



Press and Information

Court of Justice of the European Communities

**PRESS RELEASE No 99/09**

Luxembourg, 12 November 2009

Judgments in Cases C-554/08 P and 564/08 P  
Le Carbone-Lorraine SA and SGL Carbon AG v Commission

## **The Court of Justice confirms on appeal the Commission's decision relating to the electrical and mechanical carbon and graphite products cartel**

*It dismisses the appeals brought by Le Carbone-Lorraine and SGL Carbon against the judgments of the Court of First Instance, which had also confirmed the Commission Decision*

By decision of 3 December 2003<sup>1</sup> the Commission imposed fines totalling € 101.44 million on the French company Le Carbone-Lorraine (€ 43.05 million) and a number of German companies, including SGL Carbon (€ 23.64 million), for participating in a cartel on the market for electrical and mechanical carbon and graphite products over a period from October 1988 to December 1999. Those products allow for the transfer of electricity to, and in, electrical motors in all kinds of industrial products and everyday consumer items.

The cartel in question consisted in fixing, directly or indirectly, sales prices and other trading conditions applicable to customers, sharing markets, in particular by allocating customers, and engaging in coordinated actions (quantity restrictions, price increases and boycotts) against those competitors which were not members of the cartel. The members of the cartel controlled over 90% of the market in the European Economic Area<sup>2</sup>.

By judgments of 8 October 2008, the Court of First Instance dismissed the actions brought by four of the companies concerned, including Le Carbone-Lorraine and SGL Carbon<sup>3</sup>. It confirmed the validity of the Commission's decision both in relation to the apportionment of liability and the setting of the amount of the fines.

Le Carbone-Lorraine and SGL Carbon then brought appeals before the Court of Justice seeking to have set aside the judgments of the Court of First Instance which concerned them, and/or to have the amount of the fines imposed reduced.

By today's judgments the Court dismisses those appeals.

As regards the arguments submitted by Le Carbone-Lorraine, the Court rejects them by holding that the Court of First Instance: first, assessed the individual conduct of Le Carbone-Lorraine and the effect of that conduct in the context of the cartel without infringing the principle that penalties must be specific to the offender; second, confirmed, rightly, the Commission's findings on the cartel's impact and the gravity of the infringement of competition rules; third, did not infringe the principle of equal treatment in the course of determining whether it should reduce the fines on account of the cooperation of certain members of the cartel with the Commission, and fourth, did not assess erroneously the specific factors which characterised Le Carbone-Lorraine's situation, compared with that of SGL Carbon, for the purposes of a possible reduction in the amount of the fine on the basis of on 'other factors', namely the financial situation of the two undertakings.

<sup>1</sup> 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).

<sup>2</sup> That is to say, on the date of the Commission's decision, the 15 Member States of the European Union at that time and Iceland, Liechtenstein and Norway.

<sup>3</sup> See [Press Release No 66/08](#).

As regards the arguments submitted by SGL Carbon, the Court rejects those arguments, holding that taking the value of the cartel members' 'internal' expenses into account in the calculation of their turnovers and their market shares, and therefore of the basic amount of their fines, constitutes an essential part of the Commission's decision which SGL Carbon should therefore have challenged in the originating application at first instance. Accordingly, the Court of First Instance was fully entitled to hold that that complaint, first put forward at the hearing, was inadmissible because it was introduced too late. In addition, the Court holds that the division of the members of the cartel into three categories, and the setting of fixed-rate basic amounts of fines by category, as carried out by the Commission and upheld by the Court of First Instance, complies with the principle of equal treatment.

---

---

*Unofficial document for media use, not binding on the Court of Justice.*

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355