tokai mentions that SGL offered to do it. Finally, Mr [...] would be requested to attend subsequent European meetings as a representative of Ibiden.
- (214) The seventh European meeting was hosted by LCL in Paris on 7-8 February 1996. UCAR was represented for the first time<sup>219</sup>. The other six participants (see fifth European meeting) also attended.
- (215) According to the contemporaneous minutes from Ibiden and UCAR as well as Tokai's summary of the meeting (based on contemporaneous notes) there was a proposal on a discount and price increase schedule for sales to EDM distributors and to machine shops up to July 1997. Contrary to the decisions of the Seoul International Level meeting (30 November–1 December 1995), it was proposed to relax the EDM price increase programme and to speed up the abolishment of machine shop discounts. Discounts to EDM distributors were kept at 20%. Tokai states that the proposal was agreed, whereas Ibiden's minutes seem to hesitate on this regard<sup>220</sup>. Also the hand-written note by LCL speaks of "*proposed increase*"<sup>221</sup>. However, it is apparent from Ibiden's notes that the companies at least agreed with the principle of abolishing the discounts to CC/GP machine shops but insisted on keeping the 20% discount to EDM distributors<sup>222</sup>.

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<sup>217</sup> Tokai has provided the table of prices agreed in this meeting (file, p. 1016).

<sup>218</sup> It is apparent from the notes of the European meeting held in Paris on 7-8 February 1996 that UCAR had become the reference for CC/GP prices and that it had become difficult to increase prices without taking into account this company (LCLS, app.6, p.4).

<sup>219</sup> SGLS, app.6, p.4; LCLS, app.6, p.4; IS, p.9, app.A.1.ii.b; TCSS, p.22, app.5, app.10; TTS, p.11, app.12; UCS, p.6, app.i.b.4. LCL has provided the agenda of the meeting, a contemporaneous meeting report ("price situation in Europe", 9 February 1996), contemporaneous hand-written notes by Mr [...], and travel expense reports. Ibiden has provided the following contemporaneous documents: (i) internal correspondence between Mr [...] and Mr [...] in preparation of the meeting, (ii) internal minutes of the meeting including the agenda and the list of attendees and (iii) a table which sets out the grades for each application of specialty graphite (the internal minutes of the meeting were prepared by Mr [...]). Tokai has provided a summary of the meeting based on contemporaneous notes and a contemporaneous list of price calculations for rods allegedly prepared by LCL. UCAR has provided contemporaneous hand-written notes of the meeting and charts used during the discussions. Toyo Tanso and SGL have provided the travel expense records of Mr [...] and Mr [...] respectively.

<sup>220</sup> "*Finally amended as follows? but no conclusion*" IS, p.9, app.ii.b. UCAR, Tokai, Ibiden and LCL and have provided the Commission with the grid of prices resulting from the meeting (file, pp. 82, 688, 710, 1017, 1047-1048, 1326-1330, 1463).

<sup>221</sup> LCLS, app.6, p.4 (file, p.688).

<sup>222</sup> IS, p.9, app.ii.b; TCSS, p.22, app.5; UCS, p.6, app.i.b.4. Toyo Tanso states in this regard: "*SGL and LCL granted machine shops discounts on the price charged to end-user customers, whilst UCAR, which was the only producer to publish a price list, applied the same price for both machine shops and end-user customers. SGL and LCL wanted to raise their price for machine shops to the UCAR price and discussed with UCAR how to achieve this. This discussion did not concern Toyo Tanso / as Toyo Tanso only used machine shops as subcontractors*" (TTS, p.13).

- (216) Furthermore, the Commission is in possession of an internal price announcement of LCL (only distributed to the Group subsidiaries and sales agents), dated 5 July 1996, that proves that LCL followed the conclusions of the meeting regarding the distributors' discounts. In that document LCL gives the instructions that: *“For EDM, the distributor discounts are unchanged with a maxi of 20%. For Continuous Casting and refractory, the discount given to machine shop is decreased to 12% from the 1<sup>st</sup> of July 1996”*<sup>223</sup>.
- (217) Ibiden's and Tokai's notes show that the proposal by SGL to make the use of local currency mandatory for sales in Europe (departing from USD in the case of LCL and from JPY for the Japanese suppliers) was postponed to the next European meeting in September (Zurich). Likewise, the proposal from LCL (according to Ibiden also from SGL) to revise the premium for rod materials was also postponed<sup>224</sup>.
- (218) All the minutes also refer to several agreements to hold local meetings in Italy, Germany and the United Kingdom, and mention some complaints about prices in local markets<sup>225</sup>.
- (219) Ibiden's notes set out the stance of some producers on the agreements:

Regarding Tokai:

*“Asked Mr. [...] of Tokai if Tokai will fix the price and compete with others on delivery, quality, service even after we have excess materials. He answered that Tokai will follow SGL's opinion. Fix the market shares of each companies, no new customer development. The reason is that we all have succeed price increase 20% more in European market, compared with other areas, conducted by SGL. There is no merit on competition. (However, TT and LCL are still interested in increasing volume)”*<sup>226</sup>.

According to the same source, LCL stated that:

*“LCL would like to increase prices before other companies complete their capacity increases. The prices will be decreased when the capacity exceeds demand”*<sup>227</sup>.

As regards Ibiden's attitude, the representative of this company wondered:

*“1) How do we make our local strategies by considering the summary of Summit?”*

*2) How deep should we involve others?”*<sup>228</sup>

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<sup>223</sup> File, p.865.

<sup>224</sup> IS, p.9, app.ii.b; TCSS, p.22, app.5

<sup>225</sup> *“Germany: [Intech employee] complained SGL's real prices of G1 are lower than the list price (Local meeting will held)*

*Italy: (...) SGL asked IBI if IBI can control Scumed.*

*(...)*

*IBI-> We have not been able to control them.*

*SGL-> We would like IBI Europe to control IBI's prices for European market including Italy.*

*IBI->?”* (IS, p.9, app.ii.b).

<sup>226</sup> IS, p.9, app.ii.b

<sup>227</sup> IS, p.9, app.ii.b



- (220) The effect of UCAR's involvement in the European meetings on UCAR's isostatic prices seems to have been immediate. This is apparent from the following documents the Commission's possession:
- The contemporaneous minutes of the 7<sup>th</sup> European meeting provided by UCAR show that the price of UCAR's isostatic Group I CC/GP products was DEM 46 on 1 January 1996 (i.e., prior to UCAR's incorporation to the meetings)<sup>229</sup>.
  - The minutes, as well as a comparative list (provided by UCAR) of UCAR and SGL prices at 8 March 1996, show that UCAR Group I prices were scheduled to raise to DEM 51 by 1 June 1996<sup>230</sup>.
  - An (undated) price list provided by UCAR of its own prices in different European markets shows that on 17 June 1996 the prices for the same product had increased to about DEM 57 in at least the United Kingdom, France and Germany. This gives a 24% increase with respect to the January prices<sup>231</sup>.
- (221) The eighth European meeting was hosted (probably) by Intech in Zurich, on 27 September 1996<sup>232</sup>. The seven companies present at the previous meeting attended.
- (222) According to Tokai, at this meeting SGL advanced policy proposals for the following year: 1) no market share increase by price; 2) no more uncontrolled shipment from USA or Asia; 3) new or doubtful inquiries to be consulted; 4) new grades, sizes and agents to be reported; 6) confidentiality; 7) companies would disclose the sales turnover for each customer (this last point is confirmed by *Ibiden's* and UCAR's minutes).
- (223) Tokai's notes and UCAR and *Ibiden's* contemporaneous hand-written notes prove that there was a general exchange of information. It was in particular remarked that the price increase of January 1996 had been successful, in contrast to the increase of June 1996. From an overall point of view, however, the price increase programme was considered as successful to a certain extent<sup>233</sup>.
- (224) The same sources show that, with a view to consolidating the agreed prices, participants suggested to their representatives at the International Working level to

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<sup>228</sup> It refers to the degree of involvement of *Ibiden's* trading agents *-[...]-* that would be required in order for *Ibiden* to effectively implement the agreements.

<sup>229</sup> File, p.82

<sup>230</sup> File, pp.82 and 153

<sup>231</sup> File, pp.175-177. The price list is undated; the fax date printed on the pages is 1 July 1996.

<sup>232</sup> SGLS, app.6, p.5; LCLS, app.6, p.5; IS, p.10, app.ii.c; TCSS, p.22-23, app.5, app.11; TTS, p.12, app.13; UCS, p.6, app.i.b.5. In its reply to the S.O., Intech contests the allegation that it hosted the meeting (as mentioned by LCL and Toyo Tanso) and claims that it was SGL the actual coordinator (as mentioned by Tokai). *Ibiden* has provided the contemporaneous hand-written notes of the meeting and a table with the grouping of grades. UCAR has provided contemporaneous hand-written notes of the meeting, the meeting agenda and some supporting documents. Tokai has provided the meeting agenda, allegedly prepared by SGL, and a summary of the discussions (based on contemporaneous notes). LCL, SGL and Toyo Tanso have provided travel expense reports of their representatives. NB: the minutes "Mémo interne de PhC du 25/10/96", that LCLS attributes to the result of a meeting in Bonn on October 22, 1996, are also in line with the conclusions of the Zurich meeting.

<sup>233</sup> IS, p.10, app.ii.c; TCSS, p.22-23, app.5, app.11; UCS, p.6, app.i.b.5. According to *Ibiden* and UCAR, prices in the United Kingdom seemed to perform the best

avoid increases in Europe in 1997 and to conduct increases only in the Japanese and Asian markets. The prices agreed confirmed the elimination of machine shop discounts as from January 1997<sup>234</sup>.

- (225) After the usual exchange of information on particular products and local markets, the next meeting was scheduled to be organised by UCAR on 22 May 1997.
- (226) The ninth European meeting took place in Geneva on 21-22 May 1997, hosted by UCAR<sup>235</sup>. The seven companies present at the previous meeting attended.
- (227) According to *Ibiden's* contemporaneous notes, the agenda of the meeting focused on three aspects: underlying the importance of communication between manufacturers, currency issues and discussion of the status in each country.
- (228) It is apparent from *Ibiden's* and *Tokai's* notes<sup>236</sup> that *Ibiden* was strongly urged to commit to a price increase programme for its ET-10 grade. According to *Tokai*, it was recognised that unless *Ibiden* acted in conformity with the price increase schedule, it would not be possible to increase the price of Group 1 graphite any further. Most of the meeting was spent on this question<sup>237</sup>.
- (229) *Tokai* states that the companies decided to propose to their representatives at the International Working level meetings to improve prices in Asia and the US; a 3% increase would be suggested for Europe in 1998<sup>238</sup>.
- (230) On the currency issue, *Tokai* alleges that notwithstanding the Japanese producer's reluctance it was agreed to bill in European local currencies. However, according to *Tokai*, UCAR's proposal on premiums for cut-to-size blocks and rod materials was rejected<sup>239</sup>.

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<sup>234</sup> A copy of the agreed prices has been submitted by *Tokai* (file, p. 1019), *Ibiden* (p. 1037-1038) and UCAR (p. 88).

<sup>235</sup> See SGLS, app.6, p.6; LCLS, app.6, p.6; IS, p.10, app.ii.d; IS(T), app.ii.d; TCSS, p.23, app.5; TTS, p.12, app.14; UCS, p.6, app.i.b.6. *Ibiden* has provided the contemporaneous minutes of the meeting. *Tokai* has provided a summary of the discussions (based on contemporaneous notes). UCAR has provided the meeting agenda. SGL, LCL, Toyo Tanso and UCAR have provided travel expense reports.

<sup>236</sup> IS, p.10, app.ii.d; IS(T), app.ii.d; TCSS, p.23, app.5

<sup>237</sup> Mr [...] –*Ibiden's* representative at the meeting- noted in the minutes: “SGL pushed me to show our price increase schedule but told SGL that we would like to confirm the situation first (***Ibiden's employee***) wrote: Good answer)  
As *IBI Euro* has not dealt with *MS* directly; I told that we would check the status first. However, Other members insist *IBI* to disclose all of current selling prices, as they will disclose their prices, too. They want to share the price information. Should we have to do this? Need to respond. (***Ibiden's employee***) wrote: we had better tell higher prices than our actual prices. Other's prices must be high, too)  
Considering the current position of *IBI Euro* (try to increase market share from now on), I think that attending the meeting is not beneficial. Will it be ideal for us not to attend the meeting but discuss individually ? (***Ibiden's employee***) wrote: This will be one of the the methods we can take, but...”) (IS, p.10, app.ii.d.).

However, it is added later on: “*ATAL* now gets in touch with all graphite suppliers to look for a source. *IBI* prices for *ATAL* (lower than the target prices) may be a problem. (***Ibiden's employee***) wrote: *IBI* has to increase the prices”) (IS, p.10, app.ii.d.).

<sup>238</sup> TCSS, p.23, app.5

<sup>239</sup> Official premiums for rod materials remained at 45% for diameters on and over 100 mm and 100% for less than 100 mm diameter (TCSS, p.23, app.5)

- (231) *Ibiden's* minutes give some detail on discussions regarding the difficulties that arose in particular countries<sup>240</sup>.
- (232) The last European meeting was hosted by Toyo Tanso in Strasbourg, on 26 November 1997. UCAR, and possibly Intech, did not attend this meeting<sup>241</sup>.
- (233) *Ibiden's* and LCL's contemporary minutes, as well as Tokai's notes of the meeting, describe that, in accordance with the decision taken at the International meeting in London on 19 September 1997, the participants agreed with a price increase of 5% for all grades as from 1 March 1998. There was therefore a review of the classification of products ("grouping") and an increase of target prices<sup>242</sup>. Toyo Tanso denies that any price increase decision was taken at this occasion<sup>243</sup>.
- (234) According to *Ibiden's* and Tokai's notes, it was further recognised that Asian market prices had not increased for two years. Despite the strong requests repeatedly made from the European manufacturers, there was a 30% difference between Asian and European market prices. The Japanese manufacturers explained that Toyo Tanso had already made a commitment to take the leader in handling this issue<sup>244</sup>.
- (235) Tokai also reports that all attendants except *Ibiden* confirmed the decision to sell in European local currency<sup>245</sup>. The European manufactures complained that they could not accept the low pricing of NSC/ NSCC any longer and requested the Japanese manufacturers to take responsibility in controlling them. As already done at the International Meeting, Toyo Tanso explained that they had been reporting their shipment volume smaller than in reality.
- (236) *Ibiden's* minutes describe in detail the discussions on the situation in each market (Asia, France, Luxembourg, Germany, United Kingdom, Italy, Spain and Sweden). In particular, they mention LCL's complaint that "the meeting is OK but never follow up", and the trouble created by the independent distributor "Albert Denis", for whom

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<sup>240</sup> "Germany: SGL 15% increase in 1995. 0 in 1996. CIP increases their market share by lowering the prices. Especially in HP market by significant cheap prices.

(...)

France: (...) LCL No price increase in France. Market demand is getting decreased.

TT feels the same

(...)

Scandinavia: (...) IBI has not been able to control AK-Maskin (...)" (IS, p.10, app.ii.d).

<sup>241</sup> LCLS, app.6, p.6; IS, p.11, app.ii.e; IS(T), app.a.1.i.q; TCSS, p.24, app.5, app.12; TTS, p.13, app.15; UCS, p.6. LCL has provided a contemporaneous internal report from Mr [LCL employee] of 28/11/1997 and Mr [LCL employee] travel expense report. *Ibiden* has provided the contemporaneous internal minutes of the meeting by Mr [...], including a list of EDM price levels, and an e-mail from Mr [...] dated 11 February 1998 with a summary of the minutes. Tokai has provided a summary of the meeting based on contemporaneous notes, the meeting agenda allegedly prepared by Toyo Tanso, and a number of working documents (groupings and list of prices allegedly prepared by Toyo Tanso). Toyo Tanso has provided a travel expense report. UCAR has provided a tentative meeting agenda.

<sup>242</sup> LCLS, app.6, p.6; IS, p.11, app.ii.e; TCSS, p.24, app.5. The grid of agreed prices has been provided by Tokai (file, pp. 1047-1048, 1052), *Ibiden* (pp. 1353-1354), LCL (pp.710-711).

<sup>243</sup> TTS, p.13. It can be noted however that SGL's prices as from March 1998 match the levels agreed at the meeting (File, pp.3045-3048: e.g., Group I CC/GP EU at DEM 54, EDM EU at DEM 66).

<sup>244</sup> IS, p.11, app.ii.e; TCSS, p.24, app.5

<sup>245</sup> According to Tokai, SGL proposed ECU to become the only billing currency when monetary union was in place (TCSS, p.24, app.5).

SGL requested corrective action<sup>246</sup>. In this regard, Mr [*Ibiden employee*] explains in an e-mail of 11/02/1998 that “*there was topic that Albert Denis was selling with cheaper price in Spain and Italy. As NSC was not member, discussion did not progress. SGL rejected NSC’s attendance*”<sup>247</sup>. *Ibiden’s* and LCL’s reports also point to a fervent discussion between LCL and Tokai on the Italian distributor “ATAL”<sup>248</sup>.

### III) Local meetings and contacts

- (237) Tokai explains that it was deemed necessary to have meetings where the situation could be assessed on a country-by-country basis because the representatives at the European meetings were not able to obtain sufficient information on specific local circumstances. As a result, at the European meeting of 18 October 1994 it was agreed that local meetings would be held in Italy, Germany, Spain and France<sup>249</sup>.
- (238) According to Tokai, the purpose of the local meetings was to implement at the local level what had been decided at the International and European meetings and, in particular, to obtain knowledge of grade names and prices, to adjust such prices, if necessary, and to make an inventory of customers and their respective suppliers. The companies’ local offices selected the representatives who would attend the meetings, with their number and names varying for each country<sup>250</sup>.
- (239) UCAR further clarifies that “*the national-level contacts varied in their origins, nature and extent, depending on local circumstances. Initially any such contacts served principally to exchange views on market conditions and to reach general understandings on the need to avoid price wars. From around 1992 onwards, the nature of the various local contacts changed. National-level contacts became integrated within a framework of contacts co-ordinated at the European level. The focus of contacts between competitors at the national level from that point on became primarily the implementation and monitoring of prices which had been agreed upon at a higher level within the different competitors’ organisations*”<sup>251</sup>.
- (240) Both Tokai and UCAR state that local meetings were held in five countries: France, Germany, Italy, United Kingdom and Spain. According to Tokai, the coordinator of the meetings was typically LCL in France and Spain, SGL in Germany and Tokai in Italy<sup>252</sup>.
- (241) In any event, the Commission has information pertaining to local meetings in France (information mainly provided by SGL, LCL and Toyo Tanso), Germany (information

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<sup>246</sup> “\*\*\* Corrective action for AD \*\*\*

*Since Albert Denis is an independent company, nobody controls in Europe. Want to control NSC in Japan.(SGL) TT (Top share holder in Japan) should be a leader for this action.(SGL)”* (IS, p.11, app.ii.e)

<sup>247</sup> IS(T), app.a1.i.q

<sup>248</sup> According to both sources, the Italian market had become unstable due to the end of the alliance between Tokai and the local distributor ATAL. LCL further mentions that Italy presented a “strong competition Il Carbonio/ Conradty/ UCAR in continuous casting” (“*forte concurrence Il Carbonio/ Conradty/ Ucar en coulée continue*”) (LCLS, app.6, p.6; IS, p.11, app.ii.e; IS(T), app.a1.i.q)

<sup>249</sup> TCSS, p.24-25. It is demonstrated below, however, that before that date –at least since the beginning of 1993- a number of meetings had taken place in France, Italy and the UK.

<sup>250</sup> TCSS, p.24-25

<sup>251</sup> UCS, p.6

<sup>252</sup> TCSS, p.25; UCS, p.6. NB: Tokai’s European subsidiary “Tokai Carbon Europe” is located in Italy.

submitted by SGL, LCL, Ividen, Tokai and Toyo Tanso), Italy (mainly provided by SGL, LCL, Tokai and UCAR) and the United Kingdom (provided by SGL and LCL), as well as some statements on meetings that took place in Spain and Sweden

- (242) Ividen has alleged that it did not attend local meetings. However, it was generally kept informed about local meetings, in particular by Intech, [...], and occasionally by its [...] distributors<sup>253</sup>.

1) *Italian market meetings:*

- (243) Tokai has provided English translations of contemporaneous hand-written notes of its representative at the meetings. The notes prove that the permanent attendants at virtually all the Italian meetings were SGL through its Italian subsidiary Risomessa, LCL through its Italian subsidiary Il Carbonio, Tokai through its subsidiary Tokai Carbon Europe S.R.L., Toyo Tanso and Intech (which was absent on some occasions)<sup>254</sup>. Such list of attendants is confirmed by SGL<sup>255</sup>, by LCL<sup>256</sup>, and by Toyo Tanso's statement regarding the Italian meetings<sup>257</sup>. UCAR claims to have attended group meetings as from the second half of 1996<sup>258</sup>. However, Tokai and LCL record UCAR's participation in such meetings as from 20 March 1996. Moreover, UCAR acknowledges that "*since the early nineties*", local managers of SGL and UCAR used to have regular telephone conversations or meetings (about every other month)<sup>259</sup>.
- (244) Toyo Tanso says that all the meetings were initiated and organised by either SGL or LCL<sup>260</sup>. UCAR alleges that its local manager was pressed by Mr [...] of SGL to attend group meetings<sup>261</sup>. In contrast, SGL states that the organisation was normally ensured by Mr [...] of Tokai Carbon Europe S.R.L.<sup>262</sup>.
- (245) A common practice in the meeting, as explained by UCAR, LCL and SGL<sup>263</sup>, consisted in trying to determine the size of the market by passing around a calculator where each participant entered its company's sales volumes of isostatic products. This ensured that no one saw the individual companies' volumes, but only aggregate sales to the Italian market. UCAR further points out that the participants also stated the prices of isostatic products that they had been quoting to each customer and that there were often disputes over the lowering of prices. At a certain moment, again according to UCAR, the participants agreed to enlarge the meetings to include the salesmen, in an attempt to impress on the sales force the importance of following the pricing directives that they received from their supervisors<sup>264</sup>.

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<sup>253</sup> IS, p.11

<sup>254</sup> TCSS, p.25-29; app.13

<sup>255</sup> SGLS, app.8

<sup>256</sup> LCLS, app.10

<sup>257</sup> TTS, p.25

<sup>258</sup> UCS, p.9

<sup>259</sup> UCS, p.7. UCAR does not specify however whether these telephone contacts concerned isostatic or extruded graphite (see section 1.4.2 below).

<sup>260</sup> TTS, p.25

<sup>261</sup> UCS, p.7. Both UCAR and SGL confirm that he refused to attend the group meetings (SGLS, app.8).

<sup>262</sup> SGLS, app.8

<sup>263</sup> SGLS, p.app.8; LCLS, app.10 p.2-3; UCS, p.9

<sup>264</sup> UCS, p.9

- (246) SGL states that the first Italian meeting was held at the end of 1993 at the invitation of Mr [Tokai employee]<sup>265</sup>, and that it was convened in order to have an inventory of the Italian EDM market. According to SGL, Mr [Tokai employee] distributed a table with customers and prices with a view to determining the actual size of the market (SGL has provided contemporaneous hand-written notes of the meeting). The company does not provide the list of attendants<sup>266</sup>.
- (247) LCL, Tokai and Toyo Tanso allege that the first Italian meeting actually took place in 1994 in Milan (on 3 June, according to LCL, in the first months of the year according to Toyo Tanso). LCL mentions that it focused on EDM issues, and included a presentation of the companies and their distributors<sup>267</sup>.
- (248) Further Italian meetings are known to have taken place at the following dates and places :
- 17 November 1994 in Trezzo<sup>268</sup>: the meeting focused on EDM issues, with classification of grades and fixation of prices<sup>269</sup>; Ibiden (through Intech) was requested to urge its distributors to conform to the decisions of the meeting<sup>270</sup>; Tokai also mentions that new meetings were planned on 16 December and January 1995 (regarding CC/GP prices and including UCAR);
  - 16 December 1994 in Linate<sup>271</sup>: dealt with EDM and CC topics;
  - 10 February 1995 in Trezzo<sup>272</sup>: focused on CC/GP issues; a new price increase was agreed; Intech did not attend and UCAR, who was invited to the meeting, cancelled its participation; SGL/Risomessa was then appointed to communicate the outcome of the meeting to UCAR;
  - 5 May 1995 in Linate<sup>273</sup>: there was a presentation and analysis of UCAR by SGL;
  - on 4 July 1995 in Milan<sup>274</sup>: a EDM market share and price list was distributed;
  - on 26 July 1995 in Trezzo<sup>275</sup>: the price increase commenced in June 1995 would be completed by the end of 1995; Tokai further explains that the

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<sup>265</sup> Mr [Tokai employee] and Tokai created in 1994 Tokai Carbon Europe S.R.L., which since that year has served as the exclusive distributor of Tokai Carbon's products in Italy (TC(2), p.1).

<sup>266</sup> SGLS, app.8, annex 1.

<sup>267</sup> LCLS, app.10, p.1; TCSS, p.25, app.13; TTS, p.24

<sup>268</sup> SGLS, app.8, p.1; LCLS, app.10, p.1; IS, p.12, app.a.1.iii.d; TCSS, p.26, app.13. Tokai has provided contemporaneous handwritten notes of the meeting. Ibiden has provided a contemporaneous report on the meeting dated 23 November 1994

<sup>269</sup> LCLS, app.10, p.1; TCSS, p.26, app.13

<sup>270</sup> IS, p.12, app.a.1.iii.d; TCSS, p.26, app.13

<sup>271</sup> LCLS, app.10, p.1

<sup>272</sup> TCSS, p.26, app.13-14. Tokai has provided contemporaneous notes of the meeting and supporting documents, including a list of standard block sizes (sent to Tokai by SGL, LCL, Intech, Toyo Tanso and Ibiden) and a list of EDM grade classification.

<sup>273</sup> LCLS, app.10, p.2

<sup>274</sup> SGLS, app.8, p.2, app.2. The company provides contemporaneous product grouping and pricing.

<sup>275</sup> LCLS, app.10, p.2; TCSS, p.27, app.13 & app.15. Tokai has provided contemporaneous notes of the meeting and a list of product grouping and minimum prices. Ibiden has provided a summary of the meeting.

meeting only dealt with EDM issues because UCAR was absent again despite its promise to attend; SGL was appointed to handle the incident; a list of sixteen major customers was prepared and it was agreed to freeze the respective sales shares for them; at the next meeting each attendant would also bring a list of sub-dealers and brand names.

