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Press and Information

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Judgment of the Court of First Instance in Cases T-68/04, T-69/04 and T-73/04

SGL Carbon AG, Schunk GmbH, Schunk Kohlenstoff Technik GmbH, Le Carbone-Lorraine v Commission

**THE COURT OF FIRST INSTANCE CONFIRMS THE COMMISSION'S DECISION
REGARDING THE CARTEL ON THE MARKET FOR ELECTRICAL AND
MECHANICAL CARBON AND GRAPHITE PRODUCTS**

The Court of First Instance maintains the fines at the level imposed by the Commission

By decision of 3 December 2003¹, the Commission imposed fines of a total amount of EUR 101.44 million on the French company Le Carbone-Lorraine ('LCL') (EUR 43.05 million) and the German companies Schunk and its subsidiary Schunk Kohlenstoff-Technik (EUR 30.87), SGL Carbon ('SGL') (EUR 23.64 million), Hoffmann & Co. Elektrokohle (EUR 2.82 million) and Conradt Nürnberg (EUR 1.06 million) in respect of their participation in a cartel on the market for electrical and mechanical carbon and graphite products during the period from October 1998 to December 1999. Those products allow electricity to be conducted to the internal mechanisms of electric motors in all kinds of products (industrial products, railway products, everyday consumer products).

The cartel on the market referred to above consisted of fixing, directly or indirectly, sales prices and other trading conditions applicable to customers, sharing markets, in particular by allocating customers, and engaging in co-ordinated actions (quantity restrictions, price increases and boycotts) against competitors which were not members of the cartel.

SGL, Schunk and LCL brought proceedings before the Court of First Instance seeking the annulment of the Commission's decision and, in the alternative, the reduction of the fines imposed on them.

In its judgments, delivered today, **the Court of First Instance dismisses the actions brought by those undertakings and confirms the validity of the Commission's decision both as regards the apportionment of liability and the amount of the fines.**

¹ Commission Decision 2004/420/EC of 3 December 2003 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case No C.38.359 – Electrical and mechanical carbon and graphite products).

The Court of First Instance rejects the plea of illegality based on Article 15(2) of Regulation No 17, which allows the Commission to impose fines of up to 10% of the turnover of the companies concerned. It considers that that provision does not infringe the principle of legal certainty, in that, while leaving the Commission a certain discretion, it lays down the criteria and limits to which it is subject in the exercise of its power to impose fines.

The Court of First Instance confirms the classification of the infringement by the Commission as ‘very serious’ in the light of the nature itself of the infringement, the fact that it had an impact on the market for the goods concerned, even though that impact could not be measured precisely, and the scope of the geographic market concerned, in the present case, the whole of the EEA.

It notes that in order to assess the impact of an infringement on the market, the Commission may legitimately infer that the infringement had effects from the fact that the cartel members took measures to apply the agreed prices. Consequently, the Commission was legitimately able to rely on the effective implementation of the cartel in concluding that there was an impact on the market, after also having pointed out, in a relevant manner, that the cartel had lasted for more than eleven years and that the members of that cartel controlled more than 90% of the EEA market.

The Court of First Instance observes that the Commission had already imposed significant fines on SGL in relation to other cartel activities, namely a fine of EUR 80.2 million for its participation in a worldwide cartel in the graphite electrodes sector and two fines totalling EUR 27.75 million for its participation in a cartel concerning isostatic graphite and extruded graphite. Allowing for a difficult financial situation, the recent fines imposed on it and the fact that the various cartel activities being punished occurred at the same time, the Commission had held that, in those particular circumstances, it was not necessary to impose the full amount of the fine to ensure effective deterrence and thus reduced the fine by 33%, lowering it to EUR 23.64 million.

The Court of First Instance rejects the complaint alleging infringement of the principle of equal treatment raised by LCL, since the latter failed to show that it was in a comparable financial situation to that of SGL, notwithstanding that it had been fined EUR 6.97 million for its participation in another worldwide cartel in the isostatic graphite sector.

The Court notes that the reduction of fines for cooperation on the part of the companies participating in infringements of Community competition law is based on the consideration that such cooperation facilitates the Commission’s task of establishing the existence of an infringement and, where relevant, of bringing it to an end. Consequently, the Court confirms the Commission’s findings concerning the cooperation provided by Schunk and LCL based on the weak added value of the evidence provided by those companies in relation to that which the Commission already had in its possession and had been communicated by other companies.

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.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-68/04>
It can usually be consulted after midday (CET) on the day judgment is delivered.*

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