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COMP/E-2/38.359 **PUBLISHED VERSION**

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COMMISSION

COMMISSION DECISION

of 3 December 2003

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

(Case C.38.359 – Electrical and mechanical carbon and graphite products)

(notified under document number C(2003) 4457)

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

(Text with EEA relevance)

(2204/.../EC)

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 Treaty¹ and, in particular, Article 3 and Article 15 (2) thereof,

Having regard to the Commission Decision of 23 May 2003 to initiate 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 Treaty²,

(*) The square brackets marked with an asterisk denote confidential information which has been deleted from the text.

¹ OJ L 13, 21.2.1962, p. 204/62. Regulation as last amended by Regulation (EC) No 1216/1999 (OJ L 148, 15.6.1999, p. 5)

² OJ L 354, 30.12.1998, p. 18.

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

Having regard to the final report of the Hearing Officer in this case,

WHEREAS:

I. Introduction

- (1) This Decision is addressed to the following undertakings, suppliers of electrical and mechanical carbon and graphite products:

C. Conradty Nürnberg GmbH (hereinafter "Conradty");

Hoffmann & Co. Elektrokohle AG (hereinafter "Hoffmann");

Le Carbone Lorraine S.A. (hereinafter "Carbone Lorraine");

Morgan Crucible Company plc (hereinafter "Morgan");

Schunk GmbH and Schunk Kohlenstofftechnik GmbH, jointly and severally (hereinafter "Schunk");

SGL Carbon AG (hereinafter "SGL")³.

- (2) The addressees of the present Decision participated in a single and continuous infringement of Article 81(1) of the Treaty establishing the European Community (hereinafter "the EC Treaty" or "the Treaty") and, from 1 January 1994, Article 53(1) of the Agreement on the European Economic Area (hereinafter "EEA Agreement"), covering the whole of the EEA territory, by which they:

1. agreed and occasionally updated a uniform, highly detailed method of calculating prices to customers, covering the main types of electrical and mechanical carbon and graphite products, different types of customers and all EEA countries where demand existed, with a view to arriving at identically or similarly calculated prices for a wide variety of products;
2. agreed regular percentage price increases for the main types of electrical and mechanical products and all EEA countries where demand existed, for different types of customers;
3. agreed on certain surcharges to customers, on discounts for different types of delivery and on payment conditions;

³ In the footnotes, references to certain documentary evidence are abbreviated. For an explanation of the meaning of these abbreviations and a full listing of the documentary evidence used in this Decision, see section 4. Page numbers in square brackets refer to the scanned file on CD-ROM.

4. agreed account leadership for certain major customers, agreed to freeze market shares in respect of those customers, and regularly exchanged pricing information and agreed specific prices to be offered to those customers;
 5. agreed a ban on advertising and on participation in sales exhibitions;
 6. agreed quantity restrictions, price increases or boycotts in respect of resellers that offered potential competition;
 7. agreed price undercutting in respect of competitors; and
 8. operated a highly refined machinery to monitor and enforce their agreements.
- (3) The undertakings participated in the infringement during at least the following periods:
- | | |
|-------------------|--------------------------------------|
| Conradty: | from October 1988 to December 1999; |
| Hoffmann: | from September 1994 to October 1999; |
| Carbone Lorraine: | from October 1988 to June 1999; |
| Morgan: | from October 1988 to December 1999; |
| Schunk: | from October 1988 to December 1999; |
| SGL: | from October 1988 to December 1999. |

II. The industry subject to the proceeding

1. THE INDUSTRY FOR ELECTRICAL AND MECHANICAL CARBON AND GRAPHITE PRODUCTS

1.1. The product

- (4) The product group subject to this proceeding is carbon and graphite products used for electrical and mechanical applications and the blocks of carbon and graphite from which these products are made (together referred to in this Decision as "electrical and mechanical carbon and graphite products").
- (5) The base material for carbon is coke. In order to produce carbon, pitch is added to coke. The two are blended and heated to around 900 degrees Celsius. The mixture becomes carbon. Carbon is pressed into shape. It is a tough, inert material, able to withstand abrasive chemicals and friction. Carbon has a low electrical resistance and is therefore suitable for the conduct of electricity. If carbon is heated to around 3 000 degrees Celsius, its chemical properties change and it becomes graphite. Graphite is softer, has lubricant properties and is able to withstand high temperatures. Carbon-graphite mixtures are produced for high-performance applications that require self-lubrication.

- (6) Electrical carbon products are primarily used to transfer electricity. The most important products in this group are carbon brushes and electrical current collectors. Electrical carbon is also sold in blocks, which require further processing⁴.
- (7) Carbon brushes are used in electric motors to conduct electricity by charging an electromagnet on an axle. A commutator⁵ is a ring that is placed around the axle. The brushes are mounted adjacent to and in contact with the commutator. As the axle of the motor spins, so does the commutator. The carbon brushes brush against the commutator as it spins, constantly maintaining contact with the commutator. Electrical current flows from the electric motor's power source, through the brushes to the commutator, and from the commutator to the electromagnet on the axle. In this way, a circuit of electricity is maintained while the axle remains free to spin with limited resistance. Applications of carbon brushes are in the automotive, consumer products, industrial and traction (public transport) markets. Examples of applications in the automotive area are starters, alternators, fuel pumps, air conditioning and powered windows in cars and trucks. Consumer product brushes are used in power tools like drills, in vacuum cleaners, electric shavers, mixers and many other domestic appliances and consumer durables. Industrial applications are for instance in assembly lines and elevators. Traction brushes are used in railway and other public transport applications, mainly in locomotives and in auxiliary electrical motors.
- (8) Electrical current collectors are used to transfer electrical current from a stationary source to a moving machine. Pantograph carbons are an example of a current collector. These objects are thin strips of carbon, generally about a meter long, which are mounted on the tops of electrical rail trains. As the train moves, the pantograph slides along the cables above the rail, staying in constant contact and providing the train with its electricity. Current collectors in electrical trains can also be installed at the bottom of the train and used in conjunction with current-carrying third rails, as in metro systems ; these are known as "third rail collecting shoes". Current collectors are also used on trams and trolley buses, and referred to as "trolleybus inserts".
- (9) Mechanical carbon and graphite products can withstand high friction, are non-reactive, resistant to wear and, if they contain graphite, may also have a lubricating function. They are primarily used to seal gases and liquids in vessels and to keep low-wear parts in machines lubricated. Examples are carbon and graphite sealing rings, bearings, vanes, rolls, pressed-to-size carbon, pressed-to-size resin-bonded carbon, carbon-disc and carbon-metal housing parts⁶. Applications are, for instance, in pumps, compressors and

⁴ For purposes of price agreements, the cartel split the electrical products it covered into several broad categories: industrial and traction brushes (sub-divided into black and metal/copper), midget brushes, pantograph carbons, trolleybus inserts and blocks. See, for example, MLS, EV 1, pages 57 [0139] and 77 [0160].