- on 19 January 1996 in Trezzo<sup>276</sup>: Tokai mentions an agreement on price increases as from January 1996, as well as the disclosure of the companies' sub-dealers and shipping;
- on 20 March 1996 in Milan<sup>277</sup>: Intech did not participate, whereas UCAR attended for the first time (it would participate in most subsequent meetings); the premiums for cut-to-size blocks and rods were established; Tokai also mentions an agreement on price increases commencing in July 1996 and that the next meeting in July was to focus on CC/GP issues;
- on 10 July 1996 in Bottanucco<sup>278</sup>: according to Tokai, it was confirmed that the price increase started in July 1996 would be completed by the end of the year; Ibidem and SGL add that the participants tried to determine the size of the market by listing their main customers;
- on 18 October 1996 in Linate<sup>279</sup> (only between SGL/Risomessa, LCL/II Carbonio and UCAR): exchange of information of prices and volumes; no specific agreement was reached; LCL recalls that UCAR was called to respect the prices;
- on 18 November 1996 in Milan<sup>280</sup>: Tokai mentions that it focused on CC/GP issues, with agreement on prices to end users and no discounts (the price increase scheduled to start from January 1997 was postponed, due to the low achievement of the increase commenced in July 1996); Tokai and LCL also recall that SGL, LCL and Toyo Tanso complained that some UCAR prices were too low (the company was urged again to conform to the agreed prices) and that there was exchange of market information;
- 6 May 1997 in Linate (Intech did not participate)<sup>281</sup>. According to Tokai's and LCL's statements, no particular decisions were taken at this occasion.

(249) Tokai explains that the participants decided to discontinue the Italian meetings when the US and European competition authorities started the graphite electrode investigations<sup>282</sup>.

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<sup>276</sup> LCLS, app.10, p.2; TCSS, p.27, app.13. Tokai has provided contemporaneous notes of the meeting

<sup>277</sup> LCLS, app.10, p.3; TCSS, p.27, app.13. Tokai has provided contemporaneous notes of the meeting. LCL has provided a summary of the meeting.

<sup>278</sup> SGLS, app.8, p.2; LCLS, app.10, p.3; TCSS, p.28, app.13. It is likely that this meeting is among the 3 group meetings that UCAR acknowledges to have attended in the second half of 1993 (UCS, p.9).

<sup>279</sup> LCLS, app.10, p.4; UCS, p.9, app.I.D. UCAR has provided the travel expense records of its representative.

<sup>280</sup> LCLS, app.10, p.4; TCSS, p.28, app.13. It is likely that this meeting is among the 3 group meetings that UCAR acknowledges to have attended in the second half of 1993 (UCS, p.9). Tokai has provided contemporaneous notes of the meeting.

<sup>281</sup> SGLS, app.8, p.2; LCLS, app.10, p.5; TCSS, p.25, 29, app.13.

- (250) Although Toyo Tanso has admitted its participation in “five or six” Italian meetings between early 1994 and 1996, it has denied that any decision to increase prices was ever reached as a result of those meetings<sup>283</sup>.
- (251) The Commission is in possession of the following documents proving the implementation of cartel arrangements specific to the Italian market:
- The contemporaneous report of the 4<sup>th</sup> European meeting (Frankfurt, 14 March 1995) provided by Ividen contains a review of the Italian market that mentions that “the new price for EDM was put into operation on schedule”<sup>284</sup>.
  - An exchange of faxes between Mr [...] of Ividen and Mr [...] of Tokai, dated 9 November 1995, provided by Ividen. The two companies exchange information and coordinate their efforts to increase the price to independent distributors (Scumed, CIP, Casartelli) in the Italian market<sup>285</sup>.
  - A fax to Mr [...] of Ividen from Mr [...], dated 29 June 1997, provided by Ividen. The fax contains a draft letter from [...] to [...] (Ividen distributor in Italy) with a view to encourage this company to adjust its prices to the minimum cartel levels. The fax is headed with the instruction “*PLEASE TREAT THIS MESSAGE AS TOP SECRET AND SYTRICT CONFIDENTIAL AND PLEASE ABANDON IT JUST AFTER YOU READ!*”<sup>286</sup>.

## 2) German market meetings

- (252) The Commission has knowledge of contacts between competitors in the German market as from autumn 1993<sup>287</sup>. Moreover, a contemporaneous report provided by Ividen containing the result of price discussions between representatives of Intech /Ividen and Ringsdorff in January 1994 proves the existence of German local meetings at least as from February 1994<sup>288</sup>. Nevertheless, SGL has also admitted the existence of contacts with competitors, and in particular with LCL, prior to autumn 1993<sup>289</sup>.
- (253) According to Tokai and Toyo Tanso, SGL was the driving force and the coordinator behind the German group meetings. Toyo Tanso says that SGL typically initiated the meetings by phoning the other producers in order to organise the meeting and appoint a host<sup>290</sup>. SGL however alleges that the appointments after the first meeting took place

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<sup>282</sup> TCSS, p.25

<sup>283</sup> TTS, p.25

<sup>284</sup> I(3), app.4 (file, p.3539).

<sup>285</sup> File, p.2412-2415. In particular, Mr [...] of Tokai says in his response to Ividen that “*We are pleased to cooperate with you on the price increase. Because the currency exchange trend since August and the abolition (draft) of discount for M/S as from next year, IBI and Tokai have to increase a lot for CIP. I would like to discuss with Mr [...] in regard with this issue (...) PS) Please see attached. Min. price list for June 1, 1995, which was decided in the local meeting, Italy*”.

<sup>286</sup> File, p.2418-2419.

<sup>287</sup> SGLS, app.7

<sup>288</sup> “*We agreed to resume the German meetings and agreed that the five manufacturers or their representatives will attend. A local Germany meeting will be held in late February*” (IS, p.11, app. A.1(iii)(a))

<sup>289</sup> SGLS, app.7

<sup>290</sup> TCSS, p.29; TTS, p.19



twice a year, following the European meetings, upon invitation from LCL or Carbon Industries<sup>291</sup>.

- (254) It is apparent from the contemporaneous report provided by Ibiden that participants were “the five manufacturers or their representatives”<sup>292</sup>. Likewise, SGL states that the usual attendants to the German meetings were SGL, LCL, Intech, Tokai (sometimes represented by its German distributor “Novotec”) and Toyo Tanso (through its German subsidiary “GTD”)<sup>293</sup>. This is further confirmed by Toyo Tanso’s statement, which provides a list of meetings and a short description of the discussions, and by the statements of LCL and Tokai, that recall some particular meetings<sup>294</sup>. It is apparent from Toyo Tanso’s and LCL’s statements that the independent distributor “Carbon Industries” (CIP) also joined the group discussions as from the meeting of 29 November 1995<sup>295</sup>. Toyo Tanso declares that SGL considered Carbon Industries as a “troublemaker” in the German market and opted to approach and persuade this company to participate in the German meetings<sup>296</sup>.
- (255) Both Toyo Tanso and SGL have admitted that price discussions were a usual topic in the German meetings. Toyo Tanso declares that it included the comparison of prices applied to particular customers. SGL says that there was allocation of customers, comparison of turnovers with particular customers and monitoring of deviations from the agreements<sup>297</sup>.
- (256) According to SGL, the first German meeting took place in autumn 1993 in Niederwald, at its own invitation<sup>298</sup>. However, Tokai’s and Toyo Tanso’s recollections start later on, with the meeting (also mentioned by SGL) convened on 9 December 1994 in Rüdeshheim<sup>299</sup>.
- (257) Tokai claims that this is the only meeting on the German market which the company is aware of. However, both LCL and Toyo Tanso mention Tokai as one of the usual participants in the meetings, either directly or via its German distributor “Novotec”<sup>300</sup>.
- (258) Later known German meetings took place on the following dates<sup>301</sup>:
- 13 July 1995 in Bad Kreuznach (according to Toyo Tanso Tokai did not participate)

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<sup>291</sup> SGLS, app.7

<sup>292</sup> IS, app.a1.iii.a; SGLS, app.7

<sup>293</sup> SGLS, app.7

<sup>294</sup> LCLS, app.8; TCS, p.29, app.13, 16; TTS, p.19-24.

<sup>295</sup> SGL confirms that CIP (distributor of Tokai and Ibiden) was among usual participants.

<sup>296</sup> TTS, p.22

<sup>297</sup> SGLS app.7; TTS, p.19-24

<sup>298</sup> SGLS, app.7

<sup>299</sup> SGLS, app.6, p.3; TCSS, p.29; TTS, p.19. Tokai has provided contemporaneous minutes and working documents of the meeting, allegedly prepared by SGL. SGL has provided the travel expense reports of Mr [...] and Mr [...]. Toyo Tanso has provided the hotel invoice of Mr [...] of GTD. This company also specifies that the producers unofficially met on that occasion after the official export control meeting called by the German Federal Export Office “Bundesausfuhramt”. According to Toyo Tanso, The Bundesausfuhramt wanted to consult the industry on the control of exports to countries that could use graphite to build nuclear arms (“export control”).

<sup>300</sup> LCLS, app.8, p.1; TTS, p.19-24

<sup>301</sup> See TTS, pp. 19-24. Toyo Tanso also provides a short description of the discussions.

- on 11 October 1995 in Frankfurt (according to Toyo Tanso Tokai did not participate);
- on 29 November 1995 in Karben (according to Toyo Tanso and LCL<sup>302</sup>, Carbon Industrie attended for the first time);
- on 8 April 1996 (venue unknown<sup>303</sup>);
- on 18 April 1996 in Weilburg;
- on 22 May 1996 in Frankfurt;
- on 7 October 1996 in Bonn;
- on 22 January 1997 in Venlo (The Netherlands<sup>304</sup>).

SGL also acknowledges that, parallel to the meetings, there were intensive telephone contacts among the suppliers.

### 3) French market meetings

- (259) Toyo Tanso claims that, as LCL was the oldest supplier in France, it was most interested in establishing an arrangement for its home market and thus became the driving force who usually initiated and appointed the hosts for the French market meetings<sup>305</sup>. SGL also points to LCL as the company who convened the first meetings between SGL, LCL and Toyo Tanso in Paris, “at the beginning” and “at the end” of 1993<sup>306</sup>.
- (260) The first French meeting for which a precise date and venue have been communicated to the Commission appears to have been attended by SGL, LCL and Toyo Tanso in Paris on 25 March 1994<sup>307</sup>. According to Toyo Tanso, Tokai’s local distributor “Novotec France” joined those companies as from 22 December 1994 in Paris. As from 19 May 1995 in Paris, Toyo Tanso also mentions the presence of “Albert Denis”, local distributor of NSC/ NSCC<sup>308</sup>. SGL describes the same sequence of adhesions to the French meetings<sup>309</sup>. LCL confirms the list of participants by mentioning SGL, LCL, Novotec, GTI (Toyo Tanso’s French subsidiary) and Albert Denis as usual attendants to the meetings<sup>310</sup>.
- (261) Some information points however to the occasional participation of Intech/ Ibiden representatives: firstly, a fax from Mr [...] of Intech to Ibiden dated 21 October 1994 mentions a “*local meeting in France organised by LC; Intech representative is Mr [...] for Intech EDM France*”<sup>311</sup>. Secondly, SGL states that Ibiden attended meetings

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<sup>302</sup> LCLS, app.8

<sup>303</sup> LCLS, app.8. This occasion is not mentioned by Toyo Tanso.

<sup>304</sup> Also mentioned by SGL (SGLS, app.7).

<sup>305</sup> TTS, p.14-19

<sup>306</sup> SGLS, app.10

<sup>307</sup> TTS, p.14

<sup>308</sup> TTS, p.14

<sup>309</sup> SGLS, app.10

<sup>310</sup> LCLS, app.7

<sup>311</sup> IS, app. A.1(iii)(a)

starting from end 1995.<sup>312</sup> Thirdly, Intech's grades are mentioned in Novotec France's reports of the meetings of 16 January 1996 and June 1996<sup>313</sup>.

- (262) According to SGL, the French meetings usually took place twice a year, following the meetings at higher level. SGL says that the topics of all the meetings were similar: freezing of market shares and increase of market prices for EDM products, partially in connection with the allocation of big customers. The prices were changed twice a year and the sequence of companies announcing price increases became a major issue (the lapse between increases tended to become shorter and shorter). The companies also used the product classification produced at higher level meetings<sup>314</sup>.
- (263) SGL has alleged that, starting at the beginning of 1993, at least 7 French meetings took place up to the end of 1996. However, it does not provide a precise date for these meetings. On the basis of the information submitted by Toyo Tanso, LCL, and Tokai<sup>315</sup>, the Commission is aware of the following meetings on the French market:
- on 25 March 1994 in Paris (attended by SGL, LCL -host- and Toyo Tanso)<sup>316</sup>;
  - on 22 December 1994 in Paris (Novotec joined as from this meeting; LCL hosted)<sup>317</sup>;
  - on 19 May 1995 in Paris (Albert Denis joined as from this meeting; SGL hosted)<sup>318</sup>. The contemporaneous report submitted by Tokai shows that "*the main discussion was concerning the price of the standard blocks and the cut off blocs*" and that "*it looks that the market price starts to increase to the level that we plan*".
  - on 29 September 1995 in Montpellier (Novotec hosted)<sup>319</sup>;
  - on 26 January 1996 in Val d'Oise (LCL hosted)<sup>320</sup>; The contemporaneous report submitted by Tokai shows that the meeting's primary purpose was to exchange information on standard sizes and grades. Furthermore, the report points out that "*it looks like the new level price for 1996 is respected in a very large way*". In June 1996<sup>321</sup>;

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<sup>312</sup> SGLS, app.10, p.2

<sup>313</sup> TC(3S), p.2.

<sup>314</sup> SGLS, app.10, p.2

<sup>315</sup> LCLS, app.7; TTS, pp.14-19; TC(3S).

<sup>316</sup> TTS, p.14

<sup>317</sup> TTS, p.15

<sup>318</sup> TTS, p.15, TC(3S). Tokai has provided a contemporaneous meeting report dated 23 May 1995 produced by its French distributor Novotec France.

<sup>319</sup> LCLS, app.7, p.1; TTS, p.16. LCL has provided the travel expense report of its representative. Toyo Tanso has provided a copy of the price lists of September 1995 allegedly drawn up by SGL.

<sup>320</sup> TTS, p.16; TC(3S). Tokai has provided a contemporaneous meeting report dated 27 January 1996 produced by its French distributor Novotec France, including a list of the standard sizes and grades of each participant and a price list.

<sup>321</sup> TC(3S). Tokai provides a contemporaneous report from its local distributor Novotec France, that includes a table detailing a product grouping of isostatic graphite.

- on 15 January 1997 in Paris (hosted by Novotec according to LCL, or by LCL according to Toyo Tanso)<sup>322</sup>;
- on 14 March 1997 in Paris (hosted by Toyo Tanso)<sup>323</sup>. The contemporaneous report submitted by Tokai shows that the participants agreed to increase prices gradually, in two steps in the Oyonnax region (which according to Tokai was considered to be the most competitive in France, where prices were lowest). Also, a list was made of 20 to 30 larger customers outside the Oyonnax region for which price increases were discussed separately. Moreover, it mentions that *“the representatives of SGL and LCL strongly warned (...) GTI/Toyo Tanso, not to undercut the prices any more threatening that they would otherwise make quotations so low in Japan, as an eye for eye deal, as to ruin the Japanese market”*.
- on 23-26 May 1997 in Paris (hosted by Albert Denis)<sup>324</sup>;

(264) The meeting of 23-26 May 1997 is the last French meeting in which Toyo Tanso acknowledges participation. SGL alleges that the meetings ended at the end of 1996 or beginning of 1997, when NSC/ NSCC claimed a larger market share and no agreement was found<sup>325</sup>. However, LCL has provided information on three additional French meetings:

- on 26 September 1997 in Vincennes (hosted by SGL)<sup>326</sup>;
- on 22 December 1997 in Paris (hosted by LCL)<sup>327</sup>;
- on 2 March 1998 in Lyon (hosted by Novotec)<sup>328</sup>.

(265) Finally, both SGL and LCL have admitted further bilateral contacts on 22 October 1998 in Cergy (France)<sup>329</sup>

#### 4) United Kingdom market meetings:

(266) According to SGL, United Kingdom market meetings among specialty graphite producers were held since the late eighties<sup>330</sup>. UCAR alleges that they had taken place some time before an UCAR representative attended the meetings for the first time, upon SGL’s invitation<sup>331</sup>, at the end of 1993<sup>332</sup>. Participants and dates are actually known with precision for the period from March 1993 to July 1998. It is apparent from

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<sup>322</sup> LCLS, app.7, p.1. LCL has provided the travel expense report of its representative. It is likely that this is the meeting of January 1997 mentioned by Toyo Tanso (TTS, p.17)

<sup>323</sup> LCLS, app.7, p.1; TTS, p.17; TC(3S), p.2. Toyo Tanso has provided the travel expense report of its representative. Tokai has provided a contemporaneous phone report from its local distributor Novotec France.

<sup>324</sup> TTS, p.18. It is possible that this is the meeting of 6 May 1997 mentioned by LCL (LCLS, app.7, p.1)

<sup>325</sup> SGLS, app.10, p.2

<sup>326</sup> LCLS, app.7, p.1

<sup>327</sup> LCLS, app.7, p.1

<sup>328</sup> LCLS, app.7, p.1

<sup>329</sup> SGLS, app.10, p.3; LCLS, app.7, p.2

<sup>330</sup> SGLS, app.9

<sup>331</sup> As for Italy, UCAR states that its primary contact with competitors was through SGL.

<sup>332</sup> UCS, p.10

both SGL and LCL submissions that up to 1996 there were about four meetings a year and that this frequency decreased subsequently<sup>333</sup>.

- (267) SGL, LCL and UCAR explain that the participants in the United Kingdom meetings were SGL, LCL, Graphite Technologies (independent distributor for Ibiden and Tokai), Erodex (independent distributor for Toyo Tanso) and UCAR. SGL says that all participants were invariably present at the group meetings. As to Intech, LCL states that this company was among the usual attendants, whereas SGL alleges that its representative at the United Kingdom meetings “*could only identify one meeting in 1994 in which they (Intech) participated, but they may have been present at other meetings*”. UCAR does not mention the presence of Intech at the meetings<sup>334</sup>.
- (268) SGL sets out that the organisation of the meetings rotated between the participants. Invitations were only by telephone, with no particular company taking the lead and without a formal period of time between any two meetings<sup>335</sup>. According to UCAR, however, Mr [...] of SGL generally organised<sup>336</sup>.
- (269) As to the content of the meetings UCAR and SGL explain that, due to currency exchange rates, prices in the United Kingdom were relatively low in comparison with other European countries. UCAR says that, as target prices for isostatic products were generally agreed at the European level, the United Kingdom meetings followed them and thus discussions primarily focused on how to present the price changes to customers rather than on the level of those changes or on any volume-related questions. According to UCAR, there were also agreements on supply of products to particular customers (the specialties market in the United Kingdom is composed mainly of a few large customers).<sup>337</sup>
- (270) SGL confirms that the meeting discussed minimum prices and that competitors in the United Kingdom tended not to attack the established major accounts of their competitors<sup>338</sup>.
- (271) Although UCAR’s statement is not precise as to the date and location of the meetings, this company admits regular participation between 1994 and late 1996 or early 1997<sup>339</sup>. The information provided by SGL and LCL, nevertheless, has revealed the existence of an important number of United Kingdom cartel meetings. Both sources<sup>340</sup> converge in mentioning the following meetings:
- on 31 October 1995 in Kidderminster<sup>341</sup>
  - on 27 November 1995 in Egham<sup>342</sup>

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<sup>333</sup> LCLS, app.11, annex to SGLS, app.9

<sup>334</sup> SGLS, app.9, p.2; LCLS, app.11; UCS, p.10

<sup>335</sup> SGLS, app.9

<sup>336</sup> UCS, p.10

<sup>337</sup> UCS, p.10

<sup>338</sup> SGLS, app.9

<sup>339</sup> UCS, p.10

<sup>340</sup> SGLS, app.9 (annex); LCLS, app.11

<sup>341</sup> LCL has provided a copy of the personal agenda and the travel expense report of Mr [LCL employee].

<sup>342</sup> LCL has provided a copy of the personal agenda of Mr [LCL employee] for that day.

- on 15 December 1995 in Woodstock<sup>343</sup>
- on 16 February 1996 in Stratford upon Avon<sup>344</sup>
- on 20 June 1996 in Woodstock<sup>345</sup>.

(272) In addition, SGL points to further meetings held:

- in 1993: on 4 March, 21 May and 13 August in Egham;
- in 1994: on 22 February (venue unknown), 14 April in Warwick, 15 June in Egham, 7 September (venue unknown), 24 November (venue unknown) and 9 December in Bromsgrove.
- in 1995: on 31 March (venue unknown) and 26 September in Woodstock.
- in 1996: on 22 February (venue unknown), 28 March in Woodstock and 15 August in Egham;
- in 1997: on 25 June in Stow on the Wold.
- in 1998: on 20 March (venue unknown).

(273) In contrast, LCL provides information on meetings held:

- in 1993: on 13 December in Egham<sup>346</sup>
- in 1995: on 16 February in Woodstock<sup>347</sup>, 18 December in Box Hill<sup>348</sup>;
- in 1997: on 5 February in Banbury<sup>349</sup>
- in 1998: on 7 July in Kidderminster<sup>350</sup>; LCL declares that subsequent bilateral contacts between SGL and LCL took place on 21 August and 13 November 1998<sup>351</sup>.

##### 5) Spanish market meetings

(274) The Commission has been provided with little information about meetings concerning the Spanish market for isostatic graphite.

(275) UCAR reports that a representative of the company attended two local meetings in Spain, one in Madrid in mid 1994 and one in Barcelona on 12 December 1994.

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<sup>343</sup> LCL has provided a copy of the personal agenda and the travel expense report of Mr [LCL employee].  
<sup>344</sup> LCL has provided a copy of the personal agenda and the travel expense report of Mr [LCL employee].  
<sup>345</sup> LCL has provided a copy of the personal agenda of Mr [LCL employee] for that day.  
<sup>346</sup> LCL has provided the travel expense report of Mr [LCL employee] and a list of addresses.  
<sup>347</sup> LCL has provided a copy of the personal agenda of Mr [LCL employee] for that day.  
<sup>348</sup> LCL has provided a copy of the personal agenda and the travel expense report of Mr [LCL employee].  
<sup>349</sup> LCL has provided a copy of the personal agenda of Mr [LCL employee] for that day.  
<sup>350</sup> LCL has provided a copy of the personal agenda and the travel expense report of Mr [LCL employee].  
<sup>351</sup> SGL has also acknowledged the existence of bilateral and trilateral meetings involving LCL, Erodex and occasionally UCAR on specific continuous casting customers (SGLS, app.9, p.2).

Representatives from SGL, LCL, Schunk and “several Japanese companies” also attended according to UCAR<sup>352</sup>.

(276) Moreover, LCL and Tokai refer to another meeting that took place on 24 July 1995. Both companies declare that the participants were LCL, SGL, Tokai, Toyo Tanso and UCAR. According to LCL, the discussions focused on the fixation of target prices and the exchange of commercial information<sup>353</sup>.

#### 1.4.1.3. Implementation of the cartel decisions

(277) From the discussions of the participants in the cartel meetings, it can be concluded that the conspiracy to increase isostatic graphite prices, or to contain the fall of those prices, had an impact on the Community/EEA market up to at least 1997. In particular:

- in the fifth International level meeting (Hong Kong, 3-4 November 1994) it was remarked that “*according to the western suppliers, an average 8% price increase has been implemented in EDM, CC and GP applications. However, French and Southern European markets, such as the Italian and Spanish ones, were still a problem*”<sup>354</sup>.
- the participants in the fourth European meeting (Frankfurt, 14 March 1995) concluded that the price increase scheduled for 1 March 1995 had been substantially achieved and that local meetings were starting to function<sup>355</sup>.
- at the sixth International level meeting (Paris, 29-30 May 1995) “*all attendants agreed that the price increase has been steadily implemented in European countries as a result of the local meeting arrangements*”<sup>356</sup>. Furthermore “*According to Ibidem, although the effort for such action has been observed, the actual result was still marginal. European suppliers stated that the current price levels have just reached the level as when Toyo Tanso originally entered the European market*”<sup>357</sup>. Likewise, the impressions of a participant that “*specific strong interest from European suppliers could not be observed because the action has been relatively successful in the European home market*” have also been quoted<sup>358</sup>.
- at the fifth European meeting (Mönchengladbach, 25-26 September 1995) EDM price increases were reported to be a success in Germany, France, Italy and United Kingdom, whereas CC and GP increases in Scandinavia revealed only limited success<sup>359</sup>.

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<sup>352</sup> UCS, p.7.

<sup>353</sup> LCLS, app.9, p.1; TCSS, p.30, app.13. The venue was Madrid according to LCL and Barcelona according to Tokai. LCL has provided travel expense records from the meeting, contemporaneous tables of prices with hand-written notes and the visit cards received on that occasion.

<sup>354</sup> See recital (147) above.

<sup>355</sup> See recital (205) above.

<sup>356</sup> See recital (151) above.

<sup>357</sup> See recital (152) above.

<sup>358</sup> See recital (155) above.

<sup>359</sup> See recital (209) above.

- at the seventh International level meeting (Seoul, 30 November and 1 December 1995), it was noted that “*Generally price increase in northern Europe is efficiently going on but southern Europe is slow, especially Italy*”<sup>360</sup>.
- at the seventh European meeting (Paris, 7-8 February 1996) it was mentioned that “*(...) we all have succeed price increase 20% more in European market, compared with other areas (...)*”<sup>361</sup>.
- at the eight International level meeting (Berlin, 15-16 April 1996) it was mentioned that “*in general prices are increasing but still many problems depend on customer or country*”<sup>362</sup>.
- participants in the ninth international level meeting (Honolulu, 5-6 November 1996) remarked that “*Generally price level in Europe is reasonably going up through the local meetings. However the price level in southern Europe is still low. (...) The success of past price increase is based on the strong demand for graphite. However, future price increase is not easy due to slowdown for the demand. Tight price discipline is crucial not to cause the loss of the benefit achieved since 1993*”<sup>363</sup>.

