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Press and Information

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Judgment of the Court of First Instance in Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03

Tokai Carbon Co. Ltd, Intech EDM BV, Intech EDM AG and SGL Carbon AG v Commission of the European Communities

THE COURT OF FIRST INSTANCE LARGELY CONFIRMS THE COMMISSION'S DECISION CONCERNING A CARTEL ON THE SPECIALITY GRAPHITE MARKET

The fine imposed on SGL Carbon is reduced from EUR 27.75 million to EUR 18.45 million and the fine imposed on Intech EDM AG is reduced from EUR 980 000 to EUR 420 000

In June 1997 the Commission of the European Communities commenced an investigation into the graphite electrodes market. During that investigation, UCAR, one of the companies involved, informed the Commission of the existence of anti-competitive practices on the isostatic graphite and extruded graphite markets. These types of speciality graphite are used for the manufacture of industrial instruments, in particular in the automobile, electronics, iron and steel, and metallurgy sectors. Speciality graphite is supplied either directly to the customer in the form of machined products or to machine shops in the form of blocks or rods.

By decision of 17 December 2002,¹ the Commission found that eight companies had participated in a series of agreements and concerted practices on the speciality graphite market between July 1993 and February 1998. The Decision also imposed fines totalling EUR 60.6 million. UCAR, one of the largest producers, obtained immunity from fines on the ground that it had disclosed the existence of the cartel.

Tokai Carbon Co. Ltd, Intech EDM BV, Intech EDM AG and SGL Carbon, established in Japan, the Netherlands, Switzerland and Germany respectively, challenged the Decision before the Court of First Instance and sought reductions of their fines.

For the most part, the Court confirms the Commission's Decision and the calculation of the fines.

¹ Decision C(2002) 5083 final of 17 December 2002 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-2/37.667 – Speciality Graphite)

The fine imposed on SGL Carbon for its participation in the cartel on the isostatic graphite market:

The Court finds that **the starting amount** determined by the Commission **was manifestly incorrect**. In calculating the fines, the Commission relied on the figures sent by the undertakings themselves. However, in the case of SGL, the Commission used figures which, according to the express statements sent in good time by SGL, included products other than isostatic graphite. Consequently, the starting amount used in calculating the fine must be reduced from EUR 20 million to EUR 11.3 million.

As to the 50% increase imposed on account of SGL's role as ringleader of the cartel, the Court considers that the behaviour of other members of the cartel was not so readily distinguishable from that of SGL. Accordingly, a 50% increase cannot be justified and the Court reduces it to 35%.

Consequently, taking into account the reductions already allowed by the Commission, the final amount of **the fine imposed on SGL** in respect of its participation in the cartel on the isostatic graphite market **is reduced** to EUR 9 641 970, which, taken together with the fine imposed in respect of the cartel on the extruded graphite market, corresponds to a total fine of **EUR 18 451 970** for SGL.

The fine imposed jointly and severally on Intech EDM AG and Intech EDM BV:

The Court observes that, under the applicable rules, in no case may the Commission impose a fine in excess of 10% of worldwide turnover of the company concerned. That 10% ceiling aims to protect undertakings against excessive fines which might affect their economic existence and, thus, it relates to a period close to the date on which the fine was imposed. However, since 1997, Intech EDM BV has no longer been the parent company of Intech EDM AG and the turnover figures for each company should have been considered separately. Having regard to the total turnover of Intech EDM AG in 2001, **the joint and several liability of Intech EDM AG is limited to EUR 420 000 and the fine imposed on it is reduced to that amount.**

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: DE, EN, FR

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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