⁵ According to Morgan, commutators and brush holders were not part of the cartel. See submission by Morgan of July 2, 2002, page 2 [4791].

⁶ For the cartel's own list of the main mechanical carbon products covered, see MLS, EV 4, page 52 [1155]. See also the submission by Morgan of July 2, 2002 [4790-4793].

turbines. Mechanical carbon is also sold in blocks, which require further processing.

- (10) There are literally thousands of varieties of electrical and mechanical carbon and graphite products. Most often they are customer-designed and certification of the product's conformity to product requirements is usually necessary before the product can be used. As the products are, in principle, not large or heavy, they are easy to transport. Nevertheless, most producers have a policy of transporting blocks from one or a few production plants to local subsidiaries in different countries for further tooling close to – and in contact with – the customer.
- (11) The common element in all these different products is that they are all produced from carbon and graphite for ultimate applications in either the electrical or mechanical field. The companies that produce these products are basically experts in adding value to carbon and graphite. These producers saw fit to co-ordinate their commercial behaviour in respect of this entire product group, within the same cartel, over the same period and for the same countries, albeit targeted at different types of clients depending on the specific product type.
- (12) In its reply to the Statement of Objections, Carbone Lorraine argues that the Commission should have used the Notice on the definition of the relevant market for the purposes of Community competition law⁷ to define the product and that there is no substitution possible between carbon and graphite blocks on the one hand and finished carbon and graphite products on the other hand.
- (13) The Commission agrees that there is no substitution possible between blocks and finished products. Neither is substitution possible between electrical and mechanical products, as their applications are entirely different. Indeed, even among different types of electrical products and among different types of mechanical products, substitution is often not possible. However, it should be recalled that market definition is a tool to identify and define the boundaries of competition between firms⁸, to be used where needed to apply Community law. In cartel cases, the companies that conclude anti-competitive agreements have in so doing themselves determined the boundaries of competition (or rather the lack of it) between them. For the purposes of applying Article 81 of the Treaty, the reason for defining the relevant market, if at all, is to determine whether an agreement is liable to affect trade between Member States and has as its object or effect the prevention, restriction or distortion of competition within the common market. Consequently, there is an obligation on the Commission to define the relevant market in a decision applying Article 81 of the Treaty only where it is impossible, without such a definition, to determine whether the agreement or concerted practice at issue is liable to affect trade

⁷ OJ C 372, 9.12.1997, p.5.

⁸ Commission Notice on the definition of the relevant market for the purpose of Community competition law, paragraph 2.

between Member States and has as its object or effect the prevention, restriction, or distortion of competition within the common market⁹.

1.2. The undertakings subject to the proceeding

1.2.1. Conradty

- (14) Conradty did not reply to the letter sent by the Commission pursuant to Article 11 of Regulation No 17 ("Article 11 letter") on 2 August 2002. It entered into insolvency on 7 November 2002. Later in the procedure, Conradty did provide certain very limited elements of information. In its reply to the Statement of Objections, for instance, Conradty stated that it did not produce graphite foil, pressed-to-size parts or electrical brushes for cars in the period of the infringement and that it stopped producing pantographs in 1997.
- (15) In 1998, the last full year in which all members participated in the cartel, Conradty's reported consolidated turnover of electrical and mechanical carbon and graphite products in the EEA was EUR [*]¹⁰. In its reply to the Statement of Objections, Conradty contested the correctness of this figure, which it had provided itself, now claiming an alternative figure of less than EUR [*]. This claim, however, was based on internal sales figures for a limited number of the products subject to the proceeding to a limited number of geographic areas within the EEA. To find out the correct turnover figure, as well the value of any captive use¹¹, the Commission sent Conradty, as well as the other undertakings in this proceeding, Article 11 letters on 13 and 20 August 2003. However, Conradty failed to provide the information requested. As a result, the Commission has used the information provided in Conradty's original submission, which appeared the most reliable.
- (16) Conradty also did not report its consolidated worldwide turnover for all products in 2001, the last full year of operations before the company went into insolvency. However, it did report its 2001 consolidated worldwide turnover for electrical and mechanical carbon and graphite products, which was EUR 10,6 million¹². Given that Conradty's operations were heavily focused on these products, the Commission has accepted this figure as Conradty's 2001 consolidated worldwide turnover for all products.

⁹ See the judgement of the Court of First Instance of 19 March 2003 in Case T-213/00, *CMA CGM and Others v Commission*, not yet published, at paragraph 206 and the case law mentioned there.

¹⁰ Conradty's submission of 10 April 2003 [15050].

¹¹ For the purpose of this Decision, captive use can be described as the further processing or internal use of products within the company or the group to which it belongs in such a way that the product becomes (part of) a different product that is (ultimately) sold to independent buyers. Captive use may, or may not, entail a transfer sale within the group to which the company belongs.

¹² Conradty's submission of 10 April 2003 [15050].

1.2.2. *Hoffmann*

- (17) Established in 1946, Hoffmann & Co. Elektrokohle AG has its headquarters in Steeg, Austria. It produces electrical carbon and graphite products. It has subsidiaries in the USA and Hungary.
- (18) Hoffmann was taken over by Schunk on 28 October 1999. It continues to have separate legal personality and assets, but since the take-over the management of the company is in the hands of Schunk¹³.
- (19) Hoffmann's reported consolidated turnover in 1998 of electrical and mechanical carbon and graphite products in the EEA, including the value of captive use, was EUR [*]¹⁴. Hoffmann's reported consolidated worldwide turnover in 2002 for all products was EUR 40,4 million¹⁵.

1.2.3. *Carbone Lorraine*

- (20) Le Carbone Lorraine S.A. was created in 1937 by the merger of La Compagnie Générale Electrique de Nancy and la société Le Carbone. It is now the parent company of what it calls a "federation of small and medium enterprises", together constituting the Group Carbone Lorraine¹⁶. Carbone Lorraine is a publicly-traded company. Its headquarters are located in Paris, France.
- (21) Carbone Lorraine organises its production and commercial activities around two cores: around the electrical motor with the pole Electrical Components and around graphite with the pole Advanced Systems and Materials. Electrical carbon and graphite products are covered by the pole Electrical Components. Mechanical carbon and graphite products are covered by the pole Advanced Systems and Materials.
- (22) Carbone Lorraine is a global company. Forty percent of its staff and more than half of its industrial sites are located outside of Europe. For all products together, it has 19 industrial sites in Europe (mainly in France, Germany, the United Kingdom, Spain and Italy), 5 in Asia, 12 in the USA and 3 in South America and Africa.
- (23) Carbone Lorraine's reported consolidated turnover in 1998 of electrical and mechanical carbon and graphite products in the EEA, including the value of

¹³ Schunk submission of 10 March 2003, page 8 [1088].