(278) On the other hand, on the basis of the information provided by the companies the Commission has obtained an overall picture of the evolution of target prices, as agreed by the members of the cartel along the period of the infringement. It has been set out in section 1.4.1.1 above that the cartel prices were broken down by product application, in two different trade levels (distributors/machine shops (DB/MS) and large end users with machining capability (EU), and by geographic area (Europe or US). Accordingly -as it has also been shown in section 1.4.1.2 above- the meetings often resulted in the approval of a complete grid of prices that covered each of the categories. For the present purposes, in order to assess the implementation of the cartel arrangements the Commission will focus its analysis on a sample of the prices agreed, namely the prices for Group I isostatic grades<sup>364</sup>. Such selection respects the distinction of target price levels according to the final applications of the product (EDM vs. CC/GP) and to its trade level (DB/MS vs. EU).

**Table 4:** evolution of cartel prices during the period of the infringement (DEM).

	Source (page of the file)	EDM DB	EDM EU	CC/GP MS	CC/GP EU
23/07/1993	647-651, 1261-1263	38	47	40	47
18/11/1993	358-360	41	51		47

<sup>360</sup> See recital (157) above.

<sup>361</sup> See recital (219) above.

<sup>362</sup> See recital (160) above.

<sup>363</sup> See recital (164) above.

<sup>364</sup> For a definition of the groups of grades, see e.g. the product groupings shown at pp. 712, 1006, 1049-1050, 1330. According to the responses to the Commission’s third request for information (22 November 2001), regarding CC/GP applications Group I grades are the most important ones in terms of isostatic turnover for all the companies. Concerning EDM applications, Group I and Group II grades are the most relevant ones.



01/01/1994	2381	40		41	
01/04/1994	358-360, 1274-1277, 3879-3882	41	51	41	51
20/06/1994	1011	40	47	40	47
04/11/1994	2519	41	51	41	51
01/03/1995	136, 2519	43	54	43	54
01/05/1995	1078, 1281	43	54	43	54
17/10/1995	1016, 1463	43	54	43	54
01/01/1996	82, 367, 688, 710, 1017, 1047-1048, 1463	46	57	46	57
01/06/1996	370, 710-711, 1052	51	63	51	51
01/07/1996	688, 1017, 1326-1330	46	57	51	57
27/09/1996	88, 1019, 1337-1338	51	63	51	57
01/01/1997	370, 1326-1330, 1337-1338	50	63	57	57
29/06/1997	2418	51	63		
01/04/1998	710-711, 1047-1048, 1052, 1353-1354	54	66	54	54

1993

(279) The Commission is in possession of the following documents proving implementation of the cartel target prices, as mentioned in table 4 above, during the year 1993:

- A fax dated 23 August 1993 from [...] of Ibiden to [...] (Ibiden’s distributor in the United Kingdom). The document, submitted by Ibiden, shows that Ibiden is “intending to make a price rise at least 20 (twenty) percent effective from the 15<sup>th</sup> September 1993”. In its response to this fax, Graphite Technologies expresses its alarm as “the UK market is very competitive and we do not see how we can possibly pass on this increase to our customers”<sup>365</sup>. It is to be noted that 20% is the target price increase for unmachined isostatic graphite blocks decided at the first Top Level meeting (see recital (130) above).
- A list of LCL’s isostatic graphite prices for September 1993, expressed in Spanish pesetas (it is not mentioned whether the prices are applicable only for

<sup>365</sup> File, pp.1446-1448.

the Spanish market). The document has been provided by LCL. The prices in the list are in line with the cartel target levels<sup>366</sup>.

- Fax from Mr [...] of SGL UK, dated 21 September 1993, provided by SGL. It contains a list of SGL’s EDM prices in the United Kingdom as of 1 October 1993. The prices in the list are in line with the cartel target levels<sup>367</sup>.
- A fax dated 7 October 1993 from Mr [...] of Ibiden to Mr [...] of **[Ibiden’s trading agent]** on graphite prices in Europe. The document has been provided by Ibiden. It shows prices that are slightly above the cartel target levels<sup>368</sup>.
- A list of LCL’s isostatic graphite prices in France as from 11 October 1993 (document provided by LCL). The prices in the list match the cartel target levels agreed<sup>369</sup>.
- The EDM European tariffs for 1993 provided by LCL, which are in line with cartel target levels<sup>370</sup>.
- A fax provided by Ibiden, from Mr [...] of Ibiden to Mr [...] of Intech, dated 29 October 1993. In this fax Mr [...] prompts Mr **[Intech employee]** to align prices up to the level of competitors<sup>371</sup>.
- A fax dated 1 December 1993 from the trading company **[Ibiden’s trading agent]** to Ibiden (provided by the later). It shows that Tokai grades are sold at prices above the cartel target levels<sup>372</sup>.
- A fax, dated 12 December 1993, from Mr [...] of **[Ibiden’s trading agent]** to MM. [...] of Ibiden concerning Intech prices. The fax, provided by Ibiden, shows that this company adopted the cartel target prices<sup>373</sup>.
- A letter dated 14 December 1993 from Mr [...] of Intech to Mr [...] of Ibiden that shows Intech’s prices worldwide (document provided by Ibiden). The prices therein match the cartel target levels<sup>374</sup>.

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<sup>366</sup> File, p.749. E.g.: EDM EU Group I at ESP 4071, equivalent to DEM 51; CC/GP EU Group I at ESP 3749, equivalent to DEM 47. According to LCL, this is a working document from Sofacel (LCL’s subsidiary in Spain), that shows the evolution of LCL prices in Spain (LCL(2), p.3).

<sup>367</sup> File, p.1184. E.g.: EDM EU Group I at 0.0000201 GBP, equivalent to DEM 50.

<sup>368</sup> File, p.2358. E.g., Group I prices: CC/GP MS at DEM 41; CC/GP EU at DEM 51; EDM DB at DEM 44; EDM EU at DEM 55.

<sup>369</sup> File, p.828-829. E.g.: CC/GP EU Group I at FRF 163, equivalent to DEM 47.

<sup>370</sup> File, pp.805-809, 2944. E.g.: EDM EU Group I at FRF 32175 the block, equivalent to DEM 47.

<sup>371</sup> File, p.1391 (“*I guess all graphite manufacturer will finish to announce new price lists to there (sic) customer by the end of Oct. So, would you please inform me of market information as minutely as possible by Nov.12<sup>th</sup> (...) Anyway, please keep in your mind that situation will be advantageous for us if our price level becomes same with competitors.*”)

<sup>372</sup> File, p. 2378. E.g.: Group I CC/GP MS at DEM 44.6; the fax notably remarks that “the standard price for Jan-Apr. next year is DM41-/DM3. So, above prices is within the standard”.

<sup>373</sup> File, p.2383; e.g: Group I EDM DB prices at DEM 40 in the “revised prices” column. It is likely that the “first” and “revised” prices refer to target prices that **[Ibiden’s trading agent]** will offer to Intech, whereas the “current prices” -below the cartel target levels- seems to refer to the prices actually applied to Intech before the price increase. It is apparent that **[Ibiden’s trading agent]** has consulted Ibiden before setting the prices that will be offered to Intech (“*We would like to meet you whether we must inform intactly the new price (Revised price) decided on last visit your company or not*”).

- An internal fax provided by POCO dated 14 December 1993. It shows that LCL’s actual pricing is in line with the cartel target levels<sup>375</sup>.
- A fax dated 16 December 1993 from Mr [...] of Ibiden to Ringsdorff, provided by Ibiden. Mr [*Ibiden’s employee*] reminds the price agreements and the commitment not to offer and quote to new customers<sup>376</sup>.

1994

(280) The Commission is in possession of the following documents proving implementation of the cartel target prices, as mentioned in table 4 above, during the year 1994:

- An internal note dated 7 February 1994 submitted by POCO refers to the low market prices applied by Toyo and Ibiden in Scandinavia by remarking that “*it seems that the European policy has not reached this part of the world yet*”<sup>377</sup>. It is therefore apparent that POCO was at the time aware of the concertation of prices applied by its competitors in other European markets, and could notice its actual impact on the market place.
- A fax from [...] of SGL UK (addressees not identified -probably sales agents of the company-) dated 30 March 1994, with a list of prices for SGL products that is in line with cartel target prices<sup>378</sup>.
- A list of LCL’s isostatic graphite prices for April and May 1994, expressed in Spanish pesetas (it is not mentioned whether the prices are applicable only for the Spanish market), provided by LCL. The prices in the list are in line with the cartel target prices<sup>379</sup>.
- The internal tariffs for Europe of LCL (distributed only to group subsidiaries and sales agents), valid from 1 April 1994. The document, dated 11 April 1994, has been provided by LCL. The prices in the list match the cartel target prices<sup>380</sup>.
- A list of SGL prices dated July 1994, provided by UCAR. The list shows that the prices applied by SGL at the time matched the cartel target levels. SGL has

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<sup>374</sup> File, p. 1414. E.g: Group I EDM EU prices at DEM 50. Mr [...] expresses in the letter his doubts as to the effectiveness of the price agreements: “(...) *Intech is, in no uncertain words, doubtful that the price increases being proposed by the graphite manufacturers will hold. We hope they do, but there is too much evidence (which we will try to document in this letter) suggesting that agreements are changing and “creative” pricing schemes to bypass all minimum prices are proliferating*”.

<sup>375</sup> File, p.1741; e.g.: EDM EU at FRF 170, equivalent to DEM 49.

<sup>376</sup> File, p.1416.

<sup>377</sup> File, p.1850.

<sup>378</sup> File, p.1187-1188; e.g.: CC/GP MS and EU at 3307 GBP/block, equivalent to DEM 41.

<sup>379</sup> File, p.749; e.g.: Group I CC/GP EU prices at ESP 3854, equivalent to DEM 47, EDM EU at ESP 4182 (equivalent to DEM 51). According to LCL, this is a working document from Sofacel (LCL’s subsidiary in Spain), that shows the evolution of LCL prices in Spain (LCL(2), p.3).

<sup>380</sup> File, pp.814-827; e.g: Group I CC/GP MS at FRF 136 (equivalent to DEM 40), CC/GP EU at FRF 159 (equivalent to DEM 47), EDM DB at FRF 139 (equivalent to DEM 41), EDM EU at FRF 173 (equivalent to DEM 51). On File pp. 812-813 there is a revision of the price lists dated 2 June 1994.

subsequently submitted its tariffs for isostatic graphite products as from July 1994<sup>381</sup>, which confirm this aspect.

- A price offer from Tokai Carbon Europe S.R.L. to the distributor Carbon Industrie Produkte (CIP), with quotations matching the cartel target prices. The document, dated 2 August 1994, has been provided by Tokai<sup>382</sup>. In a subsequent response to CIP, dated 15 August 1994, Mr [...] of Tokai claims that “*it is quite difficult for Tokai Japan to lower their prices (...) We don’t ask you further burden. Instead, we ask you to stay at the current level*”<sup>383</sup>.
- A report of a meeting between Mr [...] and MM. [...] of Intech -document provided by Ibidem- that mentions a general increase of prices among producers<sup>384</sup>.
- The minutes of the European meeting held on 18 October 1994<sup>385</sup> (document provided by Ibidem and allegedly produced by Tokai) show that, while Tokai, Toyo Tanso, SGL and LCL had trouble to reach the target prices, they were positively attempting to attain it by practising the *de facto* same prices<sup>386</sup>.
- A list with SGL’s revised EDM prices for the United Kingdom as of 7 November 1994, dated November 1994 and signed by [...]. The prices in the list match the cartel target prices<sup>387</sup>.
- A letter dated 27 December 1994 from Mr [...] of NSC/ NSCC to Mr [...] of [...] (NSC/ NSCC’s trading partner), provided by NSCC, shows that this company respected the decision agreed at the 5<sup>th</sup> International meeting to increase prices of 5% as from March 1995<sup>388</sup>. Additional correspondence with **[NSCC’s trading partner]** in the period 18 January 1995 to 17 February 1995 further demonstrates that, after long discussions, a 7% increase for NSC/ NSCC’s main isostatic grade was imposed on the French distributor Albert Denis<sup>389</sup>. In particular, in the fax dated 14 February 1995 **[NSCC’s trading partner]** points out that “*As far as we are understanding, NSCC is ask for prc increase because of their necessity to adjust prc compared with competitions. Reason why we proposed settlemt of this subject by prc increase at 6pct (neither 5pct nor 7 pct)*”<sup>390</sup>.

(281) In addition, the Commission is in possession of the following documents that demonstrate a consistent policy of price increases in this period:

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<sup>381</sup> File, pp.127-129 and 3084-3087; e.g.: Group I CC/GP MS at DEM 41, CC/GP EU at DEM 51, EDM DB at DEM 41, EDM EU at DEM 51.

<sup>382</sup> File, p.430; e.g.: Group I CC/GP MS at JPY 650,000/ block, equivalent to DEM 42.

<sup>383</sup> File, p.431.

<sup>384</sup> File, p.2347: “*1) Price increase: a. Have other distributors increased prices?: Mostly yes. Some prices that were used to be higher than the target were decreased*”.

<sup>385</sup> See recital (201) above.

<sup>386</sup> File, pp.3533-3535. E.g: Group I EDM EU at DEM 43 for SGL, DEM 44 for Tokai and Toyo Tanso, DEM 45 for LCL.

<sup>387</sup> File, p.1181-1182; e.g.: EDM EU at GBP 0.00002136, equivalent to DEM 52.

<sup>388</sup> “*Looking at other companies’ price increases for shipment after April, ask for an additional adjustment of approximately 5% for April-September shipments*” (NSCC(2), app.4.2.h.).

<sup>389</sup> NSCC(2), app. 4.2.i to 4.2.q.

<sup>390</sup> NSCC(2), app.4.2.o.

- A fax dated 10 January 1994 from Mr [...] of Ibiden to Mr [...] of Intech, provided by Ibiden. Mr [*Ibiden employee*] says that “*it is major premise to become happy for Intech and Ibiden by this price increase*”. In a subsequent fax dated 12 January 1994 to the independent German distributor Carbon Industrie-Produkte (CIP) Mr [*Ibiden employee*] also states that “*I consider price increase for end-users will be important for CIP and Ibiden to become happy for each other*”<sup>391</sup>.
- The internal minutes produced by LCL’s representative at the 1<sup>st</sup> European meeting of 25 February 1994 point out referring to Ringsdorff that “*its policy of increasing sales prices has cost it some large customers*”<sup>392</sup>.
- An internal note dated 4 May 1994, submitted by POCO, that demonstrates the ongoing implementation of the price agreements. The note refers to the EDM market in the following terms: “*Market wise no major improvements, still flat. It seems that the new price policy works better at key accounts, but only with prior briefings between the suppliers*”<sup>393</sup>.

1995

(282) The Commission is in possession of the following documents proving implementation of the cartel target prices, as mentioned in table 4 above, during the year 1995:

- The report of the 4<sup>th</sup> European meeting (Frankfurt, 14 March 1995)<sup>394</sup>, provided by Ibiden. It shows that “Albert Denis” (distributor of NSC/ NSCC’s products), Tokai (alleged author of the report) and SGL offered to their clients in France and the UK prices that were in line with the cartel target levels<sup>395</sup>.
- The list of SGL isostatic graphite prices for March 1995, provided by UCAR (fax date 20 March 1995) and SGL itself. Prices in the list match the cartel targets. In the internal SGL note communicating the price announcement Mr [...] remarks “*you will find that some prices have been increased considerably. For material group R4510/R4530, for example, by 25%, for R8500 by 10%. We ask you for your special support to prevail these prices on the market*”<sup>396</sup>.
- Another list of SGL isostatic graphite prices, dated 1 March 1995, provided by LCL. The prices in the list also match the cartel targets<sup>397</sup>.
- LCL’s internal tariffs for March 1995 (document dated 20 February 1995, only distributed to the Group subsidiaries and sales agents). Those tariffs are in line with the cartel target prices<sup>398</sup>.

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<sup>391</sup> File, pp.1429-1430.

<sup>392</sup> File, p.657.

<sup>393</sup> File, p.1864.

<sup>394</sup> See recital (204) above.

<sup>395</sup> I(3), app.4 (file, p.3539-3540). SGL is reported to sell Group I CC/GP EU at DEM 54. Tokai and Albert Denis are reported to sell at 182 FRF/litter, equivalent to DEM 52.

<sup>396</sup> File, pp.131, 136-141, 3068-3074; e.g.: Group I CC/GP MS at DEM 43, CC/GP EU at DEM 54, EDM DB at DEM 43, EDM EU at DEM 54.

<sup>397</sup> File, p.746. E.g.: Group I EDM EU at DEM 54.

- A fax dated 9 March 1995 from Mr [...] of Tokai Carbon Europe S.R.L. to Mr [...] of Carbon Industrie Produkte (CIP). Mr [*Tokai employee*] announces that “TCE would like to increase the price of C330 and G347 to you by 8% effective from the delivery of July 1<sup>st</sup>, 1995” (document submitted by Tokai)<sup>399</sup>. It is to be noted that 8% is the price increase that, according to the western suppliers, had been implemented in EDM, CC and GP applications (see recital (147) above).
- A fax from Mr [...] of Tokai to a Belgian customer, on 7 June 1995 (document provided by Tokai). It announces a price increase as from 1 July 1995, with new prices that match the cartel target prices<sup>400</sup>.
- A list with SGL prices for EDM and GP graphite as from 1 September 1995. The list, dated July 1995, was faxed by Gelter-Ringsdorff (SGL) to LCL on 19 September 1995, and has been provided by the later. It shows prices that are in line with the cartel target levels<sup>401</sup>.
- A price list provided by LCL, with the company’s isostatic graphite prices for September 1995, expressed in Spanish pesetas (it is not mentioned whether the prices are applicable only for the Spanish market). The prices in the list match the cartel target prices<sup>402</sup>.

(283) In addition, the Commission is in possession of the following documents that demonstrate a consistent policy of price increases in this period:

- The correspondence between NSC/ NSCC and [*NSCC’s trading partner*] dated 24 July 1995 and 11 August 1995. It shows that in September 1995 there were new attempts from NSC/ NSCC to force Albert Denis to increase prices<sup>403</sup>.
- The chart allegedly prepared by Toyo Tanso for the European meeting of 17 October 1995 (provided by Tokai). It shows that market prices correspond to the cartel target prices<sup>404</sup>.
- LCL internal price announcement, dated 7 December 1995. It is mentioned that “For EDM, the distributor discounts are unchanged. For Continuous Casting and Refractory, the discount given to machine shop will be progressively decreased. We will give you more details later”<sup>405</sup>.

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<sup>398</sup> File, pp.830-842; e.g.: Group I CC/GP MS at FRF 132 (equivalent to DEM 38), CC/GP EU at FRF 174 (equivalent to DEM 50), EDM DB at FRF 146 (equivalent to 42), EDM EU at FRF 184 (equivalent to DEM 53).

<sup>399</sup> File, p.433.

<sup>400</sup> File, p.465-466; e.g. Group I CC/GP EU at DEM 53. The argument used for the increase announcement is that “due to the extreme appreciation of Japanese Yen recently, we are forced to adjust our prices”.

<sup>401</sup> File, pp. 739-740; e.g.: Group I EDM EU and CC/GP EU at DEM 54.

<sup>402</sup> File, pp.748-749; e.g.: Group I EDM EU at ESP 4644 (equivalent to DEM 54). According to LCL, this is a working document from Sofacel (LCL’s subsidiary in Spain), that shows the evolution of LCL prices in Spain (LCL(2), p.3).

<sup>403</sup> NSCC(2), app.4.2.r and 4.2.s.

<sup>404</sup> File, p. 1039.

<sup>405</sup> File, p.847.

1996

(284) The Commission is in possession of the following documents proving implementation of the cartel target prices, as mentioned in table 4 above, during the year 1996:

- The contemporaneous report, submitted by Tokai, of a French local cartel meeting held on 26 January 1996. The report points out that “*it looks like the new level price for 1996 is respected in a very large way*”<sup>406</sup>.
- An internal letter provided by Ividen, that reports on the results of a bilateral meeting of this company with Tokai<sup>407</sup>. Ividen has stated that this letter was written by Mr [...] of Ividen Europe on 24 January 1996<sup>408</sup>. The letter shows that both Tokai and Ividen prices match the cartel target prices<sup>409</sup>. Moreover, it shows that the two companies planned to increase prices as from 1 January 1996, as decided at the Paris meeting (see recital (150) above)<sup>410</sup>.
- The tariffs of LCL for January 1996 (document dated 7 December 1995, only distributed to the Group’s subsidiaries and sales agents). They show price increases up to the cartel target levels<sup>411</sup>.
- A list of LCL’s isostatic graphite prices for January 1996, expressed in Spanish pesetas (it is not mentioned whether the prices are applicable only for the Spanish market). The prices in the list match the cartel target prices<sup>412</sup>.
- Another list of LCL isostatic graphite prices as from 9 January 1996; the prices in the list match the cartel target prices<sup>413</sup>.
- A list with SGL target prices for EDM graphite as from 1 January 1996. The list, dated July 1995, was faxed by Gelter-Ringsdorff to LCL on 16 July 1995, and has been provided by the later. It shows prices in line with the cartel target levels<sup>414</sup>.
- SGL’s tariffs for isostatic graphite products as from January 1996, with increases of 5 to 10% depending on grades and prices that match the cartel target levels<sup>415</sup>.

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<sup>406</sup> File, p.3380.

<sup>407</sup> File, p.1434.

<sup>408</sup> I(2), p.12.

<sup>409</sup> It is mentioned that Tokai and Ividen sell Group I CC/GP DB at DEM 43 and DEM 44 respectively.

<sup>410</sup> “*They would like to raise a price at 2990 yen/dm3 from beginning of 1996 with Ividen*” (Idem)

<sup>411</sup> File, p.843-859; e.g.: Group I CC/GP EU increase of 14.9% to FRF 200 (equivalent to DEM 58); EDM EU increase of 8.7% to FRF 200 (equivalent to DEM 58).

<sup>412</sup> File, p.749; e.g.: Group I CC/GP EU at ESP 4902, equivalent to DEM 58. According to LCL, this is a working document from Sofacel (LCL’s subsidiary in Spain), that shows the evolution of LCL prices in Spain (LCL(2), p.3).

<sup>413</sup> File, p.752; e.g. Group I CC/GP EU at DEM 51, EDM EU at DEM 57. According to LCL, this is a working document from Sofacel (LCL’s subsidiary in Spain), that shows the evolution of LCL prices in Spain (LCL(2), p.3).

<sup>414</sup> File, p.741; e.g.: Group I EDM EU at DEM 57. The list is drawn up on the basis of a previous list, shown in p.740; the prices in the original list, set for September 1995, have been deleted and replaced by the new prices, set for January 1996.

<sup>415</sup> File, p.149, pp.3077-3082; e.g.: Group I CC/GP EU and EDM EU at DEM 57.

- A list with SGL’s revised EDM prices for the United Kingdom as of 15 January 1996, dated January 1996 and signed by [...]. The prices in the list, are above the cartel target prices<sup>416</sup>.
- A fax dated 29 January 1996 from Mr [...] of Tokai Carbon Europe S.R.L. to Mr [...] of CIP whereby a new 12% price increase (further to the increase of 1 January 1996) is announced for all grades as from 1 March 1996 (document submitted by Tokai)<sup>417</sup>.
- The contemporaneous hand-written notes provided by UCAR relating to the European meeting of 7-8 February 1996 which show that the prices applied by SGL to EDM products match the cartel target levels<sup>418</sup>.
- A comparative list with SGL and UCAR prices for CC/GP products, dated 8 March 1996 and provided by UCAR, that shows SGL prices matching the cartel target levels<sup>419</sup>.
- A price increase announcement by SGL for extruded and isostatic graphite in the United Kingdom, dated 15 May 1996. The attached tariffs for continuous casting products as from 1 June 1996 show prices matching the cartel target levels<sup>420</sup>.
- SGL's tariffs for isostatic graphite products as from 1 June 1996. They show prices that match or are above the cartel target levels<sup>421</sup>.
- A classification of EDM grades provided by UCAR which also shows that SGL prices as from 1 June 1996 matched cartel target levels<sup>422</sup>.
- LCL’s internal announcement of tariffs applicable from 1 July 1996 (only distributed to Group subsidiaries and sales agents). The document shows price increases up to the cartel target levels<sup>423</sup>.
- LCL European tariffs for EDM as from 1 July 1996. They are above the cartel target prices<sup>424</sup>.
- An internal LCL note signed by Mr [**LCL employee**], dated 19 July 1996, with isostatic graphite price lists for Germany as from 1 June 1996. The prices in the list are above the cartel target prices<sup>425</sup>.

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<sup>416</sup> File, p.1179; e.g.: Group I EDM EU at DEM 67.

<sup>417</sup> File, p. 435.

<sup>418</sup> File, p.77; the 5<sup>th</sup> indent in the notes reads “- *THEIR R 8510/R8500 (73)/R8500X (57)/R8510 (81)*”.

<sup>419</sup> File, p.153; e.g.: Group I CC/GP MS at DEM 45.6, CC/GP EU at DEM 57.

<sup>420</sup> File, pp.3037-3040. E.g.: Group I CC/GP EU at 4450 GBP/block, equivalent to 50 DEM.

<sup>421</sup> File, pp.3060-3067. E.g.: Group I EDM EU at DEM 63, CC/GP EU at DEM 57.

<sup>422</sup> File, p.192; e.g.: Group I EDM EU at DEM 63.

<sup>423</sup> File, p.862-865; e.g.: Group I EDM EU is raised a 7% to FRF 214, equivalent to DEM 63. It is also announced that the MS discount is set at 12% for CC/GP, whereas the distributors’ discount (EDM) is kept at 20% (i.e., EDM DB at DEM 51).

<sup>424</sup> File, pp.2946-2949. E.g.: Group I EDM EU at FRF 214, equivalent to DEM 63; CC/GP EU at FRF 200, equivalent to DEM 59.

<sup>425</sup> File, pp.889-891; e.g.: Group I CC/GP EU at DEM 57, EDM EU at DEM 63.



- LCL EDM price list for Germany (Deutsche Carbone AG), valid from 1 July 1996. It shows prices above the cartel target levels (document undated; the fax date printed on the page is 24 July 1996)<sup>426</sup>.
- A product grouping provided by LCL (with the heading ““Prices of SGL’s EDM graphite””), dated 16 September 1996. It shows that the prices to be applied as from 1 October 1996 are in line with the cartel target levels<sup>427</sup>.

(285) In addition, the Commission is in possession of the following documents that demonstrate a consistent policy of price increases in this period:

- A fax dated 19 January 1996 from Mr [...] of Tokai to Ms [...] of Schunk Iberica (Tokai’s distributor in Spain) whereby a 10% price increase is announced (document submitted by Tokai)<sup>428</sup>.
- A fax dated 17 April 1996 from Mr [...] of Tokai to Ms [...] of Schunk Iberica whereby a new 4% price increase is announced for certain grades as from April 1996. Moreover, it is intended that prices as from October are increased a further 5% -subject to discussions- (document submitted by Tokai)<sup>429</sup>.
- A fax dated 11 November 1996 from Ms [...] of Schunk Iberica to Mr [...] of Tokai, whereby the Spanish distributor complains about Tokai’s proposal for 1997 prices. The cumulative price increase applied by Tokai in the period January 1994 to January 1997 amounts to 52.57% (document provided by Tokai)<sup>430</sup>.
- The exchange of mail between Ibiden and Intech at the end of 1996, submitted by Intech<sup>431</sup>. It shows that Ibiden attempted, but failed, to increase its prices by about 6% as from the beginning of 1997. On 2 October 1996 Intech complained by stating that “*we cannot accept another price increase for January 1997 (...) This would make an increase of 16%, less approximately 2.5% for import duties (...) in one year for the most common grades*”<sup>432</sup>. The reply of Ibiden (fax of 4 October 1996) proves that at the beginning of 1996 Ibiden had imposed a price increase of 10% for the year, and that Intech was charging prices in line with cartel target levels<sup>433</sup>. Ibiden’s intended increase was eventually postponed to August 1997<sup>434</sup>.

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<sup>426</sup> File, p.892; e.g. Group I EDM EU with block price of DEM 22019 (equivalent to DEM 63/dm3).  
<sup>427</sup> File, p.745; e.g.: Group I EDM EU at DEM 63. According to LCL, this is a working document from Sofacel (LCL’s subsidiary in Spain), established through contacts with competitors (LCL(2), p.3).  
<sup>428</sup> File, p.443.  
<sup>429</sup> File, p.445.  
<sup>430</sup> File, p.447.  
<sup>431</sup> File, pp. 3206-3214.  
<sup>432</sup> File, pp. 3207-3208.  
<sup>433</sup> “*I think that you remember the meeting in the end of January 1996 (...) Actually price increase is around 5% (not 10%) against our proposal we asked 10% increase in January meeting. Our proposal has not reached yet. The reason why we propose you increase the price are that you could increase your customers more than 10% in 1996. For instance G1 57DM/L → 63 DM/L. On the other hands our sales prices to you are big difference from target prices. For instance ED-11 at 33.4 DM/L → 51 DM/L. It is 35% lower. (We know every suppliers do not reach that, but our price is too difference we suppose*” (file, pp.3209-3210). It is also shown at pp. 3207, 3247 that Intech was selling Group I

- A fax from Mr [...] of Ibiden to the trading company [*Ibiden's trading agent*], dated 12 December 1996 (document provided by Ibiden). It shows that the local distributors of Toyo Tanso and Ibiden divided the Swedish market in equal shares<sup>435</sup>.

1997

(286) The Commission is in possession of the following documents proving implementation of the cartel target prices, as mentioned in table 4 above, during the year 1997:

- SGL's tariffs for isostatic graphite products as from January 1997, which show prices matching the cartel target levels<sup>436</sup>.
- An LCL internal note dated 20 March 1997, signed by Mr [*LCL employee*], with the company's prices for Germany as from 1 January 1997. The prices in the note match the cartel target levels<sup>437</sup>.
- LCL has also stated that the company left its tariffs unchanged in 1997, and applied its 1996 tariffs until the update of 1 March 1998 (which is coherent with the decisions of the 10<sup>th</sup> International meeting –see section (173) above–)<sup>438</sup>.
- Correlative documents provided by Ibiden:
  - An internal note dated 23 May 1997, where Mr [...] remarks: *“I think that we have to increase price any way. Because I think that we have actual results to have business, and TC and SGL truly is selling with 48 DM/L”*<sup>439</sup>.
  - An internal e-mail dated 10 June 1997: Mr [...] points out therein that *“I got phone call from Mr. [Tokai employee], and he was pressing me to inform him of schedule of increase price for ATAL, CIP and Morganite. It seems that Mr. [...] from SGL called Mr. [Tokai employee] about this (...) Our Customer are complaining us why Ibiden is selling only [...] with such low price. We request [...] to increase price with 49DM/B (this is the same price as SGL/TC)”*<sup>440</sup>.
  - The subsequent internal report of 17 June 1997 confirms that *“we proposed [customer] that we would like to increase price in order to follow competitors, since there is a problem in last European meeting*

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products at DEM 63. It can be remarked that DEM 51 and DEM 63 were the cartel target prices for this category of products at the end of 1996 (see table 4 above).

<sup>434</sup> File, p.3221.

<sup>435</sup> File, p.2345.

<sup>436</sup> File, pp.3051-3058. E.g.: Group I CC/GP EU at DEM 51, EDM EU at DEM 63.

<sup>437</sup> File, pp.896-900. E.g.: Group I CC/GP EU at DEM 57, EDM EU at DEM 63.

<sup>438</sup> LCL(2), p.3.

<sup>439</sup> File, p.2448.

<sup>440</sup> File, pp. 2455-2456.

(...) *As soon as I receive answer from [customer] for increase of price, I will let SGL and TC know*<sup>441</sup>.

- Intech has provided its tariffs for August 1997. The prices shown therein are in line with the cartel target levels<sup>442</sup>.
- NSCC has provided a fax from its trading company [...] dated 27 August 1997. It contains a report with “current market information in Europe”, that describes the degree of respect of the agreements encountered in several European markets. It is, in particular, stated:

**“United Kingdom:** (...) *UK is a difficult market due to the strong position of TOYO TANSO through their distributor ERODEX. This distributor is very aggressive and respectful of prices which means he leaves little margin to newcomers who also have the policy to respect these agreements (...).*

**Italy:** (... ) *The size of the market is comparable to France but competition is much more difficult because prices are usually not respected and there are very big differences between agreed prices and real selling prices (...).*

## **2. RESULT OF AD<sup>443</sup> MARKETING EFFORT:**

### **Price situation in France:**

*AD and INTECH respect prices as much as possible*

*NOVOTEC<sup>444</sup> and CARBONE LORRAINE usually respect prices, except in the case of local/regional distributors, which are difficult to control (such distributors are traditionally more independent)*

*SGL (RINGSDORFF) sometimes causes problems*

*GTI (TOYO TANSO) usually do not respect agreements and also display fake information in front of other distributors. Thanks to this strategy, they can get significant market shares*

(...)

*The biggest problem in terms of prices is the attitude of TOYO TANSO, who could gain significant market share by not respecting prices*<sup>445</sup>.

- The contemporaneous report prepared by Mr [...] of Toyo Tanso for the eleventh International meeting of 15 September 1997 quotes LCL statement

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<sup>441</sup> File, pp. 2459-2460.

<sup>442</sup> File, p. 3245, 3247.

<sup>443</sup> N.B.: AD refers to Albert Denis, NSC/ NSCC’s distributor in France (see the subject section in the fax cover page).

<sup>444</sup> N.B.: Distributor of Tokai’s products in France.

<sup>445</sup> NSCC(2), app.4.2.w.

that “In France, target prices are applied for EDM and General purpose since Sept. 97”<sup>446</sup>.

1998

(287) The Commission is in possession of the following documents proving implementation of the cartel target prices, as mentioned in table 4 above, during the year 1998:

- SGL’s price list of isostatic graphite for continuous casting for deliveries from February 1998. It shows prices in line with the cartel target levels<sup>447</sup>.
- A report dated 5 June 1998 from the French distributor Albert Denis, provided by NSCC. It states that:

*“Till end-MAR’98 prices remained quite stable, ranging between*

*[EDM Grade Group I] sold at FRF 200-240/dm<sup>3</sup>*<sup>448</sup>

*[EDM Grade Group II] sold at FRF230-280/dm<sup>3</sup>*

*Recently, prices dropped dramatically, of approximately 20%:*

*[EDM Grade Group I] sold at FRF 165-210/dm<sup>3</sup>*<sup>449</sup>

*[EDM Grade Group II] sold at FRF180-230/dm<sup>3</sup>*

*(Above prices correspond to competitors’ prices for comparable types of graphite).*

*(...)*

*However it is important to keep in mind that no customer is aware of the lowest selling price possible for graphite: between 1985 and 1990, selling price was between FRF 350-400/dm<sup>3</sup> for [EDM Grade Group II] and of course, a price of FRF250-300 would have been considered as very low. This means that the 6 suppliers of graphite are managing variations of prices. Customers do not really understand how price could change so much and they now consider that a reasonable price for [EDM Grade Group II] is around FRF200-220/dm<sup>3</sup> because it is cheaper than in 1997.*

*We strongly fear that both under the pressure of customers as well as of distributors from Oyonnax, price on the whole market will follow the lowest price level now available.*

*[EDM Grade Group I] sold at FRF 160-180/dm<sup>3</sup>*

*[EDM Grade Group II] sold at FRF180-200/dm<sup>3</sup>*

*This would represent a significant decrease of our selling price compared to 1997 (more than 20%) and thus a dramatic collapse of our gross margin.*

*Current conditions of market, which we consider as being absurd because the 6 manufacturers and their distributors determine sales conditions) are undoubtedly linked with the decrease of YEN currency face to FRANC(...)”*<sup>450</sup>.

(288) Therefore, although several sources show that as from 1997 the cartel participants had difficulties in attaining the target prices agreed at the meetings<sup>451</sup>, it is apparent that

<sup>446</sup> TTS, p.7, app.8 (see recital (178) above).

<sup>447</sup> File, p.1185; e.g.: Group I CC/GP EU at 4450 GPB/block, equivalent to 64 DEM/dm<sup>3</sup>.

<sup>448</sup> FRF 220 is equivalent to DEM 66, in line with the cartel target prices.

<sup>449</sup> FRF 190 is equivalent to DEM 57.

<sup>450</sup> NSCC(2), app.4(1)(b).

<sup>451</sup> See e.g. Tokai’s prices shown in pp. 457 and 460 of the File; *Ibiden*’s prices shown in pp. 1500 and 1502 of the File; Toyo Tanso’s prices shown in pp. 1500 and 1502 of the File.

the end of the cartel arrangements was immediately followed by a sharp drop of isostatic specialty prices.

#### 1.4.2. *Unmachined extruded specialty graphite*

##### 1.4.2.1. History of the cartel

- (289) The two main players on the European market for extruded specialty products, SGL and UCAR, have admitted participation in a number of bilateral meetings dealing with that market in the period from 1993 to the end of 1996.
- (290) According to UCAR, at some point during 1993 a senior UCAR executive received a telephone call from Mr [...] of SGL inviting him to participate in a meeting regarding (extruded) specialties<sup>452</sup>.
- (291) Both SGL and UCAR confirm that the meeting took place in Paris on **24-25 February 1993**<sup>453</sup>. Participants were UCAR (Mr [...], Mr [...]), SGL (Mr [...], Mr [...]) and Conradty (a small company active in this market, represented on that occasion by Mr [...] and Mr [...]), and the discussions focused on block (i.e. semi-finished) extruded products<sup>454</sup>.
- (292) UCAR recalls the topics of the meeting:

*“The discussions focussed on the overall positions of the companies and the necessity of improving pricing levels in the market for unmachined extruded product (...) There were no discussions of volume of sales nor individual customers.*

*A matrix relating to unmachined extruded products was created on a white board (...) The matrix referenced two grades –AGR and AGX-. The group agreed to preserve the “traditional” price difference of approximately 15% between the two grades (AGX is impregnated and consequently more expensive). The group further agreed that the price of 500mm square or round product would be the reference price from which the prices of the other products were determined (...)*

*In relation to proposed price increases, the representatives of the German companies, and in particular, Mr [...], favoured an aggressive approach (...) However, no specific agreement was reached concerning price or volume. The participants essentially provided a guiding principle: that prices should be increased, and further regular meetings between representatives of the companies were anticipated in order to allow general coordination regarding the pricing of unmachined extruded products”<sup>455</sup>.*

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<sup>452</sup> UCS, p.3.

<sup>453</sup> SGL has provided the travel expense report of Mr [...]. It must be noted that SGL mentions a previous bilateral meeting with UCAR (not confirmed by this company) on 15 January 1993 in London.

<sup>454</sup> SGLS, p.18, app.11; UCS, p.3-4, app.2. According to SGL, unmachined products involve approx. 35-40% of the extruded graphite market. UCAR explains that “it was difficult to achieve any common approach (in relation to machined products) given that machining costs were not transparent, and that the products were often customised and made to order”.

<sup>455</sup> UCS, p.3-4, app.2

(293) SGL and UCAR confirm that their representatives at technical level (in particular Mr [...] and Mr [...] for UCAR, Mr [...] and Mr [...] for SGL) subsequently met to discuss unmachined extruded product pricing<sup>456</sup>.

(294) According to UCAR, no fixed number of meetings was scheduled, but typically about two a year took place. UCAR says that after the first meeting Conradty ceased its participation (which is not confirmed by SGL's version)<sup>457</sup>.

(295) UCAR explains the object of the meetings as follows:

*“The essential understanding on unmachined extruded product between SGL and UCAR was that they would only compete on quality and service, but not on price. General price increases were discussed with SGL and it was always agreed as to whether UCAR or SGL would be the first to introduce a price increase. UCAR introduced the first price increase, and thereafter SGL led subsequent price increases. Prices in each country were increased more or less simultaneously, but UCAR and SGL did not prearrange the order in which prices would be increased.*

*Mr. [UCAR employee] states that SGL frequently sought to discuss an allocation of customers between companies but that he refused to come to any agreement on the issue. Any discussions regarding specific customers concerned primarily whether agreed prices were being charged to specific customers, or whether specific customers were getting discounts from the agreed upon prices*

*Both companies continued to publish price lists concerning unmachined extruded products. SGL and UCAR would exchange copies of their price lists”<sup>458</sup>.*

(296) SGL describes those meetings as meetings “at expert level”, as opposed to the “top” level meeting of Paris. According to SGL, the first “expert level” meeting took place in **May 1993** in Frankfurt<sup>459</sup>, with participation of SGL (host), UCAR and Conradty. The topic of the meeting was the rise of prices, particularly in Germany, England, France and Italy and the withdrawal of discounts. In addition, each participant reported on the level of prices in the different European markets<sup>460</sup>.

(297) SGL's statement confirms UCAR's assertion that the bilateral SGL-UCAR meetings took place on average twice a year (generally in Frankfurt or Geneva)<sup>461</sup>. SGL says that the agenda of the meetings was always the same, and mainly concerned prices and the classification of products<sup>462</sup>. According to SGL, there was also a “rotation” of customers (the companies manoeuvred in order to share the key accounts by bid-rigging contracts). Regarding the agreements mentioned by UCAR as to which

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<sup>456</sup> UCS, p.4; SGLS, p.19-21, app.11

<sup>457</sup> UCS, p.4

<sup>458</sup> UCS, p.4-5

<sup>459</sup> SGL provides the travel expense report of Mr [...]. It must be noted that SGL also refers to a previous meeting on 26 March 1993 in Manchester without clarifying the precise nature of the meeting (“expert level” or other) (SGLS, app.11).

<sup>460</sup> SGLS, p.19-20, app.11

<sup>461</sup> In addition, SGL alleges that Conradty participated in about two such meetings in the second half of 1993. The Commission has no evidence of this participation.

<sup>462</sup> However, when referring to the French market SGL states that “equivalence between the products of UCAR and SGL did not need to be established as UCAR had historically set the standards in this business which others, including SGL, followed” (SGLS, app.13)

company would be the first to introduce the price increases, SGL says that prior to 1995 UCAR used to be first, but after 1995 the sequence reversed<sup>463</sup>. There were no agreements on capacities or regarding outsiders<sup>464</sup>.

- (298) SGL's version differs from UCAR's as regards the allocation of customers. In reference to the meetings that concerned the French market, SGL states that "*from 1995, it was also agreed that the market shares of SGL and UCAR in France should be frozen. In addition, some individual customers were allocated, sometimes including customers in other countries. In addition to the meetings on pricing, there were also additional meetings on specific customers. It was agreed who would get the customer for the relevant year by means of agreeing the discount to be offered to the customer*"<sup>465</sup>.
- (299) SGL also explains that the meetings took place separately from the isostatic graphite market meetings. Usually Mr [SGL employee] took advantage of the extruded graphite meetings to report to Mr [UCAR employee] about the isostatic graphite meetings with the Japanese<sup>466</sup>. UCAR explains that it was on one of those occasions that it was invited by SGL to participate in European level meetings specifically concerning isostatic products<sup>467</sup>.
- (300) Both SGL and UCAR declare that, in order to carry out the price agreements, and in particular with a view to ensure parity in the face of currency fluctuations, their representative at the meeting usually passed internal notes to local managers at country level. These people "fine tuned" the price lists before sending them to the customers (according to SGL this concerned about 70 to 100 customers in Europe)<sup>468</sup>.
- (301) On the basis of the information submitted by SGL and UCAR<sup>469</sup>, the Commission is aware of the following bilateral meetings between SGL and UCAR at "expert level":
- on 11 June 1993 in Strasbourg<sup>470</sup>;
  - on 11 October 1993 in Sulzbach<sup>471</sup>;
  - on 21 July 1994 in Paris<sup>472</sup>;
  - at the end of 1994 in Albertville<sup>473</sup>;

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<sup>463</sup> Moreover, SGL explains that "*prices were increased once a year on the market, initially in September but then later in June. Before such price increases were agreed, this sometimes required two meetings, the first for preparation and the second to decide on the new prices*" (SGLS, app.13).

<sup>464</sup> SGLS, p.19-21

<sup>465</sup> SGLS, app.13

<sup>466</sup> SGLS, p.19-20

<sup>467</sup> UCS, p.4

<sup>468</sup> SGLS, p.19-20; UCS, p.5

<sup>469</sup> SGLS, app.11; UCS, app.II. SGL points out that, in addition to the managers meetings referred to above, there were approximately quarterly meetings between UCAR and SGL aimed to go into the detail of the same topics. Such meetings were usually held in the production sites of the companies, such as Megeve or Albertville.

<sup>470</sup> SGL provides the travel expense report of Mr [...].

<sup>471</sup> SGL provides the travel expense report of Mr [...].

<sup>472</sup> SGL provides the travel expense report of Mr [...].

- in 1995 in Annecy or Megeve<sup>474</sup>;
  - on 8-10 November 1995 in Albertville
  - on 29 November 1996 in Geneva<sup>475</sup>. The Geneva meeting seems to be the last European-level meeting on unmachined extruded products.
- (302) In addition to the face-to-face meetings, UCAR and SGL admit that they had regular telephone contacts with each other. Mr [...], Mr [...] and occasionally Mr [...], from SGL, would on average exchange two or three calls a week with Mr [...] and Mr [...] from UCAR. According to SGL, after 1996 the frequency was reduced to two to three calls a month<sup>476</sup>.
- (303) SGL submitted information on local (national) meetings on extruded graphite held in Italy, the United Kingdom and Germany. The French market was dealt with in the context of the bilateral meetings for the whole European market<sup>477</sup>. UCAR has provided some information on local Italian meetings.

#### 1) Italian market meetings:

- (304) UCAR asserts that the first contacts with SGL in the Italian market took place in the early nineties, at a point at which specialty prices in Italy were slumping. Representatives of UCAR contacted Mr [*SGL employee*] of SGL in order to arrange for a meeting, that eventually took place in Milan<sup>478</sup>. According to SGL, that first meeting took place between Mr [*SGL employee*] (SGL) and Mr [*UCAR employee*] (UCAR) on 25 November 1992. Both UCAR and SGL confirm that, although the possibilities of price rises were discussed, the meeting basically served to become mutually acquainted. UCAR alleges that Mr [*SGL employee*] said that he was in contact with “everybody else” in the market and asked why UCAR’s representative had previously refused the contacts. According to UCAR, Dr [*SGL employee*] pressed to attend group meetings of local competitors in the Italian market, but UCAR refused. UCAR admits, nevertheless, that telephone conversations or meetings with SGL went on approximately every other month<sup>479</sup>.
- (305) SGL confirms that the usual subject of the meetings was the execution of price increases as well as dealing with mutual complaints about price cuts. In particular, SGL claims that UCAR was absolute leader in the Italian market of extruded graphite, with about 90% market share, and dumped prices in order to keep competitors out of the market.<sup>480</sup>

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<sup>473</sup> Meeting mentioned by both SGL and UCAR. UCAR declares that there were probably two meetings in 1994, but is not precise as to the exact locations and dates.

<sup>474</sup> According to UCAR the 1995 meeting took place in Megeve; according to SGL it took place in Annecy.

<sup>475</sup> SGL provides the travel expense report of Mr [...].

<sup>476</sup> UCS, p.4; SGLS, p.22. SGL says that Mr [*SGL employee*] occasionally telephoned Conradty.

<sup>477</sup> SGLS, p.21-22 & app. 8, 9, 12, 13

<sup>478</sup> However, UCAR claims to have rejected previous attempts of contact by Dr [*SGL employee*] around 1988-89 (UCS, p.7).

<sup>479</sup> SGLS, app.8; UCS, p.7.

<sup>480</sup> SGLS, app.8



(306) UCAR has not retained precise dates and locations of the meetings. According to SGL's submission, there were further meetings between UCAR's *[UCAR employee]* and SGL's *[SGL employee]* on the extruded Italian market, always in Milan, on the following dates: on 12 January 1993; probably on 19 January 1993; on 27 October 1993; probably at the end of 1993<sup>481</sup>; on 29 April 1994; on 4 October 1994; on 6 December 1994; on 5 January 1995. According to SGL, the meeting on 5 January 1995 was the last meeting between Mr *[SGL employee]* and Mr *[UCAR employee]*. Mr *[UCAR employee]*'s successor, Mr *[UCAR employee]*, was introduced on this occasion (he would later become a participant in the isostatic meetings -see section 1.4.1 above-, something that Mr *[UCAR employee]* had always rejected). However, UCAR states that it appears that the last meeting with Mr *[SGL employee]* was a lunch meeting on 12 January 1996<sup>482</sup>.

## 2) United Kingdom market meetings:

(307) According to SGL, the only competitors on the UK market for extruded graphite are UCAR and SGL<sup>483</sup>. The meetings in this market were therefore bilateral, with Mr [...] usually representing UCAR and Mr [...] representing SGL<sup>484</sup>. Both SGL and UCAR recall that UK extruded graphite meetings probably started in Heathrow on 14-15 January 1993<sup>485</sup>.

(308) SGL also states that the meetings in the United Kingdom were "ad hoc" meetings, whose frequency and timing depended on the evolution of prices in Europe and the need to reflect them in the United Kingdom. The subject of the meetings was target prices for semi-finished product<sup>486</sup>. The competitors agreed who would announce what price on what date and the order of announcement. According to SGL, the agreements between competitors did not specifically involve customer allocation.

(309) SGL says that in the UK market there were much fewer meetings on extruded graphite than on isostatic graphite. Mr. *[SGL employee]* could specifically identify only two of them, on 24 November 1994 and on 9 February 1996. However, SGL remarks that "there was a price increase in June (1 June for SGL and 17 June for UCAR) so that it is possible that there was another brief meeting after the February 1996 meeting or at least telephone calls to agree this price increase"<sup>487</sup>. The company also notes that in addition to meetings there were telephone contacts between UCAR and SGL on extruded graphite (less frequent than for isostatic graphite, once every two months in general) where the subject was always prices<sup>488</sup>. According to UCAR, they generally did not discuss individual accounts<sup>489</sup>.

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<sup>481</sup> This meeting, together with other two or three for which precise data have not been retained, are evoked by SGL to have taken place in France or Italy.

<sup>482</sup> SGLS, app.8; UCS, p.8

<sup>483</sup> UCAR explains that the specialties market in the United Kingdom is composed mainly of a few large customers.

<sup>484</sup> SGLS, app.9

<sup>485</sup> SGLS, app.9, UCS, p.10

<sup>486</sup> According to SGL, as 95% of sales of extruded graphite relate to semi-finished product, no agreement was necessary on finished product prices (SGLS, app.9).

<sup>487</sup> SGLS, app.9

<sup>488</sup> SGLS, app.9

<sup>489</sup> UCS, p.10

### 3) German market meetings:

- (310) SGL has described some contacts with competitors in the German extruded graphite market. Participants in this market are SGL, UCAR and Conradty; however, Conradty has no production of fine graphite, but buys it from other manufacturers<sup>490</sup>.
- (311) According to SGL, SGL and Conradty met on four occasions between the beginning of 1994 and the beginning of 1996<sup>491</sup>. On three of those occasions the meetings took place near Nuremberg. SGL also declares that a further meeting took place in February 1996 in Sulzbach. UCAR did not attend the meetings, but was reported on the results. SGL was represented by Mr [...] and [...]; Conradty was represented by Mr [...] and [...]. In addition to the meetings, SGL admits that there were regular telephone contacts between Mr [SGL employee] and Mr [Conradty employee] in which key accounts were discussed<sup>492</sup>.
- (312) SGL declares that the meetings focused on the prices for semi-finished materials, price cuts (that led to substantial changes in market shares) and discussions about particular customers<sup>493</sup>.

#### 1.4.2.2. Implementation of the cartel decisions

- (313) From the description of the facts, it can be concluded that both UCAR and SGL implemented the conspiracy to increase extruded graphite prices on the Community/EEA market. It has been established, in particular, that 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<sup>494</sup>. The parties did closely monitor the implementation of their agreements through the organisation of regular meetings among them, the usual subject of which was the execution of price increases and the complaints due to price cuts<sup>495</sup>. They further agreed who would announce what price on what date and the order of announcement<sup>496</sup>. The new target prices were thus effectively announced to customers in turn by one of the parties<sup>497</sup>. The parties have also admitted that, in order to carry out the price agreements, their 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<sup>498</sup>.

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<sup>490</sup> SGLS, app.12.

<sup>491</sup> SGL clarifies that both companies had had previous contacts in the context of commercial relations (Conradty was client of SGL).

<sup>492</sup> SGL also explains that Mr [...] was, in any event, the person responsible in Conradty for the purchase of semi-finished materials.

<sup>493</sup> SGL, app.12

<sup>494</sup> See recitals (295) and (298) above.

<sup>495</sup> See recital (305) above.

<sup>496</sup> See recital (308) and (309) above.

<sup>497</sup> See recital (295) and (297)above.

<sup>498</sup> See recital (300) above.