¹⁴ Hoffmann's replies of 28 August and 9 September 2003 to the Commission's Article 11 letters of 13 and 20 August 2003 respectively.

¹⁵ Hoffmann's reply of 8 September 2003 to the Commission's Article 11 letter of 13 August 2003.

¹⁶ CL11, page 5 [6704].

captive use, was EUR [*]¹⁷. Carbone Lorraine's reported consolidated worldwide turnover in 2002 for all products was EUR 721 million¹⁸.

- (24) Since 1995, the Group Carbone Lorraine has expanded, in particular through acquisitions of other companies. This expansion has focused on other areas of activity than electrical and mechanical carbon and graphite products. Companies that were acquired in the area of electrical and mechanical carbon and graphite products are:
- the US company Stackpole in 1991;
 - the Danish company Dansk Electrical Industri in 1998.

1.2.4. Morgan

- (25) The Morgan Crucible Company plc has been the ultimate parent entity of the Morgan Group during the entire period in question. Morgan is a publicly-traded company. Its headquarters are located in Windsor, United Kingdom.
- (26) Morgan describes itself as a "focused application engineering company"¹⁹. It covers five business sectors, electrical carbon, magnetics, engineered carbon, technical ceramics and insulating ceramics. The first three sectors, which include electrical and mechanical carbon and graphite products, are handled by the Carbon Division. The latter two sectors are handled by the Ceramics Division.
- (27) Morgan is a global company. The Carbon Division alone had in 2001 five subsidiaries in the USA, one in South Korea, one in South Africa, one in Brazil, and seven in the Community, spread out over five Member States (the United Kingdom, Germany, Italy, Luxembourg and the Netherlands).
- (28) Morgan's reported turnover in 1998 of electrical and mechanical carbon and graphite products in the EEA, including the value of captive use, was EUR [*]²⁰. Morgan's reported consolidated worldwide turnover in 2002 for all products was EUR 1 400 million²¹.
- (29) Over the years, the Morgan Group has expanded in size, in particular through acquisitions of other companies. In the area of electrical and mechanical carbon and graphite products, Morgan acquired:

¹⁷ Carbone Lorraine's reply of 10 September 2003 to the Commission's Article 11 letters of 13 and 20 August 2003.

¹⁸ Carbone Lorraine's reply of 10 September 2003 to the Commission's Article 11 letters of 13 and 20 August 2003.

¹⁹ M11, annex B, Morgan 2000-2001 Annual Report, page 1 [5290].

²⁰ Morgan's replies of 2 and 11 September 2003 to the Commission's Article 11 letters of 13 and 20 August 2003. The EUR figures are based on an exchange rate of UK pounds to EUR (ECU) of 0.67643 as the yearly average for 1998, as reported by the European Commission, Directorate-General Economic and Financial Affairs, Statistical Annex of European Economy, Autumn 2002.

²¹ Morgan's reply of 2 September 2003 to the Commission's Article 11 letter of 13 August 2003.

- the Italian company EBN SpA in 1972;
- the UK company Nobrac Carbon Ltd in 1973;
- the Dutch and UK companies National Electric Carbon BV and National Electric Ltd in 1986;
- the US company Pure Carbon Inc. and its UK subsidiary Pure Industries Ltd in 1995;
- the French company Cupex SA in 1997;
- the German company Rekofa and its German subsidiary Rekofa Wenzel GmbH and French subsidiary Graphite et Métaux SA in 1998.

1.2.5. *Schunk*

- (30) Schunk GmbH, with headquarters in Thale, Germany, is the main parent company within the Schunk Group, consisting of more than 80 affiliated companies. The Group describes itself as a "global technologies conglomerate"²². The Group has subsidiaries in 25 countries. Schunk GmbH is responsible for, *inter alia*, the Group's Graphite and Ceramics Division, within which electrical and mechanical carbon and graphite products fall. In 2000, one third of the Group's turnover in the Graphite and Ceramics Division was achieved outside of Europe.
- (31) As part of the Graphite and Ceramics Division, Schunk Kohlenstofftechnik GmbH, located in Heuchelheim, Germany, produces and sells the products subject to this proceeding. Schunk Kohlenstofftechnik GmbH is the legal successor to the original producer of electrical and mechanical carbon and graphite products Schunk & Ebe OHG, established in 1913 and located in Fulda, Germany. Schunk Kohlenstofftechnik GmbH is a 100% subsidiary of Schunk GmbH. Hoffmann, formerly an independent company, came under the control of Schunk on 28 October 1999. Since then, it has been a 100% subsidiary of Schunk Wien Ges. MbH, Vienna, Austria, which is a 90% subsidiary of Schunk GmbH. Since the takeover, management of Hoffmann is in the hands of Schunk.
- (32) The reported consolidated turnover in 1998 of Schunk Kohlenstofftechnik GmbH in the EEA for electrical and mechanical carbon and graphite products, including the value of captive use, was EUR [*]²³. The reported consolidated world-wide turnover of Schunk Kohlenstofftechnik GmbH in 2002 was EUR

²² Schunk website.

²³ Replies of Schunk Kohlenstofftechnik GmbH of 28 August and 9 September 2003 to the Commission's Article 11 letters of 13 and 20 August 2003 respectively.

78 million²⁴. The reported consolidated worldwide turnover of Schunk GmbH in 2002 for all products was EUR 584 million²⁵.

1.2.6. SGL

- (33) SGL Carbon AG is the publicly-traded holding company for a group of companies together forming the SGL Carbon Group. The headquarters of the group are in Wiesbaden, Germany. The group produces carbon, graphite and composite materials. The group distinguishes four business areas: carbon and graphite, graphite specialties, corrosion protection and SGL technologies. Electrical and mechanical carbon and graphite products are covered by the graphite specialties business area, which is responsible for [*]% of the group's sales²⁶.
- (34) In 1992, the merger of the German company SIGRI GmbH and the US company Great Lakes Carbon Corporation created the SIGRI Great Lakes Carbon GmbH. In 1994, this company was transformed into SGL Carbon AG. At that time and before, the group's activities in the area of electrical and mechanical carbon and graphite products were undertaken through Ringsdorff GmbH. Since 1988, Ringsdorff GmbH had been a 100% subsidiary of SIGRI GmbH and since 1992 of SIGRI Great Lakes Carbon GmbH. In July 1995, Ringsdorff GmbH and its activities were merged into those of SGL Carbon AG and transferred in 1998 to a new operational company SGL Carbon GmbH. SGL Carbon AG then became the 100% parent company of SGL Carbon GmbH²⁷.
- (35) SGL is a global company, with 40 sites world-wide. Half of these sites and 39% of employees are located outside of Europe²⁸. In the Community, SGL has sites in Germany, Austria, Italy, France, Spain, Belgium and the United Kingdom. Outside of the Community, SGL has sites in, *inter alia*, Poland, the US and Canada. SGL's reported consolidated turnover in 1998 of electrical and mechanical carbon and graphite products in the EEA, including the value of captive use, was EUR [*]²⁹. SGL's reported consolidated worldwide turnover in 2002 for all products was EUR 1 112 million³⁰.
- (36) In the area of electrical and mechanical carbon and graphite products, SGL over the years expanded its operations through acquisitions of the following companies:

²⁴ Reply of Schunk Kohlenstofftechnik GmbH of 28 August 2003 to the Commission's Article 11 letter of 13 August 2003.