## **2. LEGAL ASSESSMENT**

### **2.1. The EC Treaty and the EEA Agreement**

#### *2.1.1. Relationship between the EC Treaty and the EEA Agreement*

- (314) The arrangements described applied to all the EEA countries for which a demand for specialty graphite exist, that is, all the present Member States except Ireland (for which there is no record of sales available), plus Norway and Iceland (there is no information on sales to Liechtenstein). The arrangements in question covered Austria, Sweden and Finland prior to their accession to the Community on 1 January 1995.
- (315) The EEA Agreement, which contains provisions on competition analogous to those of the Treaty, came into force on 1 January 1994. This Decision therefore also represents the application as from that date of the rules on competition under the EEA Agreement (in particular Article 53(1) thereof) to the arrangements to which objection is taken.
- (316) In so far as the arrangements affected competition in the Common market and trade between Member States, Article 81 of the Treaty is applicable. Regarding the operation of the cartel arrangements in Norway and Iceland, and in so far as the cartel operations had an effect on trade between the Community and EFTA countries or between EFTA countries themselves, Article 53 of the EEA Agreement is applicable.

#### *2.1.2. Jurisdiction*

- (317) Where an agreement or practice affects only trade between Member States of the Community, the Commission retains competence and applies Article 81 of the Treaty. On the other hand, where an agreement affects only trade between EFTA States, the EFTA Surveillance Authority (“ESA”) is alone competent and will apply the competition rules set out in Article 53 of the EEA Agreement .
- (318) In this case, the Commission is the competent authority to apply both Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement on the basis of Article 56 of the EEA Agreement since the cartel had an appreciable effect on competition as well as on trade between the Member States .

### **2.2. Application of Article 81 of the Treaty and Article 53 of the EEA Agreement**

#### *2.2.1. Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement*

- (319) Article 81(1) of the Treaty prohibits as incompatible with the common market all agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions, limit or control production and markets, or share markets or sources of supply.
- (320) Article 53(1) of the EEA Agreement (which is modelled on Article 81(1) of the Treaty) contains a similar prohibition. However, the reference in Article 81(1) to “*trade between Member States*” is replaced in the former provision by a reference to “*trade between contracting parties*” and the reference to competition “*within the*

*common market*” is replaced by a reference to competition “*within the territory covered by ... (the EEA) agreement*”.

### 2.2.2. *Agreements and concerted practices*

- (321) Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement prohibit agreements, decisions of associations and concerted practices.
- (322) Such an *agreement* can be said to exist when the parties adhere to a common plan that limits or is likely to limit their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. It does not have to be made in writing; no formalities are necessary, and no contractual sanctions or enforcement measures are required. The fact of agreement may be express or implicit in the behaviour of the parties.
- (323) In Joined Cases T-305/94 *Limburgse Vinyl Maatschappij N.V. and Others v Commission (PVC II)*<sup>499</sup> the Court of First Instance stated that “*it is well established in the case law that for there to be an agreement within the meaning of Article [81(1)] of the Treaty it is sufficient for the undertakings to have expressed their joint intention to behave on the market in a certain way*”<sup>500</sup>.
- (324) Article 81 of the Treaty and Article 53 of the EEA Agreement draw a distinction between the concept of “*concerted practice*” and that of “*agreements between undertakings*” or of “*decisions by associations of undertakings*”; the object of the distinction is to bring within the prohibition of that article a form of co-ordination between undertakings by which, without having reached the stage where an agreement properly so-called has been concluded, they knowingly substitute practical co-operation between them for the risks of competition<sup>501</sup>.
- (325) The criteria of coordination and cooperation laid down by the case law of the Court, far from requiring the elaboration of an actual plan, must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition, according to which each economic operator must determine independently the commercial policy which it intends to adopt in the common market. Although that requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it strictly precludes any direct or indirect contact between such operators the object or effect of which is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market<sup>502</sup>.
- (326) Thus conduct may fall under Article 81(1) of the Treaty as a “*concerted practice*” even where the parties have not explicitly subscribed to a common plan defining their

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<sup>499</sup> Joined Cases T-305/94 etc. *Limburgse Vinyl Maatschappij N.V. and others v Commission (PVC II)*, [1999] ECR II-931, at paragraph 715.

<sup>500</sup> The case law of the Court of Justice and the Court of First Instance in relation to the interpretation of Article 81 of the Treaty applies equally to Article 53 of the EEA Agreement. See recitals (4) and (15) as well as Article 6 of the EEA Agreement, Article 3(2) of the EEA Surveillance and Court Agreement as well as Case E-1/94 of 16.12.94, paras 32-35.

<sup>501</sup> Case 48/69 *Imperial Chemical Industries v Commission* [1972] ECR 619 at paragraph 64.

<sup>502</sup> Joined Cases 40-48/73, etc. *Suiker Unie and others v Commission* [1975] ECR 1663.

action in the market but knowingly adopt or adhere to collusive devices which facilitate the coordination of their commercial behaviour<sup>503</sup>.

- (327) Although in terms of Article 81(1) of the Treaty the concept of a concerted practice requires not only concertation but also conduct on the market resulting from the concertation and having a causal connection with it, it may be presumed, subject to proof to the contrary, that undertakings taking part in such concertation and remaining active in the market will take account of the information exchanged with competitors in determining their own conduct on the market, all the more so when the concertation occurs on a regular basis and over a long period<sup>504</sup>.
- (328) It is not necessary, particularly in the case of a complex infringement of long duration, for the Commission to characterise the conduct as exclusively one or other of these forms of illegal behaviour. The concepts of agreement and concerted practice are fluid and may overlap. Indeed, it may not even be possible realistically to make such a distinction, as an infringement may present simultaneously the characteristics of each form of prohibited conduct, while when considered in isolation some of its manifestations could accurately be described as one rather than the other. It would however be artificial analytically to sub-divide what is clearly a continuing common enterprise having one and the same overall objective into several discrete forms of infringement. A cartel may therefore be an agreement and a concerted practice at the same time. Article 81 of the Treaty lays down no specific category for a complex infringement of the type encountered in this case<sup>505</sup>.
- (329) In *PVC II* (see recital (323) above), the Court of First Instance stated that “[i]n the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the infringement precisely, for each undertaking and for any given moment, as in any event both those forms of infringement are covered by Article [81] of the Treaty”.
- (330) An “agreement” for the purposes of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement does not require the same certainty as would be necessary for the enforcement of a commercial contract at civil law. Moreover, in the case of a complex cartel of long duration, the term “agreement” can properly be applied not only to any overall plan or to the terms expressly agreed but also to the implementation of what has been agreed on the basis of the same mechanisms and in pursuance of the same common purpose.
- (331) As the Court of Justice (upholding the judgment of the Court of First Instance) pointed out in Case C-49/92 *P Commission v Anic Partecipazioni SpA*<sup>506</sup>, it follows from the express terms of Article 81(1) of the Treaty that an agreement may consist not only in an isolated act but also in a series of acts or a course of conduct.

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<sup>503</sup> See also the judgment of the Court of First Instance in Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, at paragraph 256.

<sup>504</sup> See also Judgement of the Court of Justice in Case C-199/92 *P Hüls v Commission*, [1999] ECR I-4287, at paragraphs 158-166.

<sup>505</sup> See again the judgement of the Court of First Instance in Case T-7/89 *Hercules v Commission*, at paragraph 264.

<sup>506</sup> [1999] ECR I-4125, at paragraph 81

- (332) A complex cartel may thus properly be viewed as a single continuing infringement for the time frame in which it existed. The agreement may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. The validity of this assessment is not affected by the possibility that one or more elements of a series of actions or of a continuous course of conduct could individually and in themselves constitute a violation of Article 81(1) of the Treaty.
- (333) Although a cartel is a joint enterprise, each participant in the agreement may play its own particular role. One or more may exercise a dominant role as ringleader(s). Internal conflicts and rivalries or even cheating may occur, but will not however prevent the arrangement from constituting an agreement/concerted practice for the purposes of Article 81(1) of the Treaty where there is a single common and continuing objective.
- (334) The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not rule out its responsibility for the infringement as a whole, including acts committed by other participants but which share the same unlawful purpose and the same anticompetitive effect. An undertaking which takes part in the common unlawful enterprise through actions which contribute to the realisation of the shared objective is equally responsible, for the whole period of its adherence to the common scheme, for the acts of the other participants pursuant to the same infringement. This is certainly the case where it is established that the undertaking in question was aware of the unlawful behaviour of the other participants or could have reasonably foreseen or been aware of them and was prepared to take the risk<sup>507</sup>.

### 2.2.3. *The nature of the infringements in this case*

- (335) This procedure involves two different cartels –concerning the isostatic and extruded specialty graphite markets- and 8 suppliers. SGL and UCAR are the only producers involved in the two cartel arrangements that are the subject of this Decision
- (336) It is apparent from the facts described in the first part of this Decision that the collusion among the producers of isostatic specialty graphite affecting the Community started as early as in the mid 1970s, with contacts between the European suppliers LCL, Schunk and Ringsdorff. However, the Commission has evidence of meetings between European and Japanese suppliers only as from late 1988. These meetings went on until 1991, when they were discontinued<sup>508</sup>. The operations of the cartel during this period are therefore not within the scope of this Decision<sup>509</sup>.
- (337) It is not necessary, in order for there to be an infringement of Article 81(1) of the Treaty, for the participants to have agreed in advance upon a comprehensive common plan. The concept of “agreement” in Article 81(1) of the Treaty would apply to the inchoate understandings and partial and conditional agreements in the bargaining process which lead up to the definitive agreement. Further, the process of negotiation and preparation culminating in the adoption of an overall plan to regulate the market

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<sup>507</sup> Judgement of Court of Justice in *Anic*, at paragraph 83.

<sup>508</sup> See section 1.4.1 above.

<sup>509</sup> See section 2.2.7 below.

may well also (depending on the circumstances) be correctly characterised as a concerted practice.

(338) For the purpose of setting the fines in this case, however, the Commission will begin its assessment with the definitive adoption and implementation by the producers of the two cartel plans.

– Cartel in the market of isostatic specialty graphite:

(339) In the first Top Level meeting in Gotenba on 23 July 1993, the major producers of isostatic graphite -SGL, LCL, Ibiden, Tokai, Toyo Tanso, NSC/ NSCC- agreed the basic principles by which they would cartellise the world market for isostatic specialty graphite in blocks and cut blocks. 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. They also discussed arrangements aiming to respect each other's existing customers. A monitoring and enforcement scheme was set up<sup>510</sup>.

(340) This plan was subscribed by all the participants and subsequently adhered to by Intech (February 1994), and UCAR (February 1996). It was implemented over a period of several years employing the same mechanisms and pursuing the same common purpose of eliminating competition.

– Cartel in the market of extruded specialty graphite:

(341) The Paris meeting of 24-25 February 1993 marked the starting date of regular collusion between UCAR and SGL in the market for unmachined extruded specialty. The two parties reached an agreement that prices had to be increased and further regular meetings held in order to attain a general coordination of prices<sup>511</sup>.

(342) Therefore, from July 1993 to February 1998 there is ample evidence to illustrate the existence of a single and continuous collusion at world level affecting the isostatic specialty market. The same applies from February 1993 to November 1996 regarding the market of extruded specialty. Indeed, in both cases the parties expressed, through their respective [*members of top level management*] and [*members of top level management*], a joint intention to behave on the market in a certain way, and adhered to a common global plan to limit their individual commercial conduct in areas where they could have competed.

(343) In the isostatic market, the agreement to enter into a global plan with a view to restrict competition can therefore be dated back to at least July 1993. It revived previous practices, discontinued in 1991, which dated back to at least 1988. The parties subsequently implemented their plan over a period of more than four and a half years. The arrangements in the extruded market started in February 1993 and went on for more than three and a half years. In both cases, the plan of the parties was intended to achieve a major anti-competitive economic aim: preventing any competition on prices (see e.g. recitals (126), (130), (292) and (293) above).

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<sup>510</sup> See recital (128) et seq. above.

<sup>511</sup> See recital (291) et seq. above.

- (344) The implementation of that plan involved a complex of collusive arrangements, specific agreements and/or concerted practices, in pursuit of the same common objective of eliminating competition. The undertakings participating in the cartel arrangements knew that they were contributing to an overall plan with a common unlawful object.
- (345) Given the common design and common objective of eliminating competition in the two markets, the Commission considers that the collusive arrangements had as their object the restriction of competition within the meaning of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement. These agreements are described in detail in the factual part of this Decision. Such description is supported by widespread and clear evidence, systematically referred to throughout the text.
- (346) The working-out of the plan at regular meetings did not give rise to separate “agreements” as regards either isostatic or extruded graphite, but constituted the continuous implementation of two overall illegal schemes. For each market, therefore, the conduct in question constituted a single continuing infringement of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement.
- (347) Given their similarity of method, as well as the fact that the two infringements concerned neighbouring products and that SGL and UCAR were members of both schemes (in addition to other members which participated only in the isostatic cartel), the Commission considers it appropriate to treat the agreements covering the two different products in one and the same procedure. Therefore, this Decision relates to two separate infringements of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement.
- (348) In this Decision the Commission has analysed the cartel arrangements in the markets for isostatic and extruded specialty graphite, and has identified the participants in each infringement. The Decision thus permits each addressee to obtain a clear picture of the objections made against it.

#### *2.2.4. Restriction of competition*

- (349) The two cartel agreements affecting isostatic and extruded specialty graphite individually had the object and effect of restricting competition in the Community and EEA.
- (350) Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement expressly include as restrictive of competition agreements and concerted practices which
- directly or indirectly fix selling prices or any other trading conditions;
  - limit or control production, markets or technical development;
  - share markets or sources of supply.
- (351) Price fixing was the essential objective of the two horizontal arrangements under consideration in this case. Price being the main instrument of competition, the various collusive arrangements and mechanisms adopted by the producers in the two cartels were ultimately aimed at an inflation of the price to their benefit and above the level which would be determined by conditions of free competition. Price fixing by its very



nature restricts competition within the meaning of both Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement.

(352) The two cartels have to be considered in the light of all the circumstances, but in both cases the principal aspects of the complex of agreements and arrangements which can be characterised as restrictions of competition are:

- fixing of prices;
- exchange of commercial information (e.g. shipment records, information on specific customers, price levels)

and, specific to the infringement in the isostatic specialty market:

- fixing of trading conditions (premiums, discounts, billing currency, exchange rates);
- occasional exchanges of information, in particular at local level, concerning the repartition of major customers;

(353) Participants in the two cartels implemented these principal aspects mainly by:

- agreeing concerted price increases;
- circulating lists of current and future target prices in order to coordinate price increases;
- devising and applying a reporting and monitoring system to ensure the implementation of their restrictive agreements;
- participating in regular meetings and having other contacts in order to agree the restrictions and to implement and/or modify them as required.

(354) As mentioned, these kinds of arrangements have as their object the restriction of competition within the meaning of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement. It is settled case-law that for the purpose of application of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement there is no need to take into account the actual effects of an agreement when it has as its object the prevention, restriction or distortion of competition within the common market. Consequently, it is not necessary to show actual anti-competitive effects where the anti-competitive object of the conduct in question is proved<sup>512</sup>. In this case, however, the Commission considers that, on the basis of the elements which are put forward in this Decision, it has also proved that the anticompetitive cartel decisions have been implemented and that therefore actual anti-competitive effects of the cartel arrangements have taken place. Whilst the competition-restricting object of the arrangements is sufficient to support the conclusion that Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement apply, the competition-restricting effects of those arrangements have nonetheless also been established and lead to the same conclusion.

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<sup>512</sup> Case T-62/98 *Volkswagen AG vs Commission* [2000] ECR II-2707, paragraph 178.

### 2.2.5. *Effect on trade between Member States and between EEA contracting parties*

- (355) The continuing agreements between the producers in the two specialty markets had an appreciable effect on trade between Member States and between EEA contracting parties.
- (356) As demonstrated in the “Interstate trade” section (see section 1.2.5 above), the markets for isostatic and extruded specialty graphite are characterised by a substantial volume of trade between Member States. There is also a considerable volume of trade between the Community and EFTA countries belonging to the EEA: Norway and Iceland import 100% of their requirements, primarily from the Community, and prior to their accession to the Community Austria, Finland and Sweden imported the totality of their requirements.
- (357) The application of Articles 81(1) of the Treaty and 53(1) of the EEA Agreement to a cartel is not, however, limited to that part of the members’ sales that actually involve the transfer of goods from one State to another. Nor is it necessary, in order for these provisions to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States<sup>513</sup>.
- (358) In this case, the cartel arrangements covered virtually all trade throughout the Community and EEA. The existence of a price-fixing mechanism must have resulted, or was likely to result, in the automatic diversion of trade patterns from the course they would otherwise have followed<sup>514</sup>.
- (359) In so far as the activities of the two cartels related to sales in countries that are not members of the Community or the EEA, they lie outside the scope of this Decision

### 2.2.6. *Provisions of the competition rules applicable to Austria, Finland, Norway, Sweden, and Iceland.*

- (360) The EEA agreement entered into force on 1 January 1994. For the period prior to that date during which a cartel operated, the only provision applicable to these proceedings is Article 81 of the Treaty. In so far as the two cartel arrangements within that period restricted competition in Austria, Finland, Iceland, Liechtenstein, Norway or Sweden (then EFTA Member States) they will not be regarded as a violation of that provision.
- (361) In the period 1 January-31 December 1994, the provisions of the EEA Agreement applied to the four EFTA Member States which had joined the EEA; the cartels thus constituted a violation of Article 53(1) of the EEA Agreement as well as of Article 81(1) of the Treaty, and the Commission is competent to apply both provisions. The restrictions of competition in these four EFTA States during this one-year period fall under Article 53(1) of the EEA Agreement.
- (362) After the accession of Austria, Finland and Sweden to the Community on 1 January 1995, Article 81(1) of the Treaty became applicable to the two cartels in so far as they

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<sup>513</sup> See the judgment of the Court of First Instance in Case T-13/89 *Imperial Chemical Industries v Commission* [1992] ECR II-1021, at paragraph 304.

<sup>514</sup> See the judgment of the Court of Justice in Joined Cases 209 to 215 and 218/78 *Van Landewyck and others v Commission* [1980] ECR 3125, at paragraph 170.

affected competition in those markets. The operation of the cartels in Norway and Iceland remained in violation of Article 53(1) of the EEA Agreement.

(363) In practice, it follows from the foregoing that in so far as the cartel agreements operated in Austria, Finland, Norway, Sweden and Iceland they constituted a violation of the EEA and/or Community competition rules as from 1 January 1994.

#### 2.2.7. *Duration of the infringements*

(364) As mentioned, it is apparent from the statements of both Toyo Tanso and Ibiden that contacts between the European producers (LCL, Schunk and Ringsdorff) existed since as early as the mid-1970s, and that as from late 1988 they also included Ibiden and Toyo Tanso. These “early meetings” went on until 1991. However, as they were then suspended for almost two years, the Commission will limit its assessment for the purpose of the imposition of any fines to the period from July 1993 -as regards the cartel in the isostatic specialty market- and from February 1993 -as regards the cartel in the extruded specialty market.

(365) Insofar as the cartel arrangements concerning each specialty product covered Austria, Finland, Norway, Sweden and Iceland, they did not constitute infringements of the competition rules prior to 1 January 1994, when the EEA Agreement came into effect.

(366) This section sets out separately for isostatic and extruded specialty the factors relevant for establishing the duration of the involvement of each producer.

##### 2.2.7.1. Isostatic specialty graphite

(367) The participation in the infringement of SGL, LCL, Ibiden, Tokai, Toyo Tanso and NSC/ NSCC from 23 July 1993 is established by the participation of their respective [*member of top level management*] in the first “Top Level” meeting.

(368) Although SGL has stated that it systematically reported to UCAR on the results of the International cartel meetings, there is no corroborating evidence of this. The involvement of UCAR will therefore be considered to start with its first attendance at a European meeting, on 7-8 February 1996.

(369) The Commission will consider that Intech began its participation in the infringement with its presence at the first European meeting on 25 February 1994.

(370) Cartel meetings continued until at least 28 February 1998: the last known “International Working Level” meeting took place on that date with the presence of representatives of SGL, LCL, Ibiden, Tokai, Toyo Tanso and NSCC. The Commission considers that NSC put an end to its participation in the infringement at the same time as its subsidiary NSCC. For UCAR and Intech, the relevant date will be taken as 22 May 1997, date of their last participation at a European meeting (the presence of Intech at the last European meeting of 26 November 1997 or at the UK local meeting of 7 July 1998 has not been confirmed).

(371) LCL has stated that “informal” contacts between SGL, LCL and Toyo Tanso took place on at least one further occasion in March 1998, and that collaboration at local level continued for at least another two months after February 1998 (until March 1998 in France and July 1998 in the United Kingdom). It has also disclosed that bilateral

meetings (LCL/SGL or LCL/ Japanese companies) were held up to at least February 1999. However, in the absence of corroborating evidence, the Commission will for the purposes of assessing fines proceed on the basis that the participation of the undertakings (except for UCAR and Intech) in the cartel ended in February 1998.

- (372) In its reply to the S.O., Tokai submits that the end date of Tokai's participation should be November 1997, because it was the last meeting with an anti-competitive agenda (the only decision taken at the February 1998 meeting was not to organise any further meetings and to stop any collaboration).
- (373) The Commission must dismiss this argument. Firstly, the last International meeting of 27-28 February 1998 was planned as a regular cartel meeting (see recital (178) above), and it has been established (see recitals (181) and (233) above) that, as part of the collusive process, the parties reached concrete agreements in the second half of 1997, which were supposed to be applicable in February 1998 and even beyond (the February 1998 meeting being part of that process). Therefore, no retroactive effect can be attributed to the fact that the parties decided to dissolve the cartel during that very meeting. Secondly, a cartel may properly be viewed as a single continuing infringement for the time frame in which it existed. The validity of this assessment is not affected by the possibility that one or more elements of a series of actions or of a continuous course of conduct could individually and in themselves constitute a violation of Article 81(1) of the Treaty. The infringement can therefore rightly be considered as having existed between July 1993 and February 1998.
- (374) Intech also contests the duration of its participation in the cartel. It claims that, if it participated at all, it started on 26 September 1995, the first time that both Intech and Ibiden participated in the European cartel meetings. Intech insists that it cannot be held responsible for its participation, since it acted exclusively under instructions from Ibiden. This is particularly true for all the meetings before 26 September 1995, that were not attended by Ibiden itself.
- (375) The duration of Intech's participation in the cartel has been discussed under recitals (369) and (370) above. Its separate liability in the infringement regarding Ibiden's liability will be referred to in section 2.2.8.4 below.

#### 2.2.7.2. Extruded specialty graphite

- (376) The Commission will take the first "Top Level" meeting on unmachined extruded products, on 24 February 1993, as the starting date of UCAR and SGL's infringement in this market.
- (377) The last documented "expert level" meeting between the two companies took place on 29 November 1996, which will be taken as the end date of the infringement.

#### 2.2.8. Addressees of these proceedings

- (378) It is established by the facts that SGL, LCL, Toyo Tanso, Tokai, Ibiden, NSC/ NSCC, UCAR and Intech have directly participated in the cartel for isostatic specialty graphite. It is also established that SGL and UCAR have directly participated in the cartel for extruded specialty graphite. This Decision is addressed to the eight undertakings. Specific issues regarding some of the addressees are dealt with below:

### 2.2.8.1. Tokai

- (379) Tokai declares that since Japanese producers like Ibiden and Tokai sold isostatic graphite products mostly via independent distributors and machine shops, they did not have detailed knowledge of the end user prices charged by those distributors or machine shops. Tokai claims therefore that it was not in a position to exercise influence on those distributors and machine shops and it was not able to control their prices<sup>515</sup>.
- (380) Local distributors of Tokai were Tokai Carbon Europe S.R.L. in Italy, Novotec in Germany, Novotec France in France, Graphite Technologies in the United Kingdom and Schunk Iberica in Spain. Regarding their role in local meetings, Tokai declares that although initially those distributors reported back to Tokai on the meeting results, very soon they started to participate more on their own behalf<sup>516</sup>.
- (381) These arguments must be rejected for the following reasons:
- (382) It has been demonstrated that the isostatic specialty graphite market is a world market and that Tokai actively participated in a world cartel aimed to raise its prices. Tokai has formally admitted this participation. In as much as these meetings related to European matters, Tokai's participation in them suffices to establish its liability in the infringement. Moreover, it is apparent from the facts that Tokai also participated in the European cartel meetings. Tokai has also formally admitted this participation. Thus, the behaviour of the undertaking in the cartel arrangements necessarily affected competition within the Community/EEA. Furthermore, Tokai leaves unexplained why it took part in all the meetings, including European meetings, if it was not able to withdraw an advantage from that exercise.
- (383) In addition, Tokai admits that Tokai itself decided which of its representatives attended the Top Level, International Working Level, European and (to a limited extent) national meetings. Independent distributors of Tokai's isostatic graphite products did not exert any influence in this respect<sup>517</sup>. In particular, Tokai declares that *"due to the company's reliance on its distributors in local markets and the request of other producers which complained that Tokai did not exert enough control over pricing by these distributors, Tokai invited the above mentioned distributors to participate in local meetings on behalf of Tokai Carbon"*<sup>518</sup>.
- (384) Moreover, Tokai has stated that its Italian subsidiary Tokai Carbon Europe S.R.L. participated in the Italian meetings on its behalf, and that the French distributor Novotec France usually reported back on local meetings<sup>519</sup>.
- (385) Finally, it has been demonstrated that the Local meetings were aimed to implement and adjust for each country the decisions taken at the International and European levels<sup>520</sup>. Local meetings were therefore the last stage in the structure of different

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<sup>515</sup> TC(2), p.1.

<sup>516</sup> TC(3), p.6

<sup>517</sup> TC(2), p.1.

<sup>518</sup> TC(3), p.6.

<sup>519</sup> TC(3), pp.6-7.

<sup>520</sup> Tokai itself has declared in this regard that *"given that representatives at the European meetings were not able to obtain sufficient information on specific local circumstances, it was deemed necessary to*

levels of management created with the objective of ensuring the functioning of the cartel, and the presence of Tokai's distributors at the Local meetings can only be interpreted in this context.