²⁵ Reply of Schunk GmbH of 28 August 2003 to the Commission's Article 11 letter of 13 August 2003.

²⁶ The products covered by the current proceeding are, however, quite different from the isostatic specialty graphite and extruded specialty graphite products covered by the Commission Decision of 17 December 2002 in case COMP/E-1/37.667 – Specialty Graphite, not yet published.

²⁷ SGL11, annual report 2001, page 76 [9057].

²⁸ SGL website on 27 February 2003.

²⁹ Reply of SGL of 9 September 2003 to the Commission's Article 11 letters of 13 and 20 August 2003.

³⁰ Reply of SGL of 9 September 2003 to the Commission's Article 11 letter of 13 August 2003.

- the specialty graphite business of the US Carbon/Graphite Group in 1994;
- the formerly East-German company Elektrokohle Lichtenberg (EKL) in 1997, which became part of SGL PanTrac GmbH in Berlin.

1.3. Supply of electrical and mechanical carbon and graphite products

- (37) Like other industrial sectors in the EEA, and as evidenced by section 1.2 above, the sector of the production of electrical and mechanical carbon and graphite products has seen a tendency towards concentration since the Second World War and in particular in recent decades. In 1998, the last full year in which all members participated in the cartel, the cartel covered more than 90% of the EEA market for the product group concerned, this market having a total estimated value in that year of EUR 291 million, including the value of captive use. According to SGL, Morgan, Carbone Lorraine and Schunk together also control more than two thirds of the world market³¹.

Table 1: Estimates of turnover (including the value of captive use) and market shares in the EEA for the product group subject to the proceeding in the year 1998:

Supplier	Turnover (including the value of captive use)	Market share in EEA
Conradty	[*]	[below 10%*]
Hoffmann	[*]	[below 10%*]
Carbone Lorraine	[*]	[above 20%*]
Morgan	[*]	[above 20%*]
Schunk	[*]	[between 10% and 20%*]
SGL	[*]	[between 10% and 20%*]
Others	[*]	7%
Total	291	100%

Source: Replies to the Commission's Article 11 letters of 13 and 20 August 2003, except for Conradty. The turnover figure for Conradty is that which it reported in its submission of 10 April 2003 [15050]. The Commission has assumed that Conradty did not have any significant captive use. Sales by "Others" are as estimated by Morgan in its submission of 21 March 2003 [11045].

³¹

Submission by SGL of 17 March 2003, page 3 [10743].

Note 1: Figures in EUR millions. Where Morgan estimates are used, the EUR figures are based on an exchange rate of GBP to EUR (ECU) of 0.67643 as the yearly average for 1998, as reported by the European Commission, Directorate-General Economic and Financial Affairs, Statistical Annex of European Economy, autumn 2002.

Note 2: For the purpose of this Decision, captive use can be described as the further processing or internal use of the product concerned by this proceeding within the company or the group to which it belongs in such a way that the product becomes (part of) a different product that is (ultimately) sold to independent buyers. Captive use may, or may not, entail a transfer sale within the group to which the company belongs. The value of captive use of the product concerned has been calculated by taking a percentage of the sales value of the finished product to independent customers, that percentage being based on the relative cost of the different components of the finished product. The value of the captive use of blocks of carbon and graphite has been excluded from this calculation, given that this value is already included in the reported turnover of the product concerned, which is made from blocks of carbon and graphite.

- (38) Electrical and mechanical carbon and graphite products are not only supplied by producers of carbon and graphite, but also by so-called "cutters". These are companies that buy blocks of carbon and graphite from the producers and then work these into final products, for instance by cutting the block into the desired shapes, adding cables, screws and plugs, etc. The market share of cutters in the EEA is a sub-part of the 7% for others in Table 1.

1.4. Demand for electrical and mechanical carbon and graphite products

- (39) The demand for electrical and mechanical carbon and graphite products is divided between a relatively small group of large customers and a much larger group of small customers³².
- (40) In the electrical area, large customers exist in several categories. A first category consists of automobile suppliers and producers of consumer products. These so-called original equipment manufacturers (abbreviated to "OEMs") buy very large volumes of a limited number of types of electrical or mechanical carbon and graphite products to integrate into the electrical motors that are part of the equipment they produce. These clients are very few in number. They co-operate with potential suppliers to design the products and to certify that they meet their requirements. Supply contracts are negotiated, usually with several pre-selected potential suppliers, on an annual basis. Because these clients tend to be very large companies that buy very large volumes, their negotiating power is strong. In order to avoid dependency on any particular supplier, these clients will usually buy from several suppliers simultaneously. Supplies take place continuously, with hardly any stocks being kept by the buyer.
- (41) A second category of large customer is formed by public transport companies (railways, metros, trolley buses). The number of these clients is several dozen, somewhat more than in the first category. These are large end-users, often (at least traditionally) public companies. These clients mainly buy two types of electrical carbon and graphite products: current collectors to conduct the

³² This description of the demand for electrical and mechanical carbon and graphite products is largely based on a submission of Le Carbone Lorraine of 13 February 2003 [9822-9826].

electricity to the locomotive and electrical brushes for use in the locomotive and in auxiliary motors (so-called "traction" brushes). Purchases of large series are made through public tenders, on an annual or pluri-annual basis.

- (42) A third category of large clients in the electrical area is referred to in the business as industrial "constructors". These are OEM companies that construct electrical motors for use in the production equipment of industries like steel, paper, cement, rubber, plastic and energy. There are several dozen of these constructors. They are large and they buy large volumes, either through an annual negotiation with suppliers or through specific tenders.
- (43) An example of large customers for mechanical carbon and graphite products is producers of pumps, which buy seals of mechanical carbon.
- (44) Among the large customers, there are few new clients. Competition is therefore essentially for the business of existing customers. Suppliers usually know which of them supplies what types of products to which clients. Products and prices are often tailor-made.
- (45) Small customers consist of the industries that buy electrical motors from constructors, to the extent that the electrical carbon and graphite parts in these motors need to be replaced after a period of use or in case of technical problems. The number of these end-user clients is very high, in the tens of thousands. Replacement parts are normally purchased in small quantities. They have to be produced (as most are tailor-made) and supplied immediately so as to avoid costly production breakdowns. As a result, the supplier is in a strong bargaining position. Correct technical service and advice is a crucial element of the sale. These clients purchase a technical solution rather than just parts. This kind of service is provided by the suppliers of electrical carbon and graphite products themselves, but also by specialised service companies. In the latter case, the service companies buy the parts from the suppliers of electrical carbon and graphite products.
- (46) The way sales are divided between different categories of customers undoubtedly differs for each supplier. [*]³³.
- (47) Finally, there is a demand for blocks of carbon and graphite on the part of cutters or, as they are also called, machine shops. In the EEA, these are relatively small companies like Eurocarbo S.P.A. (hereinafter "Eurocarbo"), Luckcrath B.V. (hereinafter "Luckcrath") and Gerken Europe S.A. (hereinafter "Gerken"). These small and medium-sized companies are fundamentally dependent on the other, much larger suppliers of finished carbon and graphite products, because they rely on them for the delivery of blocks (semi-finished products) at prices that still allow them to compete with these same suppliers in the market for finished products. It is therefore very easy for suppliers of blocks to force cutters into applying high prices, simply by selling the blocks to them at a higher price. A refusal to sell blocks to cutters could even drive

³³ Information based on submission of Carbone Lorraine of 26 February 2003, annex 1 [9842-9847].

them out of business. In a competitive market, this should not be possible, because other suppliers would be willing to sell blocks, and to do so at lower prices. But if a cartel dominates the market, suppliers of blocks can agree among themselves not to supply cutters at all or only at agreed high prices. Because of their fundamental dependency on their suppliers of blocks, cutters are unable to compete effectively for more than a marginal percentage of the market (mainly small customers not of interest to the large suppliers). Nor are they able to undercut the high prices agreed by the cartel, if only because their supply line of blocks might be cut off if they become too "difficult". Cutters therefore have little option but to passively follow the cartel's price level³⁴.

1.5. The geographic scope of the market in electrical and mechanical carbon and graphite products

- (48) Although most of the producers subject to the proceeding follow global business strategies, they produce their products as close as possible to their customers. The reason for this is that products are developed in close co-operation between producers and customers, the latter determining the product requirements and specifications. It is therefore important to be in constant and close contact with the customers. Also, customers normally need to be supplied very quickly, either because they carry a minimum of stock (for instance, automobile suppliers) or, in the case of industrial end-users needing replacement parts, because a breakdown of the production process can be very costly. Long transport routes are therefore uneconomical. The strategy of most producers is to produce blocks in just one or a few production sites, but then to process those blocks into a multitude of final products in tooling sites closer to the customer, as and when particular products are requested by customers. Those tooling sites are ideally in the same country as the customer, or at least in a neighbouring country.
- (49) Eurostat figures confirm that the geographic focus of this market is within the EEA. Firstly, out of a total EEA market of EUR 291 million in 1998, total trade among EEA Contracting Parties and EEA imports from the rest of the world of blocks and electric brushes, the two main products subject to the proceeding, represented only EUR 164 million³⁵. This means that a large percentage of products sold were produced in the country in which they were sold. Secondly, to the extent that trade took place, this was largely trade among EEA Contracting Parties, not trade with the rest of the world. In 1998, trade in blocks among EEA Contracting Parties amounted to EUR 29 million, while EEA imports of blocks from the rest of the world were only EUR 14 million³⁶. As for electric brushes, trade among EEA Member States represented EUR 103 million, while EEA imports from the rest of the world

³⁴ It was agreed among cartel members that "If third parties are to be supplied with blocks, the supplier is responsible to control the finish product price". MLS, EV1, page 75 [0158]. See further section 7.8 below.

³⁵ Trade figures are for tariff headings 38019000 (blocks) and 85452000 (electric brushes).

³⁶ The three largest sources of imports of blocks were the USA (EUR 5 million), Russia (EUR 3 million) and Japan (EUR 2 million).

were only EUR 19 million³⁷. This relative lack of imports shows that the EEA is largely self-sufficient in supply. The EEA does, in fact, have a small trade surplus with the rest of the world, because in 1998 it exported EUR 30 million of blocks³⁸ and EUR 73 million of electric brushes³⁹.

- (50) Finally, that the geographic scope of the business was focused on the EEA rather than global in scope is also indicated by the geographic reach of the cartel itself. The cartel covered all of the Contracting Parties of the EEA where demand existed⁴⁰. It also covered a number of countries in Eastern Europe and the Middle East. [The Commission does not have sufficient evidence that the cartel extended to other markets.]

1.6. Interstate trade

- (51) The trade figures mentioned in section 1.5 above show that there is considerable trade among EEA Contracting Parties. Eurostat figures also show that products originate from and are destined for most Contracting Parties of the EEA⁴¹. In fact, all four major suppliers to the EEA market, Morgan, Carbone Lorraine, Schunk and SGL, supply to all EEA Contracting Parties where demand exists from production sites spread out over a number of EEA Contracting Parties. The EEA market operates as a single market in this respect. However, differences in local tooling costs (for instance, labour costs) contribute to the continuation of price differences among Contracting Parties.

III. Procedure

2. THE COMMISSION'S INVESTIGATION

2.1. Previous Commission investigation of addressees of this Decision

- (52) Beginning in June 1997, the Commission carried out an investigation into the graphite electrodes market in the EEA. It revealed the existence of a cartel that

³⁷ The three largest sources of imports of electric brushes were the USA (EUR 7 million), Japan (EUR 3 million) and the Czech Republic (EUR 2 million).

³⁸ The three largest export markets for blocks were Russia (EUR 11 million), Japan (EUR 7 million) and the USA (EUR 4 million).

³⁹ The three largest export markets for electric brushes were Hungary (EUR 10 million), the Czech Republic (EUR 8 million) and Switzerland (EUR 5 million).

⁴⁰ MLS, page 13 [0015]. See also the submission by SGL of 17 March 2003, page 5: "The geographical market that was discussed at the Technical Committee and Summit meetings pertained essentially to Europe" ("Der geographische Markt, der bei den Technical und Summit Meetings besprochen wurde, bezog sich im Wesentlichen auf Europa" in the German original). The same applied for the mechanical discussions in the Technical Committee: "The theme of the meetings was the European market as well as the markets of the most important Member States". In the German original: "Thema bei den Meetings war der europäische Markt sowie die Märkte der wichtigsten Mitgliedstaaten", SGL submission of 17 March 2003, page 11 [10751].

⁴¹ For instance, all EEA Contracting Parties (with the possible exception of Liechtenstein, for which no import statistics were available) purchased electrical brushes from a number of other EEA Contracting Parties and all EEA Contracting Parties (including Liechtenstein, but excluding Iceland) supplied a number of other EEA Contracting Parties.

had been engaged in price fixing, allocation of markets and market share quotas. SGL was one of the participants in the cartel and was fined an amount of EUR 80,2 million in April 2002⁴².