- (386) The Commission therefore maintains that Tokai should be held responsible for the infringement and be the addressee of this Decision

#### 2.2.8.2. Toyo Tanso

- (387) Toyo Tanso alleges that it could not dictate the prices to be charged by the European subsidiaries to their customers, as Toyo Tanso had no knowledge about the subsidiaries' past relations and negotiations with each customer. According to Toyo Tanso, the managing directors of the European subsidiaries had great autonomy in conducting their business and would not have tolerated any price dictates from the mother company which would have impeded the acquisition and maintenance of customers. Toyo Tanso claims that there was no form of ensuring any consistency of the prices negotiated by the European subsidiaries with the target prices established at the top-level meetings. As to the Local meetings, Toyo Tanso claims that they were normally not reported to Toyo Tanso<sup>521</sup>.

- (388) These arguments must be rejected for the following reasons:

- (389) It has been demonstrated that the isostatic specialty graphite market is a world market and that Toyo Tanso actively participated in a world cartel intended to raise its prices. In as much as these meetings related to European matters, Toyo Tanso's participation in them suffices to establish its liability in the infringement. Thus, the behaviour of Toyo Tanso in the cartel arrangements necessarily affected competition within the Community/EEA.

- (390) Toyo Tanso has admitted its participation in all the International meetings and (through its subsidiaries GTD and GTI) all the European meetings as from the third one<sup>522</sup>. Moreover, Toyo Tanso acknowledges that after an International Level meeting, the participant from Toyo Tanso (the international sales director of the company) "often" sent written meeting reports to the European subsidiaries GTI, GTD and GTA/TTE "for information". Conversely, the participants in the European meetings (usually the managing directors of GTI and GTD) generally prepared a written report and sent it to the international sales director<sup>523</sup>. On the other hand, Toyo Tanso leaves unexplained why it took part in all the meetings, including European meetings, if it was not able to withdraw an advantage from that exercise.

- (391) As for Local meetings, it has been stressed that they were the last stage in the structure of different levels of management created with the objective of ensuring the functioning of the cartel. The presence of Toyo Tanso's subsidiaries at the Local meetings can only be interpreted in that context.

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*have meetings where the situation could be assessed on a country-by-country basis"* (TCSS, pp.24-25). And UCAR confirms that "*national-level contacts became integrated within a framework of contacts co-ordinated at the European level*" (UCS, p.6).

<sup>521</sup> TT(2), pp.4-5.

<sup>522</sup> Toyo Tanso's participation in the two first European meetings has been confirmed by Tokai, LCL and Ibidem (see recitals (196) and (198) above).

<sup>523</sup> TT(2), pp.4-5

(392) On the basis of the above, the Commission maintains that Toyo Tanso should be held responsible for the conduct throughout the infringement period.

#### 2.2.8.3. NSC/ NSCC

##### I) NSCC

(393) NSCC has admitted that it was represented at the Top Level and International Level meetings by Mr [...], Mr [...] and Mr [...], which were themselves NSC employees.

(394) On the other hand, NSCC has stated that it is not active in the Community/EEA market, as all of its sales during the period 1993-1998 were made to the Japanese trading companies [...].

(395) However, it has been demonstrated that the isostatic specialty graphite market is a world market and that NSCC actively participated in a world cartel aimed to raise its prices. Thus, the behaviour of NSCC in the cartel arrangements necessarily affected competition within the Community/EEA.

(396) In addition, NSCC declares that it maintained a flat fee structure with *[NSCC's trading partners]*. The trading companies charged for their services a uniform margin, provided in their contracts, of the purchase price of NSCC's products. During that period, NSCC set the prices at which the trading companies sold its products; the trading companies took orders from distributors or machine shops world-wide and transmitted them to NSCC to be filled. All pricing decisions were thus made exclusively by NSCC, and the Japanese trading companies only quoted those prices to their customers<sup>524</sup>. Furthermore NSCC discussed periodically with its French distributor Albert Denis the prices at which NSCC offered its products to *[NSCC's trading partner]*<sup>525</sup>.

(397) Under those circumstances, this Decision should be addressed to NSCC.

##### II) NSC

(398) NSCC is a subsidiary of NSC, itself 67% owned by the Nippon Steel Corporation. NSC's activities are divided into a Carbon and Gas Division, a Chemical Division and other businesses. NSCC belongs to the Carbon and Gas Division of NSC, which owns 90.7% of its capital<sup>526</sup>. NSCC purchases both the raw materials and some research and development support for its specialty graphite products from NSC. In addition, NSC also ensured the sales and marketing operations of NSCC between 1992 and 1997<sup>527</sup>.

(399) It has been proved in the factual part of this Decision that employees of NSC attended the Top Level and International Level meetings<sup>528</sup>.

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<sup>524</sup> NSCC(2), p.6.

<sup>525</sup> NSCC(2), p.1.

<sup>526</sup> The Carbon and Gas Division also includes Nippon Steel Chemical Carbon Co., Ltd. (owned at 90%) and SA Carbon Co. Ltd. (owned at 60%) (NSCC(2), p3).

<sup>527</sup> NSCC (2), pp.2-3.

<sup>528</sup> Mr [...] was an employee of NSC for the entire period 1993-1998. Mr [...] and Mr [...] were employees of NSC between January 1993 and June 1997 (file, p. 6398).

(400) Under these circumstances, the Commission considers that NSC should be held responsible for the infringement and be the addressee of this Decision. In its reply to the S.O., NSC/ NSCC confirmed that the two undertakings constituted a single participant and played no separate roles in the arrangement. They should therefore be held jointly and severally liable for any fine.

#### 2.2.8.4. Intech

(401) Intech alleges in its response to the Article 11 requests for information that the participation of its personnel at the group meetings always took place on behalf and under the corresponding instructions of Ibiden. Intech points out that its entire activity in the graphite sector in Europe is developed on the basis of a cooperation agreement between Intech EDM B.V and Ibiden Co, Ltd<sup>529</sup>.

(402) The Commission notes that Intech's representatives, and in particular Mr [...], attended all the meetings that took place at European level as from 25 February 1994. The only exceptions were the meeting of 17 October 1995 in Frankfurt and the last meeting of 26 November 1997 in Strasbourg. On four such occasions (on 26 September 1995 in Mönchengladbach, 7 February 1996 in Paris, 27 September 1996 in Zurich and 21 May 1997 in Geneva) Intech and Ibiden were represented at the same time<sup>530</sup>. In addition to its participation at the European meetings, Intech representatives also attended local meetings in Italy, Germany and the United Kingdom<sup>531</sup>. It should be pointed out that Italy is not a territory where Intech can commercialise Ibiden's products on an exclusive basis.

(403) It is apparent from the facts that Intech itself committed to charge the prices agreed by the cartel (including prices set at the International level meetings, communicated by Ibiden<sup>532</sup>) to its own customers, end users, in the downstream market<sup>533</sup>.

(404) Ibiden confirms that it requested Intech to attend the European meetings prior to 26 September 1995 on its behalf (largely because it lacked enough knowledge of the European market). Nevertheless, Ibiden remarks that even after that date an Intech representative continued to attend the European meetings, which according to Ibiden reflects Intech's presence on the market as a non-exclusive distributor outside the territory designated as exclusive<sup>534</sup>. With regard to the German and UK local meetings, Ibiden declares that it requested Intech to participate in those meetings. That was however not the case for the Italian meetings, as Intech is not Ibiden's exclusive

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<sup>529</sup> On the basis of such cooperation agreement –that existed already before 1993- Intech EDM is a business partner of Ibiden in Germany, the Netherlands, Belgium, Luxembourg and Switzerland and, occasionally, the UK. In these countries Intech sells Ibiden's artificial graphite production for use in electrical discharge machining (EDM) on an exclusive basis; Intech may also sell those products on a non-exclusive basis under its own brand in other European countries (IntechS, pp.1-2).

<sup>530</sup> See section 1.4.1.2.II) above.

<sup>531</sup> See section 1.4.1.2.III) above. Intech has admitted this participation at Intech(2), p.7.

<sup>532</sup> See Intech(2), page 7.

<sup>533</sup> See e.g. : recital (279), indent 10; (285), indent 4; (286), indents 5 and 6. See also file, pp. 1356-1357 (fax dated 9 January 1994, from Intech to Mr [...] of Ibiden): “Both Intech and Ringsdorff-Werke are concerned that if there is no differentiation between standard and nonstandard block sizes, no real prices increases can be realized”.

<sup>534</sup> Intech alleges that its presence in those meetings was intended to provide Ibiden's representatives (who did not speak English correctly) with linguistic support (Intech(2), p.8).



distributor for that market<sup>535</sup>. And Intech has also stated that, in general, it did not communicate the results of local meetings to Ibiden<sup>536</sup>.

- (405) Moreover, it is apparent that, even before Ibiden started to attend the European meetings, the other participants perceived Intech and Ibiden as companies with different interests<sup>537</sup>. In particular, the contemporaneous minutes of the second European meeting (20 June 1994 in Dusseldorf) show that “*every company worried how much responsibility Intech could take as an agency of Ibiden. Then Mr. [Intech employee] explained that Ibiden Netherlands would function as a position in Europe in the future and it was agreed as a positive attitude*”<sup>538</sup>. This proves that all the parties (including Intech itself) had reservations as to Intech’s capacity/will to commit and to speak on behalf of Ibiden.
- (406) For these reasons, the Commission concludes that the behaviour of Intech and Ibiden in the cartel must be assessed separately, and that both Ibiden and Intech remain entirely responsible for their own participation in the infringement. The specific circumstances that characterised the participation of Intech in the isostatic arrangements, as opposed to that of the other parties, will be taken into account in recitals (515) and (516) below.
- (407) Regarding the participation of Intech in the infringement as referred to in recitals (401) to (406) above, the Commission considers that two undertakings of the Intech group should be held responsible for that infringement: Intech EDM AG and Intech EDM B.V.

#### Intech EDM AG

- (408) Intech EDM AG (named Intech Technology Zug AG before 1994) markets specialty graphite products in the Community and attended all the European level cartel meetings (except the meeting of 17 October 1995 in Frankfurt and the last meeting of 26 November 1997 in Strasbourg) through its employee Mr [Intech employee]<sup>539</sup>. For this reason, the Commission concludes that Intech EDM AG must be held responsible for its participation in the infringement throughout the infringement period.
- (409) In its reply to the S.O., Intech contests the responsibility in the infringement of Intech EDM AG. Intech claims that the company was not a founding member of the cartel and actually never became a member (it did not participate in its initiation, had no influence on the decisions, never participated in any high-level meetings or international meetings and only occasionally in local meetings). It also insists on the fact that Intech EDM AG was acting only as a tool for Ibiden. In support thereof it alleges that there existed an economic and legal dependence, that the Commission

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<sup>535</sup> I(3), pp.4-5.

<sup>536</sup> Intech(2), p.8.

<sup>537</sup> It can be noted that the minutes of the meetings normally refer to Intech -and not to Ibiden- where the stance adopted by Mr [Intech employee] is mentioned (See e.g.: European meeting of 18 October 1994: “Intech is unsatisfied with low market share in UK. In this situation, it’s useless to attend local meetings” (file, p.3536)). See also file, pp. 657, 665, 674, 1011, 3528-3531, 3532-3536, 3537-3541.

<sup>538</sup> I(3), app.4.

<sup>539</sup> According to Intech’s reply to the Commission’s request for information, Mr [...] (Intech’s participant at the European meetings and several local meetings) was an employee of Intech EDM AG, Zug, Switzerland (Intech(2), pp.6-7).

violates the principle of non-discrimination by not attacking other distributors that also participated in several meetings, that the S.O. illustrates how Intech EDM AG acted according to the instructions of Ibiden, that Intech EDM AG was obliged to report to Ibiden, that Ibiden decided on an international level and Intech EDM AG had to implement those decisions, that there was no change when Intech started to participate in European meetings and that according to the judgment in *Metsä-Serla*<sup>540</sup> Ibiden alone must be held responsible.

- (410) None of these arguments can change the Commission's assessment of Intech EDM AG's responsibility in the infringement. Its direct participation in the meetings is established by the facts and is not contested. The factors that clearly point to separate liability of Intech (and in particular of Intech EDM AG) in these proceedings with regard to that of Ibiden have already been raised in recitals (402) to (406) above. The Commission also dismisses the alleged discriminatory treatment of Intech as compared to other distributors mentioned in the S.O. Other than its discretionary power to select the addressees of the Objections in accordance with the level of evidence in its possession, the Commission stresses that Intech's involvement in the arrangements was significantly higher than that of the other distributors. In particular, Intech was the only such distributor that ever attended the European meetings; it was also the only one to participate in local meetings corresponding to three national markets (Italy, Germany, United Kingdom).

Intech EDM B.V.

- (411) There are four arguments that make the Commission conclude that the former mother company of Intech EDM AG, Intech EDM B.V., must also be held responsible for the infringement throughout the infringement period:
- (412) Firstly, Intech EDM B.V. was the only interface of the Intech group with Ibiden for any transaction relating to the market of specialty products. Intech has, in particular, declared that all its activities in Europe in relation to graphite products are done on the basis of the cooperation agreement between Intech EDM B.V. and Ibiden Co., Ltd<sup>541</sup>. In accordance with that cooperation agreement Intech EDM B.V. thus managed the relations of the Intech group with Ibiden: it channelled the conclusions of the Top and International cartel meetings attended by Ibiden to Intech EDM AG and, conversely, reported back to Ibiden on the activities of its subsidiary. It is therefore clear that Intech EDM AG could not represent the interests of Ibiden (as well as its own interests) in the European cartel meetings without Intech EDM B.V. having providing it with information as to the operations of the cartel at world level.
- (413) Secondly, the intricate relation between the undertakings of the Intech group, at least regarding the market for isostatic specialty products, is further confirmed by the fact that Mr *[Intech employee]*, the same person who attended the European cartel meetings on behalf of Intech EDM AG, signed the 1998 cooperation agreement with Ibiden on behalf of Intech EDM B.V.<sup>542</sup>

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<sup>540</sup> Joined Cases T-339 to 342/94[1998] ECR II-1727, paragraph 43.

<sup>541</sup> IntechS, p.2. The first available version of the cooperation agreement with Ibiden (1989) was signed by Alectro B.V. (renamed Intech EDM B.V. on 24 April 1994) (Intech(2), app.1).

<sup>542</sup> IntechS, app.1.

- (414) Thirdly, Intech itself has confirmed that Intech EDM B.V. was also involved in the arrangements<sup>543</sup>.
- (415) Fourthly, during the Oral Hearing, the legal counsel of Intech (representing both Intech EDM AG and Intech EDM B.V.) admitted that, most likely, Intech EDM B.V. was aware of its subsidiary's participation in the cartel arrangements (although, in his view, such awareness is irrelevant for the purpose of incriminating Intech EDM B.V. in the infringement).
- (416) On the basis of the above considerations, the Commission concludes that Intech EDM B.V. should be held jointly responsible for the infringement with Intech EDM AG throughout the infringement period.

Intech's arguments:

- (417) In its reply to the S.O., Intech contests that conclusion. Intech argues, in particular, that Intech EDM B.V. is not the parent company of Intech EDM AG, as since 1997 Intech EDM AG is the subsidiary of AGIE Charmilles Holding AG (Switzerland) which itself is a subsidiary of Georg Fischer AG (Switzerland), that although the Commission is aware of such distinction, it does not make a difference between the two companies (the S.O. speaks generally of "Intech", and it is not possible to identify the specific objections raised against either Intech EDM A.G. or Intech EDM B.V.), and that by responding jointly to the S.O., the companies explicitly do not recognise that it may be addressed to both of them. Intech further claims that there is no proof of any participation of Intech EDM B.V. in the infringement. In particular it contests the confession mentioned in recital (414) above, since it alleges that the request for information was addressed to Intech EDM AG, was imprecise, and contrary to the *Orkem* case law<sup>544</sup>. It also argues that the fact that Mr. *[Intech employee]* signed the co-operation contract with Ibiden in 1998 cannot be considered as proof of Intech EDM B.V.'s participation, and that Mr *[Intech employee]* was never a managing director of that company. Finally, Intech claims that, in any event, the alleged infringement of Intech EDM B.V. would already be subject to prescription, as the Commission sent the S.O. on 22 May 2002 and the last meeting in which Intech participated was 21 May 1997.
- (418) Intech therefore contradicts in the reply to the S.O. its own statements (see recital (414)) as to the role of Intech EDM B.V. in the infringement.

The Commission's assessment:

- (419) The Commission's appraisal of Intech EDM B.V.'s involvement in the infringement remains unchanged.
- (420) As a general consideration, the subject of Community and EEA competition rules is the "undertaking", a concept that is not identical with the notion of corporate legal personality in national commercial or fiscal law. The term "undertaking" is not defined in the Treaty. It may however refer to any entity engaged in a commercial activity. According to the circumstances, it might be possible to treat as the relevant

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<sup>543</sup> Intech(2), p.7.

<sup>544</sup> Judgement of the Court of Justice in Case 374/87 *Orkem v Commission*, ECR [1989] 3283.

“undertaking” for the purposes of Article 81 of the Treaty and Article 53 of the EEA Agreement the whole group or individual subgroups or subsidiary companies.

- (421) During the period of the infringement by Intech (and up to 1 September 1997) Intech EDM B.V. owned 100% of Intech EDM AG. The Commission contends that the responsibility of Intech EDM B.V. during all the infringement period clearly derives from the fact that it both controlled Intech EDM AG *and* was fully aware of its unlawful behaviour. According to the Court, in order to determine whether a parent company should be held responsible for the unlawful conduct of a subsidiary, it is necessary to establish that the subsidiary “*does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company*”<sup>545</sup>. In *AEG-Telefunken*<sup>546</sup> and *BPB Industries*<sup>547</sup>, the Court further ruled that when a subsidiary is wholly owned, it necessarily follows in principle the policy laid down by its parent company. It has been established that Intech EDM AG was not only 100% owned by Intech EDM B.V., but was also fully dependant for its specialty graphite business on the cooperation agreement that linked its mother company to *Ibiden*.
- (422) Moreover, the confusion of Intech’s legal representation as to the role of each company in the infringement<sup>548</sup> and the fact that Mr [*Intech employee*] signed the 1998 cooperation agreement on behalf of Intech EDM B.V. are illustrative enough of the intricate relation that links the two undertakings, and shows how artificial it would be to isolate any of them from a responsibility in the cartel arrangements.
- (423) Finally, the argument that the liability of Intech EDM B.V in the infringement (if any) has been prescribed must be dismissed because the first act by the Commission which stopped time running was the sending of requests for information under Article 11 of Regulation No 17 in March 2000 to SGL, Intech, POCO, LCL, Nippon Steel Corporation, *Ibiden*, Tokai and Toyo Tanso.
- (424) Under the circumstances of this case, it is therefore appropriate to address the decision both to Intech EDM AG and Intech EDM B.V. They should be held jointly and severally liable for any fine.

#### 2.2.8.5. Conclusion

- (425) On the basis of the above considerations, the Commission considers that the following companies should bear responsibility for their respective infringements and be addressees of this Decision:
- (a) For the infringement in the market of isostatic specialty graphite:
- SGL Carbon AG
  - Le Carbone-Lorraine S.A.

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<sup>545</sup> Case 48/69 *Imperial Chemical Industries v Commission*, [1972] ECR 619, at paragraphs 132-133.

<sup>546</sup> Case 107/82 *AEG-Telefunken v Commission*, [1983] ECR 3151, paragraph 50.

<sup>547</sup> Case T-65/89 *BPB Industries* [1993] ECR II-389, paragraph 149, (Appeal rejected by judgement of the Court in Case C-310/93 ECR [1995] I-865).

<sup>548</sup> See recital (418) above.

- Ibiden Co., Ltd.
  - Tokai Carbon Co., Ltd.
  - Toyo Tanso Co., Ltd.
  - GrafTech International, Ltd.
  - NSCC Techno Carbon Co., Ltd. and Nippon Steel Chemical Co., Ltd., jointly and severally liable
  - Intech EDM B.V. and Intech EDM AG, jointly and severally liable
- (b) For the infringement in the market of extruded specialty graphite:
- SGL Carbon AG
  - GrafTech International, Ltd.

## 2.3. Remedies

### 2.3.1. Article 3 of Regulation No 17

- (426) Where the Commission finds that there is an infringement of Article 81(1) of the Treaty or Article 53 (1) of the EEA Agreement it may require the undertakings concerned to bring such infringement to an end in accordance with Article 3 of Regulation No 17.
- (427) In this case the participants in the two cartels went to considerable lengths to conceal their activities.
- (428) In particular concerning the agreements in the isostatic graphite market, the infringement continued at least until the simultaneous investigations made by the Commission and the United States authorities into the cartel for graphite electrodes. Discussions appear to have been interrupted at that stage, although further meetings among competitors have been acknowledged up to as late as February 1999. In those circumstances it is not possible to say with certainty that the infringement has ceased.
- (429) It is therefore necessary for the Commission to require the undertakings to which this Decision is addressed to bring the two cartel arrangements to an end (if they have not already done so) and henceforth to refrain from any agreement, concerted practice or decision of an association which might have the same or similar object of effect.

### 2.3.2. Article 15(2) of Regulation No 17: general considerations

- (430) Under Article 15(2) of Regulation No 17<sup>549</sup>, the Commission may by decision impose upon undertakings fines of from one thousand to one million Euro, or a sum in excess

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<sup>549</sup> Under Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area “the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 81 and 82] of the EC Treaty [...] shall apply *mutatis mutandis*”. (OJ L 305, 30.11.1994, p.6.

thereof not exceeding 10% of the turnover in the preceding business year of each of the undertakings participating in a infringement where, either intentionally or negligently, they infringe Article 81(1) of the Treaty and/or Article 53(1) of the EEA Agreement.

- (431) In fixing the amount of any fine the Commission must have regard to all relevant circumstances and particularly to the gravity and duration of the infringement, which are the two criteria explicitly referred to in Article 15(2) of Regulation No 17.
- (432) The role played by each undertaking party to the infringement will be assessed on an individual basis. In particular, the Commission will reflect in the fine imposed any aggravating or mitigating circumstances and will apply, as appropriate, the Leniency Notice .
- (433) In assessing the gravity of the infringement, the Commission will take account of its nature, its actual impact on the market, where this can be measured, and the size of the relevant geographic market. The role played by each undertaking party to the infringement will be assessed on an individual basis.
- (434) The Commission proposes to set any fines at a level sufficient to ensure deterrence.

#### 2.3.3. *The amount of the fine*

- (435) The two cartels constituted deliberate infringements of Articles 81(1) of the Treaty and 53(1) of the EEA Agreement: with full knowledge of the restrictive character of their actions and, moreover, of their illegality, leading producers of isostatic and extruded specialty graphite combined to set up a secret and institutionalised system designed to restrict competition in this industrial sector.

##### 2.3.3.1. The basic amount

- (436) The basic amount of the fine is determined according to the gravity and duration of the infringement.

##### l) Gravity

- (437) In its assessment of the gravity of the infringement, the Commission takes account of its nature, its actual impact on the market, where this can be measured, and the size of the relevant geographic market.

##### *Nature of the infringement*

- (438) It follows from the described facts that the two infringements essentially consisted of price fixing practices, which are by their very nature the worst kind of violations of Article 81(1) of the Treaty and 53(1) of the EEA Agreement.
- (439) The cartel arrangements involved major operators in the EEA and were conceived, directed and encouraged at high levels in each participating company. By its very nature, the implementation of cartel agreements of the type described leads to an important distortion of competition, which is of exclusive benefit to producers participating in the cartels and is highly detrimental to customers and, ultimately, to the general public.

- (440) Toyo Tanso, Tokai, UCAR and NSC/ NSCC submit that their respective participation in the discussions between isostatic competitors was of a less significant nature than that of the other companies involved.
- (441) The Commission rejects this approach and maintains that, by their very nature, price-fixing cartels jeopardise the proper functioning of the single market. Secondly, within the category of price-fixing cartels there cannot, in view of the incompatibility of such cartels with the common market, be any distinction, with regard to the gravity of the infringement as a whole, between the behaviour of companies that enjoyed a stronger or weaker position in the relevant market. The role played by those undertaking in the arrangements will be further dealt with in recitals (490) to (501) below. Their effective economic capacity to cause significant damage to competition will be tackled in recitals (458) to (478) below).
- (442) The Commission therefore considers that these infringements constituted by their nature a very serious infringement of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement.

*The actual impact of the infringement on the isostatic and extruded specialty markets in the EEA.*

- (443) The infringements were committed by undertakings which during the material period covered the main part of the world market and the European market for isostatic and extruded specialty graphite. Moreover, the arrangements were specifically aimed at raising prices higher than they would otherwise have been. Given that these arrangements were implemented, they had an actual impact on the market.
- (444) There is no need to quantify in detail the extent to which prices differed from those which might have been applied in the absence of these arrangements. Indeed, this cannot always be measured in a reliable manner, since a number of external factors may simultaneously have affected the price development of the products, thereby making it extremely difficult to draw conclusions on the relative importance of all possible causal effects.
- (445) The cartel agreements considered were however implemented. This has already been established in sections 1.4.1.3 and 1.4.2.2 above for the isostatic and extruded specialty markets, respectively.
- (446) In the light of the foregoing and of the efforts put by each participant into the complex organisation of the cartel, there is no doubt that the anti-competitive agreements have been implemented throughout the infringements period. Such continuous implementation during almost five years in the isostatic market and four years in the extruded market must have had an impact on both markets, as is shown, in particular, in recital (277) above (isostatic graphite).

Arguments of the parties:

- (447) In their reply to the S.O., LCL, Tokai, Ibiden and Intech submit that the cartel for isostatic graphite was not very effective, and that its actual impact on the market was rather small.

- (448) According to LCL, the evolution of real prices (as opposed to target prices) does not show a price increase in the relevant period.
- (449) Tokai alleges that the Japanese and European producers had different interests, which led to a lack of trust and the arrangements becoming ineffective over time. As most Japanese producers predominantly relied on local distributors for their sales in Europe which were not controlled by them, European producers repeatedly complained about that lack of control.
- (450) For *Ibiden* the success of the cartel was limited by the difficulties in agreeing the applicable groupings and the existence of independent distributors.
- (451) Intech considers that the cartel was not very effective and did not achieve its objective to increase or to adjust prices. Intech contests in this regard the correctness of the Commission's table (see recital (278) above). It contends that, in reality, the development of prices was exactly the opposite as far as Intech was concerned (between 1993 and 1998 prices did not rise but dropped; only in 1995-1996 was there a price increase due to an increase of demand; and already in 1997 prices dropped again due to sector over-capacities).

The Commission's assessment:

- (452) None of the arguments used by the parties to minimise the Commission's finding that the cartel had an actual effect on the market are conclusive. The explanations for occasional failures to achieve the target prices in the isostatic cartel (in particular as from 1998) are far from demonstrating in any convincing manner that the implementation of the cartel agreement could not have played any role in the setting and fluctuation of prices in that market.
- (453) The fact that in spite of the cartel's efforts the results sought by the participants were not entirely achieved may illustrate the difficulties encountered by the parties in increasing prices in a specific market situation, but it does not prove in any way that the cartel had no effect on the market, nor that prices were not kept above competitive level.
- (454) On the contrary, it has been established that the isostatic cartel members expressed their satisfaction in several occasions regarding the success of the price increases<sup>550</sup>. Moreover, it is inconceivable that the parties would have repeatedly agreed to meet in locations across the world to set target prices over the period of the infringement, having regard, *inter alia*, to the risks involved, if they had perceived the cartel as having no or only a limited impact on the isostatic specialty market.
- (455) Finally, the argument that at some stages the prices of specific companies did not follow the general trend must also be dismissed, because the actual impact of the infringement should be assessed by taking into account its effect on the relevant market as a whole.

*The size of the relevant geographic market*

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<sup>550</sup> See recital (277) above.



- (456) For the purposes of assessing gravity it is important to note that the two infringements covered the whole of the common market and, following its creation, the whole of the EEA.

*Conclusion of the Commission on the gravity of the infringement*

- (457) Taking into account the nature of the infringements under scrutiny, their impact on the isostatic and extruded specialty graphite markets and the fact that each one covered the whole of the common market and, following its creation, the EEA in its entirety, the Commission considers that the undertakings concerned by this Decision have committed very serious infringements of Article 81(1) of the Treaty and 53(1) of the EEA Agreement.

*Classification of cartel participants*

- (458) Within the category of very serious infringements, the proposed 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 and to set the fine at a level which ensures it has sufficient deterrent effect.
- (459) In the circumstances of this case, which involves several undertakings, it will be necessary in setting the basic amount of the fines to take account of the specific weight and therefore the real impact of the offending conduct of each undertaking on competition.
- (460) For this purpose the undertakings concerned can be divided into different categories established according to their relative importance in the market concerned, subject to adjustment where appropriate to take account of other factors and especially the need to ensure effective deterrence.

*Arguments of the parties:*

- (461) In their reply to the statement of objections, SGL, LCL, Toyo Tanso, Tokai, Ibiden, UCAR, NSC/ NSCC and Intech contend that their respective ability to cause significant damage to other operators or consumers in the isostatic specialty market was relatively small.
- (462) SGL alleges that the figures in the S.O. (Table 1 in recital (16) above) make believe that SGL is leader in the world-market of isostatic graphite, whereas Toyo Tanso is actually the leading seller in that market (7000 tons/year), followed by Tokai (4200 tons/year), LCL (3300 tons/year) and SGL (3000 tons /year), that the figures in Table 1 do not describe that two thirds of the world-wide production capacity of isostatic graphite are located in Japan, that the Commission based the isostatic graphite turnover in the Community on wrong figures, which include other kinds of products like powder, that Table 2 is incorrect because the part of own-consumption of SGL (10%) must be subtracted from it and that Table 3 (recital (17) above) is incomprehensible.
- (463) LCL submits that its isostatic specialty business represents a very low proportion of the company's world-wide turnover, that the undertaking has a limited sectoral

presence (it does not produce extruded graphite) and that it has small world-wide and EEA-wide market shares, in particular as compared to those of SGL and Toyo Tanso.

- (464) Toyo Tanso claims that the considerable disparity in size between that undertaking and the other cartel participants calls for a much lower starting point of the fine for Toyo Tanso, since it was by far the smallest producer which participated in the infringement (in particular, as compared to NSC). It also remarks that Toyo Tanso's EEA turnover in the affected products in 1998 was only EUR 8,2m.
- (465) Tokai argues that the EEA market for the products affected by the arrangements is small, as unmachined sales in the EEA did not exceed EUR 50m. per year, that Tokai has always remained a small player, that as the undertaking's sales outside Japan occur largely via independent distributors/ machine shops, blocks account for a higher proportion of sales as compared to others (SGL, LCL, Toyo Tanso), that Tokai is a relatively small and new player in the market both at world and EEA levels, as opposed to the graphite electrodes market (the second smallest one in the EEA) and that in its S.O. the Commission seems to overstate Tokai's world-wide market share for the sale of isostatic blocks and cut blocks (which according to the undertaking should be around [...] %).
- (466) *Ibidem* and Tokai contend in their replies to the S.O. that the Commission should assess the strength of each undertaking, and hence their ability to affect competition, on the basis of their market share within the EEA. They advance the following arguments in support thereof: that in contrast to the *Graphite Electrodes* case, the specialty graphite cartel did not aim to allocate markets at world-wide level (as any sharing of customers was circumstantial), that the proposed fine would reflect more accurately the ability of each company to affect competition within the EEA (the calculation would be distorted if the Commission relied on world-wide sales as a measure of capacity to affect conditions of competition within the EEA), that the principle of territoriality requires the Commission to limit the assessment of the cartel to practices implemented in or affecting the Community/EEA (otherwise the Commission would exceed its jurisdiction under Article 81 of the Treaty and Article 53 of the EEA Agreement), that the Commission should take an approach which is consistent with that of the US authorities in order to avoid the risk of double jeopardy, that it should respect the principle of proportionality (the penalty should be proportional to the gravity of the offence) and that there is a risk of discrimination in favour of European companies due to the practice of competition authorities in other jurisdictions to calculate the level of the fine according to the level of sales of the offending party in that jurisdiction.
- (467) *Ibidem* further believes that Tokai's worldwide sales of isostatic specialty graphite in 1998 were in the region of EUR 40-50m, rather than EUR 20m.; it also requests a correction of its own figure in the last column of Table 1 (EUR 2,2m. instead of EUR 2,8m.).
- (468) UCAR alleges that it has only a very small presence in the isostatic market and virtually no activities in Europe in the sale of EDM material (on which much of the collusion was focused).
- (469) NSC/NSCC also claims to be a small player at both world-wide and European levels, by far the smallest isostatic specialty graphite producer in the EEA. It further remarks

that the sector affected by the arrangement was of a limited size (EUR 150-200m world-wide and 30-50m in the EEA) and that since NSC/ NSCC was involved in only one arrangement, the impact of its conduct on competition was significantly less important than that of SGL and UCAR.

- (470) Finally, according to Intech the Commission should assess the size and economic strength of each undertaking, and hence its ability to affect competition, on the basis of its market share. Intech should thus fall within the category with a low starting point for the calculation of the fine. Moreover, Intech claims to be only a medium-sized distributor, with very limited economic strength, in contrast to the other companies involved. It concludes that it could not damage any consumers.

The Commission's assessment:

- (471) As the basis for the comparison of the relative importance of an undertaking in the markets concerned, the Commission considers it appropriate to take in this case the respective world-wide product market shares. Given the global character of the two markets, these figures give the most appropriate picture of the participating undertakings' capacity to cause significant damage to other operators in the common market and/or the EEA. Moreover, the respective world-wide market shares of any given party to the cartel arrangements also gives an indication of its contribution to the effectiveness of the cartel as a whole or, conversely, of the instability which would have affected the cartel had it not participated. The comparison is made on the basis of the world-wide market shares for the relevant products (isostatic and extruded specialty graphite in blocks and cut blocks) in the last complete calendar year of the infringements (see column 4 in Table 1, recital (16), and column 3 in table 3, recital (17), respectively).
- (472) Only Tokai contests its world-wide market share of isostatic products in 1998, as shown in Table 1 of the S.O. However, those market shares are obtained from the turnover figures contained in column four of the table, which were provided by the companies themselves in their response to the Commission's requests for information.
- (473) The Commission also dismisses the arguments raised by Ibiden and Tokai as to the appropriateness of taking EEA market shares for the purpose of classifying the parties in the infringement. In the Commission's view, the gravity of a cartel infringement and/or its impact on competition within a particular region may be measured in an accurate way by regarding the market size within that region. However, given the circumstances of the case, in particular that the relevant market, being world-wide in scope, exceeds the region to which the sanction applies, i.e. the EEA, and that the functioning of the cartel was organised on a world-wide basis, it is the undertaking's world-wide product turnover that provides a more precise estimation of each company's relative contribution to the overall damage caused to competition in the EEA. Therefore, the fact that world-wide turnover figures are taken into account when deciding on differential treatment of undertakings participating in a global cartel, in no way implies that the undertakings are being penalised twice for the same behaviour. The Commission also recalls that the fines imposed by the authorities of third countries are in respect of violations of their competition law, and there is no overlap with the jurisdiction of the Commission to fine undertakings for violations of EEA competition law. This argument will be further developed under section 2.3.3.5 below.

(474) The particular circumstances applying to the participation of Intech in the isostatic infringement are considered in recitals (515) and (516) below. The argument on the size of the market pointed out by SGL, Tokai and NSC/ NSCC (EUR 35-50m EEA) will be taken into consideration in this case, when defining the starting amounts.

#### Isostatic specialty market

(475) Table 1 at section 1.2.2 shows that in 1997 SGL was by far the largest producer of isostatic specialty graphite in blocks and cut blocks in the world-wide market (market share of 30%-40%). It is therefore placed in the first category. Toyo Tanso followed at a certain distance, and is placed in the second category (market share of 21-27%). LCL and Tokai, with market shares above 10%, are placed in the third category. Ibidem and NSC/ NSCC had market shares between 5% and 10%, and are placed in the fourth category. Finally, UCAR and Intech, with less than a 5% market share, are placed in the fifth category.

(476) On the basis of the foregoing, the appropriate starting point for the fine in respect of the infringement concerning the isostatic specialty market is as follows:

- SGL: **EUR 20 million**
- Toyo Tanso: **EUR 14 million**
- LCL and Tokai: **EUR 7.4 million**
- Ibidem and NSC/ NSCC: **EUR 3.8 million**
- GrafTech International, Ltd. and Intech: **EUR 1.4 million**

#### Extruded specialty market

(477) It is evident from Table 3 at section 1.2.2 that UCAR and SGL had a similar presence in the worldwide extruded specialty market with market shares of 25% to 35% each. They are therefore placed in a single category.

(478) On the basis of the foregoing, the appropriate starting point for the fine in respect of the infringement concerning the extruded specialty market is as follows:

- SGL: **EUR 15 million**
- GrafTech International, Ltd.: **EUR 15 million**

## II) Duration of the infringement

### *Isostatic specialty graphite*

(479) The Commission considers that SGL, LCL, Ibidem, Tokai, Toyo Tanso and NSC/ NSCC have infringed Article 81(1) of the Treaty from July 1993 until February 1998 and Article 53(1) of the EEA Agreement from 1 January 1994 until February 1998.

UCAR committed the same infringement from February 1996 to May 1997, and Intech from February 1994 to May 1997<sup>551</sup>.

- (480) The Commission therefore concludes that SGL, LCL, Ibiden, Tokai, Toyo Tanso and NSC/ NSCC have committed an infringement of four years and six months, i.e. of medium duration. The starting amounts of the fines determined for gravity (see recital (476)) should therefore be increased by **45%**.
- (481) Intech committed an infringement of medium duration of three years and two months. The starting amount of the fine determined for gravity (see recital (476)) is therefore increased by **30%**.
- (482) UCAR committed an infringement of medium duration of one year and two months. The starting amount of the fine determined for gravity (see recital (476)) is therefore increased by **10%**.

#### *Extruded specialty graphite*

- (483) The Commission considers that SGL and UCAR have infringed Article 81(1) of the Treaty from February 1993 to November 1996 and Article 53(1) of the EEA Agreement from 1 January 1994 until November 1996. They committed an infringement of three years and eight months, i.e. of medium duration. The starting amount of the fines determined for gravity (see recital (478) above) is therefore increased by **35%** for each company.

#### III) Conclusion on the basic amounts

- (484) The Commission accordingly sets the basic amounts of the fines as follows:

- SGL
  - Isostatic specialty graphite: **EUR 29 million**
  - Extruded specialty graphite: **EUR 20 250 000**
- LCL: **EUR 10 730 000**
- Ibiden: **EUR 5 510 000**
- Tokai: **EUR 10 730 000**
- Toyo Tanso: **EUR 20 300 000**
- GrafTech International, Ltd.:
  - Isostatic specialty graphite: **EUR 1 540 000**
  - Extruded specialty graphite: **EUR 20 250 000**
- NSC/ NSCC: **EUR 5 510 000**

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<sup>551</sup> See section 2.2.7.1 above.

- Intech: **EUR 1 820 000**

#### 2.3.3.2. Aggravating circumstances

##### Role of leader in the infringement

- (485) It is apparent from the facts as described in Part 1 of this Decision that SGL was the leader and instigator of the infringement in the isostatic specialty market<sup>552</sup>. It was this undertaking which took the initiative to launch the cartel and steered its development throughout the infringement period. SGL has not contested the Commission's finding in this regard.
- (486) The Commission also found in its S.O. that LCL had played a specific leading role in the isostatic specialty cartel. In its reply to the S.O., LCL contests the interpretation of facts that leads Commission to raise this allegation.
- (487) After evaluation of the arguments put forward by LCL, the Commission concludes that the picture provided by all the evidence, as described under the factual part of this Decision, shows that, it is difficult to identify a specific instigator of the arrangements beyond SGL. In particular, and in contrast to its initial assessment, the Commission considers that it has not been sufficiently established that LCL played a clear leading role in the context of the European meetings.
- (488) In the light of the above, the Commission considers that the fact that SGL was the leader and instigator of the infringement in the isostatic specialty market constitutes an aggravating circumstance which justifies an increase of **50 %** in the basic amount of the fine to be imposed on SGL in respect of that infringement.
- (489) The Commission considers that no specific ringleader can be identified for the infringement affecting the extruded specialty market.

#### 2.3.3.3. Attenuating circumstances.

##### Exclusively passive role in the infringements

###### Arguments of the parties:

- (490) Regarding the cartel in the isostatic specialty graphite market, Toyo Tanso, Tokai, Ibiben, UCAR, NSC/ NSCC and Intech submit that their respective participation in the discussions between competitors was of a less significant nature than that of the other companies involved.
- (491) Toyo Tanso contends that it played a radically different role from the European producers and Tokai for several reasons: It was not a party to the cartel which existed in Europe since at least the mid-1970s. , it introduced competition in the European market by starting direct sales of graphite blocks as from 1988, it was pressured by the European producers, with Tokai's support, to participate in the infringement and it

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<sup>552</sup> See in particular recitals (120) to (222), (126), (129), (134), (137), (138), (141), (143), (144), (153), (157), (158), (159), (161), (162), (167), (169), (170), (171), (175), (179), (180), (183), (187), (193), (199), (201), (202), (203), (205), (210) to (213), (217), (222), (228), (236), (240), (244), (248), (253), (254), (256), (263), and (268).

took no part in the setting up of the cartel, did not organise or host any of the Top Level meetings, was often scolded for not abiding by the arrangements, did not respect the target prices and continuously increased its sales volume in Europe, from 9% in 1993 to 20% in 1998.

- (492) Tokai alleges that as a relatively small producer and fairly recent player it had only a limited role in the collusive arrangements, that it did not play the role that Toyo Tanso seeks to attribute to it, but had a rather secretarial role and that Tokai usually dealt with distributors and machine shops in Europe, and it therefore had no detailed knowledge of these local markets (local distributors in Germany, France and United Kingdom only occasionally reported to Tokai on meetings). In particular with regard to the local meetings in Germany, Tokai emphasises that (with one exception) its employees did not attend and that the Japanese producers only had a follower role in Europe.
- (493) Ibidem argues that it played a passive role in the cartel, both internationally and in Japan, and was generally a follower and not a ringleader. This is illustrated by the following: Ibidem attended the European meetings only from the fifth one. It did not take part in local meetings and it opposed the fixing of market shares and proposals to decrease the discounts to EDM distributors.
- (494) UCAR remarks that it only has a very small presence in the isostatic market and that its participation in the meetings began at a much later stage than that of the other companies, and was for a much shorter period.
- (495) NSC/NSCC claims that it assumed a marginal role, acting as a follower only, and not as a ringleader. In support thereof, it submits the following arguments: that NSC/NSCC did not initiate or devise the arrangement (it did not participate in any “early meeting”, that it did not contact any of the other producers prior to the meeting of 23 July 1993, that it was not informed of the details of the upcoming meeting), that NSC/ NSCC entered the arrangement under pressure from the other participants, which were important customers of its pitch and pitch coke business and only did so under conditions that would not affect the expansion of its business and that it remained an outsider to the arrangements in several important aspects. In this last regard, NSC/NSCC argues that its participation in the various contacts was limited to a minimum (the arrangement was fully operational when it attended for the first time and it was the only producer that never took part in European or Local meetings, including those of France), that at the meetings it did attend, the undertaking behaved as an observer rather than an active participant and that NSC/ NSCC pursued an independent course, by failing to respond to the many calls for price increases and by consistently increasing its sales volume.
- (496) Finally, Intech alleges that it only played a passive role acting as a follower, and never played any leading role, that it did not participate in any early contacts in the 1970's, that Intech did not initiate or devise any arrangements in 1993 (it had no influence on the basic principles of the cartel and did not participate in any high level meetings), that representatives of Intech only participated in the implementation of decisions taken at a higher level and only under the instructions of Ibidem; and that Intech did not participate at a certain number of meetings (and only occasionally at the local meetings for the Italian market).

The Commission's assessment:

- (497) The Commission must reject all those arguments. It has no reason to consider that any of the companies mentioned in recital (490) above played a passive role or “follow my leader” role in the infringement relating to the isostatic specialty graphite market. The fact that in certain cases they were absent from some specific meetings or group of meetings, did not participate in the original launching of the arrangements, underwent pressure from other parties, did not respect some specific agreements, tried to increase their sales volumes, or had a small market presence does not make any of the undertakings less of an active player in the cartel.
- (498) Firstly, the Commission notes that in a cartel and for the purpose of determining the appropriate fine there can be three categories of cartel members: leaders, active members and passive members. In this case, SGL was the overall cartel leader. The Commission considers that all the other cartel members were active members, which participated regularly in the cartel meetings on their national markets. This has been largely established in the factual part of this Decision for Toyo Tanso<sup>553</sup>, Tokai<sup>554</sup>, Ividen<sup>555</sup>, UCAR<sup>556</sup>, NSC/ NSCC<sup>557</sup> and Intech<sup>558</sup>. There is also a large amount of evidence on their participation in the price increase initiatives showing that they regularly announced to the customers the agreed or concerted price increases<sup>559</sup>.
- (499) Secondly, the Commission considers that neither NSC/ NSCC nor Toyo Tanso have proved their claim that they underwent pressure from other companies. Moreover, had it been the case, that pressure would have not justified infringements of the Community and EEA competition rules. Instead of joining the cartel, the companies should have informed the competent authorities, including the Commission, of the illegal behaviour of their competitors in order to put an end to it.
- (500) Thirdly, the argument that some Japanese producers did not have a detailed knowledge of the European local markets has no relation with a deliberate passiveness on their part in regard to the cartel arrangements.
- (501) The allegations from NSC/ NSCC and Toyo Tanso that they pursued an independent course from the agreements will be further dealt with under recitals (504) to (510) below. The particular circumstances applying to the participation of Intech in the isostatic infringement are considered in recitals (515) and (516) below.

#### Termination of the infringements

- (502) LCL, Toyo Tanso, Tokai, Ividen and Intech claim that the cartel in the isostatic market came to an end prior to the intervention of the Commission and that this should be regarded as an attenuating circumstance when setting the fines.

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<sup>553</sup> See in particular recitals (136), (152), (155), (156), (162), (166), (175), (178), (193), (232) and (234).  
<sup>554</sup> See in particular recitals (120), (122), (128), (140), (146), (149), (152), (155), (162), (168), (172), (177), (178), (198), (202) and (219).  
<sup>555</sup> See in particular recitals (139), (152), (155), (160), (161), (163), (165), (166), (168), (178) and (219).  
<sup>556</sup> See in particular recitals (161), (211), (220), (226), (230) and (243).  
<sup>557</sup> See in particular recitals (146), (162), (166), (173), (174) and (264).  
<sup>558</sup> See in particular recital (221), (242), (252), (279), (285), (286).  
<sup>559</sup> See section 1.4.1.3. above.



(503) However, the Commission has taken into account for the assessment of this infringement only the limited period of time for which it considered there to be sufficient evidence. Since this is an obvious infringement, the claim to have early termination considered as an attenuating circumstance must be rejected.

#### Non implementation

#### Arguments of the parties:

(504) *Ibiden*, NSC/ NSCC, *Toyo Tanso* and *Intech* have referred in their replies to the S.O. to their alleged non-implementation of the isostatic cartel agreements as an attenuating circumstance.

(505) *Ibiden* does not deny that it attempted to implement the cartel agreements, but these attempts were not successful, at either EU or DB/MS level. This was, firstly, because as a non-vertically integrated supplier, *Ibiden* did not sell to end users, and was therefore not in a position to ensure implementation of the cartel at that level. For the same reason, it did not attend local meetings (nor did *Intech* on its behalf), which were the main engine for implementation. Secondly *Ibiden*'s prices to distributors were significantly below those agreed at the meetings (*Ibiden* submits 1993-1998 data in support of this). It also addresses and explains the correspondence relied on by the Commission in the S.O. (recitals 274-283). It contends that the explanations provided illustrate that *Ibiden* did not implement the cartel arrangement. *Ibiden* also submits that it is unaware of the extent to which its distributors applied EU prices, and that the S.O. illustrates that other cartel participants often had complaints due to its non-implementation of the agreements.

(506) NSC/NSCC's states that its participation in the arrangement was largely nominal since, contrary to the other producers, it had no control over either sales or prices applied to end-users in Europe (it did not maintain an own distribution network, it did not have a contractual relationships with any European retailers, products were not sold as such to end users in Europe and it never received any regular updates about the sales of its retailers). It alleges that it is clear from the S.O. that this caused great frustration to the other parties. NSC/ NSCC further states that it lacked the tools either to implement the decisions of the international meetings or to ensure that they were being implemented by the others. It never took part in any of the European or Local meetings, had very little information about the specific circumstances of the European market and never limited its production or sales and, therefore, the agreement had virtually no effect.

(507) *Toyo Tanso* claims that it was often scolded for not abiding by the arrangements, that it did not respect the target prices, and that it continuously increased its sales volume in Europe (from 9% in 1993 to 20% in 1998).

(508) *Intech* alleges that even if it participated in the meetings, because it was forced to do so by *Ibiden*, it did not respect the minimum prices agreed by the cartel. According to *Intech*, the S.O. illustrates that it tried to follow its own competitive sales policy.

#### The Commission's assessment:

(509) The Commission notes that the implementation of agreements on target prices does not necessarily require that these exact prices be applied. The agreements can be said

to be implemented when the parties fix their prices in order to move them in the direction of the target agreed upon. This was the case for the cartels affecting the isostatic specialty market. The fact that an undertaking which has been proved to have participated in collusion on prices with its competitors did not behave on the market in the manner agreed with its competitors is not necessarily a matter which must be taken into account as a mitigating circumstance when determining the amount of the fine to be imposed. An undertaking which, despite colluding with its competitors, follows a more or less independent policy on the market may simply be trying to exploit the cartel for its own benefit.<sup>560</sup>

- (510) On the other hand, it has been sufficiently established in section 1.4.1.3 above that *Ibiden*, NSC/ NSCC, *Toyo Tanso* and *Intech* did actually implement the isostatic cartel agreements<sup>561</sup>. The fact that neither *Ibiden* nor NSC/ NSCC had direct commercial relations with end users in the European market for the product does not invalidate this conclusion. Section 1.4.1.3 above illustrates that the two companies exerted pressure on their respective local distributors in order to achieve an effective implementation of the arrangements.

#### Other attenuating circumstances

- (511) LCL claims that the Commission does not take due account of the compliance programme submitted by this undertaking. The Commission considers that in this case the initiative to set up a compliance policy came too late and, from the point of view of prevention, it remains appropriate to sanction the infringement of the competition rules which LCL has committed in the past.
- (512) *Ibiden* and NSC/ NSCC argue that the fact that the infringement in the market for isostatic graphite is their first violation of Community/ EEA competition law should be considered as a mitigating factor. *Ibiden* considers, in particular, that the basic fine imposed on *Ibiden* should be reduced by comparison with the fine imposed on the recidivists (*UCAR*, *SGL*, *Tokai*), in accordance with the Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty<sup>562</sup> ("the Guidelines on fines"), according to which repeated infringements of the same type by the same undertaking constitute an aggravating circumstance, and the principle of equal treatment.
- (513) The Commission does not consider that, in general, the lack of antecedents in the violation of competition rules constitutes an attenuating circumstance to be taken into account for the fixing of the fine. On the contrary, the first indent of point 2 of the Guidelines on fines refers to repeated infringements as a particular category of aggravating circumstances. The absence of an aggravating circumstance does not amount to an attenuating circumstance. In addition, the aggravating circumstance of

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<sup>560</sup> Case T-308/94 *Cascades SA v Commission*, [1998] ECR II-925, paragraph 230.

<sup>561</sup> See in particular the following recitals:

- For *Ibiden*: (279), indents 1, 7, 9 and 12; (281), first indent; (284), second indent; (285), indents 4 and 5; (286), indent 4.

- For NSC/ NSCC: (280), last indent; (282), first indent; (283), first indent; (286), indent 6; (287), second indent.

- For *Toyo Tanso*: (280), indent 8; (285), indent 5; (286), indent 6.

- For *Intech*: (279), indent 10; (281), first indent; (285), indent 4; (286), indents 5 and 6.

<sup>562</sup> OJ C9, 14.1.1998, p.9.

recidivism is of no relevance for the present purposes as regards the role of UCAR, SGL or Tokai in the infringement relating to *Graphite Electrodes*. As mentioned in the factual part of this Decision, the infringement relating to isostatic graphite ended at the moment when US and Community antitrust authorities started investigations in the graphite electrodes market. Consequently, the infringement took place before the Commission had the occasion to find UCAR, SGL or Tokai responsible for their participation in the cartel affecting that market. The question of repeated infringements does therefore not arise.

- (514) LCL also includes in the category of attenuating circumstances the facts that the undertaking has fully cooperated with the Commission throughout the investigation, that it has a relatively small presence in the relevant market, and that the agreements had no significant effect on the evolution of prices. These arguments are dealt with under recitals (528), (463), and (448), respectively, of this Decision.