- (53) In April 1999, in the course of the Commission's investigation into the graphite electrodes market, one of the participants in that cartel (not SGL) revealed to the Commission the existence of anti-competitive practices in the specialty graphite market and applied for leniency for this second infringement. The Commission's subsequent investigation into the specialty graphite market confirmed the existence of two price-fixing and market-sharing cartels, one for isostatic specialty graphite and one for extruded specialty graphite. SGL and Carbone Lorraine were involved in the isostatic specialty graphite cartel. SGL was also involved in the extruded specialty graphite cartel. In a Decision of 17 December 2002, the Commission imposed a fine of EUR 27,75 million on SGL, and a fine of EUR 6,97 million on Carbone Lorraine⁴³.

2.2. The Commission's investigation into the EEA market for electrical and mechanical carbon and graphite products

- (54) On 18 September 2001, Morgan met with the Commission to apply for leniency under the Commission Notice on the non-imposition or reduction of fines in cartel cases⁴⁴ ("the 1996 Leniency Notice") in respect of possible cartel activity in the European market for electrical and mechanical carbon products. On 5 October 2001, as agreed with the Commission, Morgan submitted the evidence available to it at that point in time. A supplementary submission of evidence was received on 30 October 2001.
- (55) On 2 August 2002, the Commission sent requests for information under Article 11 of Regulation 17 to Conradty, Schunk, SGL and Carbone Lorraine, as well as to Gerken, Eurocarbo and Luckerath. The Article 11 letter to Schunk covered Hoffmann as well. Morgan was asked to provide the same information as requested in the Article 11 letters as part of its continuing co-operation under the 1996 Leniency Notice. An Article 11 letter was also sent to the European Carbon and Graphite Association (hereinafter "ECGA").
- (56) On 16 August 2002, the Commission received a fax from Carbone Lorraine saying it requested leniency. A non-exhaustive summary of agreements and practices was received on 22 August 2002. The Commission informed Carbone Lorraine on 23 September 2002 that its leniency application would be handled under the 1996 Leniency Notice. Full information to support the leniency request was received by the Commission on 24 September 2002. On 30 September 2002, the Commission received Carbone Lorraine's reply to its Article 11 letter. In accordance with Commission standard policy, Carbone Lorraine claimed leniency only for information it had supplied in addition to

⁴² Commission Decision 2002/271/EC in case COMP/E-1/36.490 – Graphite Electrodes, OJ L 100, 16.4.2002, p.1.

⁴³ Commission Decision of 17 December 2002 in case COMP/E-1/37.667 – Specialty Graphite, not yet published.

⁴⁴ OJ C 207, 18.7.1996, p. 4.

the information requested by the Commission in its Article 11 letter. Carbone Lorraine co-operated closely with the Commission in the remainder of the procedure and made several further submissions, both on its own motion and in response to questions from the Commission.

- (57) On 2 September 2002, the Commission received a fax from Schunk, saying it wanted to co-operate with the Commission in this case and that it was evaluating whether, in addition to replying to the questions in the Article 11 letter, it was able to provide added value to the Commission, considering the evidence already in the possession of the Commission. On 25 October 2002, the Commission received a reply from Schunk, claiming that there was no legal obligation to answer questions 8 to 11 of the Article 11 letter, but providing answers nonetheless in the framework of Schunk's application for leniency. Schunk provided additional information subsequently, mainly in response to questions from the Commission.
- (58) On 6 September 2002, the Commission received a reply from the ECGA.
- (59) On 18 September 2002, the Commission received a reply from Gerken. The Commission requested further information, which Gerken provided on 27 February 2003.
- (60) On 4 October 2002, the Commission received a reply from SGL, in which SGL refused to answer in their entirety the important questions 8 and 10 of the Commission's list of questions. These questions pertained precisely to meetings and other contacts between the cartel members, including a number of standard and purely factual elements. The Commission informed SGL by letter of 28 January 2003 that the Commission had the power to order replies by Decision, but that given the amount of evidence already available in this case, this would probably not be necessary. SGL applied for leniency on 17 March 2003 and submitted evidence on the same day. Subsequently, SGL provided certain additional information in response to questions from the Commission.
- (61) On 11 November 2002, the Commission received a reply from Eurocarbo.
- (62) On 9 December 2002, the Commission received a reply from Luckerath, providing some information. Luckerath provided a more comprehensive reply on 13 February 2003.
- (63) Conradty did not reply to the Commission's Article 11 letter. Conradty was declared insolvent on 7 November 2002. Conradty supplied the Commission with some limited elements of information on 10 April and 2 May 2003.
- (64) On 23 May 2003, the Commission decided to initiate proceedings in this case and adopted a Statement of Objections against the undertakings to which this decision is addressed. Parties were granted access to the file, in the form of two CD-ROMs containing a full copy, excluding business secrets and other confidential information, of the documents in the Commission's file on the case.

- (65) Substantive replies to the Statement of Objections were received from all parties, except Morgan, which merely noted that it had no observations to make. Carbone Lorraine, Schunk, Hoffmann and SGL said in their reply that they did not substantially contest the facts on which the Commission based its Statement of Objections. However, Hoffmann also claimed in the same reply that it did not participate in cartel meetings before 1994. SGL and Carbone Lorraine requested an oral hearing. Schunk and Hoffmann stated that they wanted to participate in an oral hearing if such a hearing were requested by another party. Morgan and Conradty did not request to participate in the hearing.
- (66) By Article 11 letters sent on 13 and 20 August 2003, the Commission requested further information from each undertaking regarding 2002 consolidated worldwide turnover for all products and regarding 1998 consolidated turnover and captive value for the product concerned in the EEA. The figures set out in Table 1 of this Decision were distributed to all parties prior to the hearing. The oral hearing was held on 18 September 2003, in the presence of all parties except Conradty and Morgan.

3. INVESTIGATIONS IN OTHER JURISDICTIONS

- (67) In the United States, the Department of Justice announced on November 4, 2002, that Morganite Inc., of Dunn, USA had agreed to plead guilty to charges of participation in an international cartel to fix the price of various types of electrical carbon products sold in the US and elsewhere. The UK parent company, The Morgan Crucible Company plc, agreed to plead guilty to charges of attempts to obstruct the investigation. The fines agreed were USD 10 million for the cartel behaviour and USD 1 million for obstruction of the investigation. On 24 September 2003, four former executives of Morgan were indicted by a US Grand Jury for influencing witnesses and destruction or concealment of documents in the period between April 1999 and August 2001.
- (68) In Canada, the Competition Bureau and the Department of Justice have been investigating the possible existence of an international cartel operating on the Canadian market for carbon brushes.