#### *The role of Intech*

- (515) The Commission considers that the involvement of Intech in the isostatic cartel was particular in that it was to a considerable extent under instructions from Ibiden<sup>563</sup>, in order to implement by its participation in the European and Local meetings, as Ibiden's distributor, the decisions of principle taken at higher level (where Ibiden participated, but not Intech).
- (516) The Commission considers that those specific circumstances justify a reduction of **40%** in the basic amount of the fine to be imposed on Intech for its participation in the infringement affecting the isostatic market.

#### Conclusion on the attenuating circumstances

- (517) The Commission grants Intech a reduction of **40%** in the basic amount of the fine on account of its participation in the infringement affecting the isostatic market.
- (518) The Commission considers that there are no other mitigating circumstances applicable to the participants in the infringements affecting the isostatic and extruded specialty markets.

#### 2.3.3.4. Application of the Leniency Notice

- (519) The addressees of this Decision have co-operated with the Commission, at different stages of the investigation into the infringements for the purpose of receiving the favourable treatment set out in the Leniency Notice. In order to meet the legitimate expectations of the undertakings concerned as to the non-imposition or reduction of the fines on the basis of their co-operation, the Commission examines in the following section whether the parties concerned satisfied the conditions set out in the notice.

#### Non-imposition of a fine or a very substantial reduction of its amount ("Section B")

- (520) UCAR submits that it played an exceptional role in bringing to the Commission's attention the existence and details of the price conspiracy for specialty graphite and

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<sup>563</sup> See recital (404) above.

that it has clearly fulfilled each of the criteria contained in Section B of the Leniency Notice as regards the infringements concerning both the isostatic and extruded products. Consequently, it claims that is entitled to immunity from any fines that the Commission will impose in these proceedings (argument on legitimate expectations).

- (521) The Commission accepts that UCAR was the first undertaking to submit decisive evidence on the existence of an international cartel affecting the EEA in the isostatic and extruded specialty graphite industries. The information provided by UCAR enabled the Commission to establish existence, content and participants of several cartel meetings in both the isostatic and extruded specialty markets, and the existence of collusive contacts during the periods subject to these proceedings. The Commission also acknowledges that, at the time when UCAR supplied its statement of facts and the documents regarding the cartels, on 13 April 1999, the Commission had not undertaken investigations, ordered by decision, of the enterprises involved, nor had it sufficient information to establish the existence of the infringements. UCAR had also put an end to its involvement in the illegal activities at the time at which it disclosed the cartels to the Commission, and did not compel other enterprises to take part in those cartels, nor act as an instigator of the unlawful conducts. UCAR therefore fulfils, for both infringements, the conditions set out in Section B of the Leniency Notice.
- (522) The Commission accordingly grants UCAR a **100%** reduction of the fine that would otherwise have been imposed on account of the infringements affecting the isostatic and the extruded specialty markets if it had not co-operated with the Commission.

#### Substantial reduction of a fine ("Section C")

- (523) SGL argues that it has extensively and voluntarily cooperated with the Commission, that its cooperation exceed that of any other undertakings, in particular UCAR, and that UCAR should not benefit from a higher reduction in the context of the Leniency Notice (since, for instance, UCAR did not mention its participation in the arrangements as from 1993), that only SGL has illustrated the participation of UCAR in the cartel and therefore the Commission should apply to SGL the maximum reduction provided for in section C of the Leniency Notice and that SGL gathered relevant supplementary information of the local agreements and information concerning the infringement in the extruded graphite market. It also refers to the levels of reduction foreseen in paragraph 23(b) of the Commission notice on immunity from fines and reduction of fines in cartel cases<sup>564</sup> ("the new Leniency Notice").
- (524) Tokai believes that it was the first undertaking to adduce decisive evidence, because UCAR's evidence was not decisive for the market of isostatic specialty, and that it also satisfies all other conditions required under Section C of the Leniency Notice.
- (525) The Commission notes that SGL's reference to the new Leniency Notice is irrelevant for the purposes of these proceedings, in accordance with paragraph 28 of that notice. The Commission also has no reasons to believe that UCAR did not provide it with all the relevant information and all the documents and evidence available to the undertaking regarding the two cartels.

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<sup>564</sup> OJ C 45, 19.2.2002, p.45.

- (526) SGL, LCL, Toyo Tanso, Tokai, Ibiden, NSC/ NSCC and Intech were not the first to provide the Commission with decisive information on the isostatic or extruded specialty cartels, as required under Section C of the Leniency Notice. Consequently none of those undertakings meet the conditions as set out in that section.

#### Significant reduction of a fine ("Section D")

- (527) Before the Commission adopted its S.O., SGL, LCL, Ibiden, Tokai, Toyo Tanso and NSC/ NSCC provided the Commission with information and documents which materially contributed to establishing the existence of the infringements. None of them contests substantially the facts on which the Commission based its S.O.

#### Arguments of the parties:

- (528) LCL requests the benefit of Section D of the Leniency Notice and remarks that LCL provided the Commission with every useful piece of information, which allowed a deeper analysis of facts. It also held several meetings with the Commission. LCL contends that its cooperation in the procedure should be further highlighted, since the documents provided are contemporaneous and of quality and the criteria on added value mentioned in the new Leniency Notice should not be ignored.
- (529) Toyo Tanso argues that it has extensively cooperated with the Commission's investigation and has not limited itself to responding to the Commission's request for information: it met with the Commission on 14 July 2000 to express its willingness to cooperate under the Leniency Notice, submitted evidence of "early meetings" of which the Commission had no knowledge (and which establish three additional years of infringement), actively gathered relevant information and did not claim confidentiality in respect of the information provided by it. Toyo Tanso concludes that it clearly merits a reduction of the fine of at least 50%. It further submits that the SO does not accurately describe Toyo Tanso's cooperation in the proceedings: that it is incorrect that Toyo Tanso failed to provide information on prices requested by the Commission in its first request for information, that it expressed its willingness to fully cooperate with the investigation already on 14 July 2000 rather than only on 2 September 2000 as stated in the SO, that the fact that an undertaking invokes mitigating circumstances is immaterial to the assessment of the extent of its cooperation and that it is inappropriate for the S.O. to suggest that Toyo Tanso tried to evade responsibility for the infringement, since it has repeatedly acknowledged and provided evidence of its participation.
- (530) Tokai argues that if it does not qualify under section C of the Leniency Notice it should at least qualify for the maximum lenient treatment under Section D, since it provided the Commission with evidence, was the first undertaking to reply to the Commission's request for information, provided contemporaneous documents and produced an exhaustive corporate statement.
- (531) Ibiden submits that it should be entitled to a 50% reduction in any fine on the following grounds: it was the first company to indicate its intention to fully cooperate with the Commission investigation (aside from UCAR), it provided substantial (contemporaneous) evidence on the arrangement, which amounted to "value added", and which was extensively relied on by the Commission and it provided much of the information voluntarily, outside of the scope of Article 11 of Regulation No 17. It

further claims that it should benefit from the greatest reduction of those cartel participants to which part D of Leniency Notice applies.

- (532) NSC/ NSCC argues that it has taken every effort to disclose to the Commission documents and details which have been utilised to substantiate the allegations in the S.O.
- (533) Intech claims that Intech EDM AG cooperated with the Commission in so far as it replied to the Commission's Article 11 request and that several questions of this request were inadmissible (according to the case law of the Courts in *Orkem* and in *Mannesmann*<sup>565</sup> and to Article 6 of the European Convention on Human Rights), that it could have not cooperated more comprehensively as according to Intech's own interpretation it acted under the instructions of Ibiden and can therefore not be hold responsible, and that Intech EDM B.V. could not have cooperated with the Commission in the context of the Leniency Notice because it was never involved in the cartel and was not informed about the Commission's investigation until it received the S.O.

The Commission's assessment:

- (534) As already stated, the Commission considers that UCAR had already provided decisive evidence of the cartels' existence when the other participants started to co-operate with the Commission. The information and documents provided by the rest of participants allowed the Commission to confirm and identify the functioning of the cartels and certain elements of it such as dates, locations, participants and content of meetings. That evidence also provided additional information on the number of the meetings and on the roles of participants
- (535) Given that any cooperation under the Leniency Notice must be voluntary and in particular outside the exercise of any investigatory power, the Commission considers that part of the information provided by these undertakings in fact was an integral part of their replies to the Commission's formal requests for information. The information provided by the undertakings is therefore regarded as a voluntary contribution within the meaning of the Leniency Notice only where it went beyond that requested under Article 11 of Regulation No 17.
- (536) As set out in section 1.3 above, the replies provided by SGL, LCL, Ibiden, Tokai, Toyo Tanso and NSC/ NSCC were detailed and exhaustive. They record the events and conclusions of the cartels meetings. They included material originating from the period of time to which the infringements pertain, as well as detailed corporate statements. Prior to or together with these submissions, the undertakings expressed to the Commission their intention to co-operate with its investigations.
- (537) The Commission concludes that those replies provided detailed evidence of the organisation structure of the cartel arrangements affecting the isostatic and extruded specialty markets and contributed decisively to establishing and/or confirming essential aspects of these infringements. Together with UCAR's statement, these

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<sup>565</sup> Judgement of the Court of Justice in case 374/87, [1989] ECR 3283 and Judgement of the Court of First Instance in Case T-112/98, *Mannesmann Röhren-Werke AG v Commission* 2001 [ECR] II- 729.

documents constitute the main source of evidence used by the Commission in preparing this Decision.

- (538) Furthermore, the Commission considers that it is not possible to make a distinction as to the added value that those submissions provided to the investigation in the isostatic market, since they all took place, with short differences in time, in reaction to the Commission's formal request for information, and they all provided evidence of similar quality. Moreover, none of the submissions was on its own essential for the Commission to keep the substance of its objections in the infringement, since they substantially overlapped each other as to the evidence provided.
- (539) Regarding Intech, the Commission cannot share the undertaking's argument that several questions in the Commission's request for information were inadmissible. Indeed, Intech had a duty under Article 11 of Regulation No 17 to reply fully to such requests. None of the questions of the Commission's Article 11 request of 28 March 2000 referred to by Intech in support of its claim can be considered as undermining Intech's rights of defence. As the Court held in *Orkem*<sup>566</sup>, Regulation No 17 does not give an undertaking under investigation any right to evade the investigation on the ground that the results thereof might provide evidence of an infringement by it of the competition rules. On the contrary, it imposes on the undertaking an obligation to co-operate actively, which implies that it must make available to the Commission all information relating to the subject-matter of the investigation.
- (540) In its request for information, the Commission exclusively sought to obtain factual clarification of the information submitted to it by UCAR. It is settled case law<sup>567</sup> that the Commission is entitled to request such factual clarification. In this respect, the Court of First Instance stated<sup>568</sup> that *"the mere fact of being obliged to answer purely factual questions put by the Commission [...] cannot constitute a breach of the principle of respect for the rights of defence or impair the right to fair legal process. There is nothing to prevent the addressee of such questions or requests from showing, whether later during the administrative procedure or in proceedings before the Community courts, when exercising his rights of defence, that the facts set out in his replies or the documents produced by him have a different meaning from that ascribed to them by the Commission."*
- (541) Intech did not provide any documentary evidence on meetings in its reply to the Commission's request for information. However, it did not substantially contest the facts on which the Commission bases its allegations in the S.O.
- (542) On the basis of the foregoing the Commission concludes that SGL, LCL, *Ibiden*, Tokai, Toyo Tanso and NSC/ NSCC fulfil the conditions set out in Section D(2) first and second indent of the Leniency Notice and grants these undertakings a **35%**

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<sup>566</sup> Case 374/87 *Orkem v Commission*, paragraph 27

<sup>567</sup> Case T-112/98, *Mannesmann Röhren-Werke AG v Commission*, paragraphs 70, 77-78; and Case 374/87, *Orkem v Commission*, paragraphs 37-38, 40; See also, Joined Cases 46/87 and 227/88, *Hoechst AG v Commission*, [1989] ECR 2859 and the Opinion of the Advocate General Mischo delivered on 20 September 2001 in case C-94/00 *Roquette Frères SA v Commission* concerning the powers given to the Commission by Article 14 of Regulation 17 to enable it to carry out its duty under the Treaty to bring to light any infringement of Articles 81 or 82 of the Treaty

<sup>568</sup> *Ibid.*, para 78.

reduction of the fine that would have been imposed if it had not co-operated with the Commission.

- (543) On the basis of the foregoing, the Commission also concludes that Intech fulfils the conditions set out in Section D(2) second indent of the Leniency Notice and grants this company a **10%** reduction of the fine that would have been imposed if it had not co-operated with the Commission.

#### Conclusion on the application of the Leniency Notice

- (544) In conclusion, with regard to the nature of their cooperation and in the light of the conditions as set out in the Leniency Notice, the Commission grants to the addressees of this Decision the following reductions of their respective fines:

- (a) GrafTech International, Ltd. (UCAR)
  - Isostatic specialty graphite: a reduction of **100%**
  - Extruded specialty graphite: a reduction of **100%**
- (b) SGL
  - Isostatic specialty graphite: a reduction of **35%**
  - Extruded specialty graphite: a reduction of **35%**
- (c) LCL: a reduction of **35%**
- (d) Ibidem: a reduction of **35%**
- (e) Tokai: a reduction of **35%**
- (f) Toyo Tanso: a reduction of **35%**
- (g) NSC/ NSCC: a reduction of **35%**
- (h) Intech: a reduction of **10%**

#### 2.3.3.5. “Ne bis in idem”

- (545) SGL and LCL submit that the Commission should take account of, and possibly deduct from any fine, the sanctions imposed on them for the same conduct in the US. They argue that the US prosecution related to the same product and period, and the Department of Justice sanctioned the conspiracy for the products sold in the USA and elsewhere. Since “Ne bis in idem” is a general principle of Community law, the undertakings conclude that the Commission cannot sanction several times the same infringement.

- (546) The Commission rejects these arguments. It does not consider that fines imposed elsewhere, including in the United States, have any bearing on the fines to be imposed for infringing European competition rules. The exercise by the United States (or any third country) of its (criminal) jurisdiction against cartel behaviour can in no way limit or exclude the Commission’s jurisdiction under Community competition law.



- (547) More importantly, it is in any case untrue that the Commission was intending to sanction it for the same facts as the US courts had. By virtue of the principle of territoriality, Article 81 of the Treaty is limited to restrictions of competition in the common market and Article 53 of the EEA Agreement is limited to restrictions of competition in the EEA market. In the same way, the US antitrust authorities only exercise jurisdiction to the extent that the conduct has a direct and intended effect on United States commerce.
- (548) SGL further submits that the objections in this case are in close connection with those raised in the *Graphite Electrodes* proceedings, which already led to fines from the Commission, and that there is therefore no room for further sanctions in the Community (the limit of Article 15 of Regulation No 17 has been reached). According to SGL, the arrangements of the undertakings at Top management level concerned graphite electrodes and specialty graphite; the present cartel should therefore be considered as the continuation of a single one. This concept is known in Community law as well as in certain Member States. Consequently, the Commission should take account of it for the potential imposition of fines. SGL alleges that the *Vitamins* decision<sup>569</sup> can be quoted as a precedent of this approach. By stressing the similarity of this procedure with that relating to *Graphite Electrodes*, SGL argues that the Commission would not respect the 10% threshold in Article 15 of Regulation 17 if it were to impose any new fines.
- (549) The Commission cannot follow this reasoning, which is based on the underlying assumption that the 10% limit on the undertaking's turnover applies irrespectively of whether the company is found responsible for one or several infringements. On one hand, it is clear from Article 15(2) that such limit applies to the calculation of the fine that the Commission can impose on account of each different violation of Article 81(1) of the Treaty<sup>570</sup>. On the other hand, these proceedings concern arrangements that are clearly distinct from those in the *Graphite Electrodes* Decision in terms of product market, organisation, duration, and identity, number or role of the undertakings involved. These features justify the classification of the two arrangements as separate infringements, that may or may not have overlapped in time and which may consequently lead to the imposition of separate fines. The *Vitamins* Decision can indeed be quoted as an example of such approach, since the proceedings in that case involved twelve different infringement covering similar products, with a separate calculation of fines being applied for each of them.
- (550) On the basis of the same criteria, the Commission must also reject the argument from SGL that the Commission is wrong to assume that SGL and UCAR have participated in two cartels (isostatic and extruded) because the specialty graphite market cannot be divided into two different markets.

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<sup>569</sup> Commission Decision of 21 November 2001 in Case COMP/37.512 of 21 November 2001, not yet published.

<sup>570</sup> Article 15(2) of Regulation 17 states that “*the Commission may by decision impose on undertakings or associations of undertakings fines (...) not exceeding 10% of the turnover in the preceding business year of each of the undertakings participating in the infringement where (...) they infringe Article 81(1) or Art. 82 of the Treaty (...) In fixing the amount of the fine, regard shall be had both to gravity and to the duration of the infringement*”. In accordance with this provision, the Commission calculates fines on the basis of separate infringements: the gravity (including the departing figure for the basic amount), duration, and aggravating/attenuating circumstances are separately assessed for each violation of Article 81(1) of the Treaty.

- (551) Intech argues that imposing a double fine on Intech EDM B.V. and Intech EDM AG would be contrary to the principle of “ne bis in idem” which is one of the general principles of law, recognised also by the European Convention on Human Rights and the Charter of fundamental rights of the European Union. However, as mentioned in recital (424) above, Intech EDM B.V. and Intech EDM AG are held jointly and severally liable for the infringement affecting the isostatic specialty market, and therefore no double fine is imposed.
- (552) Ibiden claims that, since there is a shared responsibility of Ibiden and Intech in respect of specialty graphite sales, any fine which would normally be imposed on Ibiden should be divided between Ibiden and Intech, as it relates to the same behaviour and sales. The Commission rejects this argument. Firstly, the distinct liability that Ibiden and Intech bear in the isostatic cartel arrangements has already been set out in recitals (401) to (406) above. Secondly, the argument is in contradiction with Ibiden’s own statements, according to which Intech had its own presence on the market as a non-exclusive distributor outside the territory designated as exclusive<sup>571</sup>.

#### 2.3.3.6. Point 5(b) of the Guidelines on fines

- (553) According to point 5(b) of the Guidelines on fines, the Commission should take certain objective factors into account, depending on the circumstances of a given case, when fixing fines<sup>572</sup>.

##### 1) Ability to pay

- (554) SGL and NSC have presented arguments relating to their ability to pay. In particular, both companies have highlighted [...] <sup>573</sup>.
- (555) In order to consider this argument, the Commission requested detailed information on the companies’ financial positions<sup>574</sup>. After examining the companies’ replies of 20 November 2002, as well as SGL’s further submission made on 8 November 2002, the Commission concludes that it is not appropriate to adjust the amount of the fines in this case. Although the financial data provided by the two undertakings show that both SGL and NSC are [...] <sup>575</sup>, to take account of the mere fact of the undertakings’ [...], mainly due to general market conditions, would be tantamount to conferring an unjustified competitive advantage on them.

##### 2) Other factors

- (556) As set out in recital (555), SGL is [...].

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<sup>571</sup> See recital (404) above.

<sup>572</sup> “Depending on the circumstances, account should be taken, once the above calculations have been made, of certain objective factors such as a specific economic context, any economic or financial benefit derived by the offenders (...), the specific characteristics of the undertakings in question and their real ability to pay in a specific social context, and the fines should be adjusted accordingly”

<sup>573</sup> SGL’s confidential presentation during the meetings with the Commission services held on 23 May 2002 and 28 October 2002. NSC’s confidential presentation during the meeting on 18 October 2002, complemented with additional submissions on 21 October 2002 and 24 October 2002.

<sup>574</sup> Commission’s requests for information pursuant to Article 11 of Regulation No 17 dated 11 November 2002.

<sup>575</sup> [...].

(557) On 18 July 2001 the Commission imposed on SGL a fine of EUR 80.2 million for violation of Article 81 of the Treaty, as a result of the undertaking's involvement in the *Graphite Electrodes* cartel<sup>576</sup>.

(558) It follows that SGL is *both* in [...] and has relatively recently been imposed a significant fine by the Commission. The Commission considers that, in these particular circumstances, imposing the full amount of the fine does not appear necessary in order to ensure effective deterrence. This conclusion takes in particular account of the fact that the aggravating circumstance of recidivism does not apply to SGL in the present case (see recital 513 above).

(559) In view of these two factors, the Commission considers that, in this specific case, the fine should be reduced by **33%**.

2.3.3.7. The final amounts of the fines imposed in these proceedings

(560) In conclusion, the fines to be imposed, pursuant to Article 15(2)(a) of Regulation No 17, should be as follows:

(a) GrafTech International, Ltd.

- Isostatic specialty graphite: **EUR 0**
- Extruded specialty graphite: **EUR 0**

(b) SGL Carbon AG

- Isostatic specialty graphite: **EUR 18 940 000**
- Extruded specialty graphite: **EUR 8 810 000**

(c) Le Carbone-Lorraine S.A.: **EUR 6 970 000**

(d) Ibiden Co., Ltd.: **EUR 3 580 000**

(e) Tokai Carbon Co., Ltd.: **EUR 6 970 000**

(f) Toyo Tanso Co., Ltd.: **EUR 10 790 000**

(g) Nippon Steel Chemical Co., Ltd./ NSCC Techno Carbon Co., Ltd.:  
**EUR 3 580 000**

(h) Intech EDM B.V./ Intech EDM AG: **EUR 980 000**

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<sup>576</sup> Decision 2002/271/EC, cited above

HAS ADOPTED THIS DECISION:

*Article 1*

The following undertakings have infringed Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement by participating, for the periods indicated, in a complex of agreements and concerted practices affecting the Community and EEA markets for isostatic specialty graphite:

- (a) GrafTech International, Ltd, from February 1996 to May 1997;
- (b) SGL Carbon AG, from July 1993 to February 1998;
- (c) Le Carbone-Lorraine S.A., from July 1993 to February 1998.;
- (d) Ividen Co., Ltd., from July 1993 to February 1998;
- (e) Tokai Carbon Co., Ltd, from July 1993 to February 1998;
- (f) Toyo Tanso Co., Ltd, from July 1993 to February 1998 ;
- (g) Nippon Steel Chemical Co., Ltd. and NSCC Techno Carbon Co., Ltd., joint and severally liable, from July 1993 to February 1998;
- (h) Intech EDM B.V. and Intech EDM AG, joint and severally liable, from February 1994 to May 1997.

The following undertakings have infringed Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement by participating, for the periods indicated, in a complex of agreements and concerted practices affecting the Community and EEA markets for extruded specialty graphite:

- (a) SGL Carbon AG, from February 1993 to November 1996
- (b) GrafTech International, Ltd., from February 1993 to November 1996

*Article 2*

The undertakings listed in Article 1 shall immediately bring to an end the infringements referred to in that Article, insofar as they have not already done so.

They shall refrain from repeating any act or conduct referred to in Article 1 and from any act or conduct having the same or equivalent object or effect.

*Article 3*

For the infringements referred to in Article 1, the following fines are imposed on the following undertakings:

- (a) GrafTech International, Ltd.

- Isostatic specialty graphite: **EUR 0**
- Extruded specialty graphite: **EUR 0**
- (b) SGL Carbon AG
  - Isostatic specialty graphite: **EUR 18 940 000**
  - Extruded specialty graphite: **EUR 8 810 000**
- (c) Le Carbone-Lorraine S.A.: **EUR 6 970 000**
- (d) Ibiden Co., Ltd.: **EUR 3 580 000**
- (e) Tokai Carbon Co., Ltd.: **EUR 6 970 000**
- (f) Toyo Tanso Co., Ltd.: **EUR 10 790 000**
- (g) Nippon Steel Chemical Co., Ltd. and NSCC Techno Carbon Co., Ltd., jointly and severally liable: **EUR 3 580 000**
- (h) Intech EDM B.V. and Intech EDM AG, jointly and severally liable: **EUR 980 000**

The fines shall be paid, within three months of the date of the notification of this Decision to the following account:

Account N°

642-0029000-95 of the European Commission with:

Banco Bilbao Vizcaya Argentaria (BBVA) S.A.

Avenue des Arts/Kunstlaan, 43 B-1040 Bruxelles/Brussel

(Code SWIFT: BBVABEBB – Code IBAN BE76 6420 0290 0095)

After expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision was adopted, plus 3,5 percentage points, namely **6.75%**.

#### *Article 4*

This Decision is addressed to :

**GrafTech International, Ltd.**

1521 Concord Pike, Suite 301

Wilmington, Delaware 19803 (USA)

**SGL Carbon AG**

Rheingaustrasse 182

D – 65203 Wiesbaden

**Le Carbone-Lorraine S.A.:**

Immeuble La Fayette

La Défense 5

TSA 38001

F-92919 Paris La Défense Cedex

**Ibiden Co., Ltd.:**

1 Kanda-Cho, 2-chome

Ogaki, Gifu, 503-8604

Japan

**Tokai Carbon Co., Ltd.:**

Aoyama Building, 2-3,

Kita- Aoyama 1-chome

Minato-ku

Tokyo 107-8636 (Japan)

**Toyo Tanso Co., Ltd.:**

7-12, 5-Chome Takeshima

Nishyodogawa-ku

Osaka 555-0011 (Japan)

**Nippon Steel Chemical Co., Ltd.**

7-21-11 Nishi-Gotanda

Shinagawa-ku

Tokyo 141-0031 (Japan)

**NSCC Techno Carbon Co., Ltd.**

62-6Aza- Nakasoneyama

Kawauchi, Osato-Cho, Kurokawa-Gun

Miyagi-Pref, 981-3514 (Japan)

**Intech EDM B.V.**

Spikweien 21

P.O. Box 4325

NL-5944 AC Lomm

**Intech EDM AG**

Via dei Pioppi 2

CH-6616 Losone

This Decision shall be enforceable pursuant to Article 256 of the Treaty.

Done at Brussels,

*For the Commission*

*Member of the Commission*

- (561) Sur la base de ce qui précède, la Commission parvient à la conclusion que SGL, LCL, Ibidem, Tokai, Toyo Tanso et NSC/NSCC remplissent les conditions énoncées au titre D, point 2, premier et second tirets, de la communication sur la clémence et accorde à ces entreprises une réduction de **35%** de l'amende qui leur aurait été infligée en l'absence de coopération avec la Commission.
- (562) Sur la base de ces considérations, la Commission parvient également à la conclusion qu'Intech remplit les conditions énoncées au titre D, point 2, second tiret, de la communication sur la clémence et accorde à cette entreprise une réduction de **10%** de l'amende qui lui aurait été infligée en l'absence de coopération avec la Commission.