IV. Description of the events

4. THE DOCUMENTARY EVIDENCE

- (69) The facts set out in this Chapter are based principally on the following evidence:
- Leniency Statement by Morgan of 5 October 2001 (hereinafter “Morgan Leniency Statement” or “MLS”) [00001-03103];

- Supplementary Leniency Statement by Morgan of 30 October 2001 (hereinafter "Morgan Supplementary Leniency Statement" or "MSLS") [03104-04600];
- Submission from Morgan to the Commission, 2 July 2002 [04790-04793];
- Submission from Morgan to the Commission, 17 July 2002 [04779-04789];
- Letter from Carbone Lorraine requesting leniency, 16 August 2002 [04631-04633];
- Submission from Carbone Lorraine regarding leniency, 22 August, 2002 [04624-04629];
- Reply from the ECGA to Article 11 letter, 6 September 2002 (hereinafter also "ECGA11") [04805-05243];
- Submission by Carbone Lorraine of 13 September 2002 regarding leniency, entitled "Communication (non-exhaustive) de documents" (Non-exhaustive communication of documents) [05444-05501];
- Reply from Gerken to Article 11 letter, 17 September 2002 [05384-05413];
- Reply from Morgan to Commission questions, 18 September 2002 (hereinafter also "M11") [05249-05354];
- Submission from Carbone Lorraine, 24 September 2002 regarding leniency (hereinafter also "CL") [05511-06698];
- Reply from Carbone Lorraine to Article 11 letter, 27 September 2002 (hereinafter also "CL11") [06699-08606];
- Reply from SGL to Article 11 letter, 4 October 2002 (hereinafter also "SGL11") [08712-09075];
- Reply from Schunk to Article 11 letter, 25 October 2002 (hereinafter also "Schunk11") [09242-09400];
- Reply from Eurocarbo to Article 11 letter, 4 November 2002 [09557-09565];
- Reply from Luckerath to Article 11 letter, 10 December 2002 [09501];
- Submission of Schunk, 4 February 2003 [09431-09449];
- Submission of Schunk, 12 February 2003 [09401-09405];
- Declaration and submission by Carbone Lorraine of 12 and 13 February 2003 respectively [09822-09832];

- Additional reply from Luckerath to Article 11 letter, 13 February 2003 [09569-09778];
- Declaration and submission of Carbone Lorraine of 18 and 19 February 2003 respectively [09810-09813];
- Submission of Schunk, 20 February 2003 [09805-09809];
- Submission of Gerken, 20 February 2003 [09799-09801];
- Submission of Carbone Lorraine of 20 February 2003 [09794-09798];
- Submission of Carbone Lorraine, 26 February 2003 [09836-10737];
- Submission of Gerken, 27 February 2003 [09779-09782];
- Submission of Schunk, 10 March 2003 [10874-10883];
- Submission of SGL, 17 March 2003 [10740-10827];
- Submission of Morgan, 21 March 2003 [11041-11045];
- Submission of SGL, 21 March 2003 [11035-11040];
- Submission of Schunk, 28 March 2003 [15184-15203];
- Submission of Conradty, 10 April 2003 [15050];
- Submission of Schunk, 14 April 2003 [15044-15049];
- Submission of Schunk, 24 April 2003 [15018-15020];
- Submission of Conradty, 2 May 2003 [15004-15008];
- Submission of Carbone Lorraine, 7 May 2003 [14997-14998];
- Reply from Hoffmann to Statement of Objections, 21 July 2003⁴⁵.

5. THE ORIGIN OF THE CARTEL

- (70) The first evidence of a European-wide cartel among suppliers of electrical and mechanical carbon and graphite products dates back to 5 April 1937. On that day, an agreement was concluded between the European Association of German Carbon Brush Manufacturers ("Europa – Konvention der deutschen Hersteller von Kohlebürsten") on the one hand and Morgan and Carbone Lorraine on the other hand⁴⁶. This agreement established a European

⁴⁵ In its reply to the Statement of Objections, Hoffmann presented new contemporaneous evidence. Copies of this evidence were circulated to all parties concerned in the Commission's Article 11 letter of 13 August 2003. Parties were also given the opportunity to comment on this evidence.

⁴⁶ MLS, EV 4, tab 76 [1308-1413].

Association of the Producers of Carbon Brushes ("Europa – Konvention der Hersteller von Kohlebürsten"). The main purpose of the agreement was to agree on minimum prices for sales of carbon brushes to a large number of European countries, including France and the United Kingdom, but excluding Germany.

- (71) The European Association of German Carbon Brush Manufacturers consisted of German producers of carbon brushes existing at that time. They had their own agreement, pertaining to exports of carbon brushes from Germany to a number of other European countries, excluding France and the United Kingdom⁴⁷. While this agreement among the German producers logically had to be at least as old as their 1937 agreement with Morgan and Carbone Lorraine, the first version the Commission has of it is dated 31 March 1939⁴⁸. The substance of this agreement is very similar to the agreement concluded with Morgan and Carbone Lorraine. The purpose of the latter agreement was therefore clearly to extend the export cartel among the German producers to France and the United Kingdom by including in the cartel the main producers located in those countries. The companies Schunk & Ebe, which later became Schunk, and Ringsdorff, which later became SGL, were members of the German association. Conradt became a member on 28 September 1939⁴⁹.
- (72) According to Morgan, some time after the Second World War, the cartel was re-constructed⁵⁰. The cartel's activities allegedly continued despite the entry into force of the competition rules of the European Economic Community on 1 January 1958⁵¹. According to SGL, the cartel was in operation at least as early as the end of the 1970's, but probably before as well⁵². Although the Commission has found a number of indications that the cartel was in operation during the 1970s and the early 1980s, the Commission has decided to limit this proceeding to the period October 1988 to December 1999, a period of 11 years and two months for which the Commission disposes of ample evidence regarding a continuous series of regular meetings and other contacts. For a list of reported cartel meetings throughout this period, see annex 1.
- (73) The first cartel meeting taken into account in this Decision is a Technical Committee meeting of 13 and 14 October 1988, held in the Hotel Goldener Hirsch, in Salzburg, Austria⁵³. It is clear from the 29 issues on the agenda and the discussion that at that time the cartel had already been in operation for a considerable period of time. This meeting dealt with both electrical and mechanical products.

⁴⁷ MLS, EV 4, tab 76, page 180 [1339].

⁴⁸ MLS, EV 4, tab 76, page 167 [1326]. The list of decisions of the German association, at page 209 [1368], starts with a first decision taken on 27 April 1937. Annex 2, on page 179 [1338], contains an arbitration agreement dated 16 November 1936.

⁴⁹ MLS, EV 4, tab 76, pages 159 [1318] and 168 [1327].

⁵⁰ MSLS, page 5 [3109].

⁵¹ Idem.

⁵² Submission by SGL of 17 March 2003, page 2 [10742].

⁵³ MLS, EV1, pages 341-349 [0443-0451].

6. THE ORGANISATION OF THE CARTEL⁵⁴

6.1. Organisation of contacts

- (74) Cartel contacts took place at several different levels⁵⁵.
- (75) The senior executives for carbon and graphite products in the member companies met in periodic European Summit meetings. The purpose of these meetings was not to discuss specifics⁵⁶, but to ensure the stability of the cartel, to ratify agreed price levels, price increases and other conclusions of preceding Technical Committee meetings, to resolve any outstanding issues from those meetings, to deal with any issues of non-compliance with the cartel's rules, and, if necessary, to agree on compensation⁵⁷. Summit meetings were held twice per year, normally within weeks of the Technical Committee meeting(s). As of 1996, the Summit was, according to Carbone Lorraine, also referred to as the Steering Committee⁵⁸. Summit meetings discussed both mechanical and electrical products and a representative of the Technical Committee level would be present to explain the work done by the Technical Committee on both types of products to the Summit⁵⁹.
- (76) Technical Committee meetings at European level were in principle held twice a year, in spring and autumn. In earlier years the same session covered both electrical and mechanical carbon and graphite products⁶⁰. In later years, as the number of products and the complexity of the arrangements increased, Technical Committee meetings were often split up in a session on electrical products and a separate session on mechanical products. The main purpose of Technical Committee meetings was to agree on price levels and percentage price increases for the different products in different countries. They were also used to reach agreement on "policy" aspects of companies' sales strategies, such as (upward) harmonisation of prices across Europe, the price levels to be applied in respect of large customers, how to handle competitors, and

⁵⁴ The description below of the cartel and its activities is largely based on documents supplied by Morgan, as referred to in the footnotes. For a brief corroborating general description of the cartel and its activities, see the declaration by a key participating employee of Carbone Lorraine of 17 September 2002, in CL, annex 7, item 17 [5772-5773]. For a general description see also the submission of SGL of 17 March 2003, pages 3 to 18 [10743-10758].

⁵⁵ MLS, pp. 11-12 [0013-0014].

⁵⁶ "In Summit meetings, specifics were rarely discussed. The participants were, however, regularly informed about the Technical Committees by a member" (in the German original: "In Summit Meeting wurden selten Einzelheiten erörtert. Den Anwesenden wurde jedoch regelmässig aus den Technical Committees durch ein Mitglied berichtet", submission by SGL of 17 March 2003, page 6 [10746].

⁵⁷ An example is the list of "Complaints against S.G.L." in MLS, EV 1, pages 81-82 [0164-0165], which was submitted to the Summit for resolution, see MLS, EV 1, page 72 [0155].

⁵⁸ CL11, page 2 [6701]. See also, Schunk11, annex 3 [9272-9275].

⁵⁹ Declaration by Carbone Lorraine of 12 February 2003 [9827-9828]. See also the submission by SGL of 17 March 2003, page 6 [10746]: "The Summit meetings were meetings in which both EC [electrical carbon] and MC [mechanical carbon] were discussed in the same meeting." (in the German original: "Die Summit Meetings waren Meetings, in denen sowohl EC als auch MC im gleichen Meeting erörtert wurden").

⁶⁰ MLS, EV 1, page 1 [0076].

surcharges for different alleged purposes⁶¹. Finally, Technical Committee meetings served to reach agreement on questions of interpretation regarding the agreed method of calculating prices⁶².

- (77) Local meetings were held on an ad hoc basis in Italy, France, the United Kingdom, Benelux, Germany, and Spain (covering also the Portuguese market). They included many of the companies' representatives at Technical Committee meetings⁶³. These meetings discussed price increases in the country concerned, as well as the accounts of single local customers. In these meetings, representatives of the local subsidiaries of cartel members participated as well. Occasionally small local cutters were apparently "invited" to participate and comply with the cartel's decisions. Such minor players were, however, never admitted to the cartel's European Technical Committee and Summit meetings.
- (78) Regular contacts between representatives of the cartel members were necessary to ensure that the agreements made in the meetings were upheld in daily practice by all parties. Representatives also kept regular contact to coordinate specific bids made to large customers. Such contacts occurred on a weekly and sometimes daily basis, by phone, fax, or, occasionally, meetings⁶⁴. These contacts were so frequent that the rules of the cartel provided that each company should have two contact persons, so that at least one might be available at any time⁶⁵.
- (79) For a list of cartel meetings that participants have reported to the Commission for the period 1988 to 1999, see Annex I. The functioning of the cartel was essentially unchanged throughout this period.

6.2. Participants in meetings

- (80) **Table 2: Participants in the different types of meetings of the cartel in the course of the operation of the cartel**

⁶¹ For mechanical products, some meetings have also been described by Morgan as "Club" meetings. While it is clear that these are cartel meetings, it is unclear whether these were at the level of Technical Committee or at local level. See MLS, EV4, pages 6 and 7 [1090-1091].

⁶² For an example, see the Technical Committee meeting of 20 September 1994: "2 cables from one hole 5.3 German/Europa? These are 2 cables therefore also calculate as such" ("2 kabels uit één gat 5.3 Duits/Europa? Dit zijn 2 kabels dus ook zo berekenen" in the Dutch original), MLS, EV1, page 150 [0241]. The reference to German/Europa is probably to the bareme scheme for Germany or Europe. For an explanation of the bareme scheme, see section 7.1.

⁶³ In the evidence, they are therefore often called Technical Committee meetings for one or more particular countries, for example Technical Committee - Germany. See MLS, EV 2, page 208 [0678]. According to SGL, representatives of the headquarters were sent to these local meetings to ensure that the "discipline" agreed at European-level meetings was respected at the national level, SGL submission of 17 March 2003, page 14 [10754].

⁶⁴ See SGL submission of 17 March 2003, page 18 [10758].

⁶⁵ MLS, EV 1, page 74 [0157].

	Conradty	LCL	Morgan	Hoffmann	Schunk	SGL
Summit meetings	[*]	[*]	[*]	[*]	[*]	[*]
Technical Committee meetings	[*]	[*]	[*]	[*]	[*]	[*]
Local meetings	[*]	[*]	[*]	[*]	[*]	[*]

Sources: Morgan Leniency Statement, appendix 2 [0034-0056], Morgan Leniency Statement Exhibits Volume 1, pages 3-4 [0078-0079], Morgan Leniency Statement Exhibits Volume 2, pages 158 [0619], 212 [0683], 249 [0724], Morgan Supplementary Leniency Statement, page 6 [3107], Carbone Lorraine reply to Article 11 letter, annex 6 [7856-7859], Submission by SGL of 17 March 2003, annex 3 [10805-10807].

6.3. Precautions to conceal meetings and contacts

- (81) In order to disguise or conceal their contacts and meetings, the participants took elaborate precautions.
- (82) European-level cartel meetings often took place in the margins of meetings of the European trade association for the products concerned, first the Association of European Graphite Electrode Producers (AEGEP) and later the European Carbon and Graphite Association (ECGA). Official meetings of these associations allowed the participants in the cartel to be at the same place at the same time under the cover of conducting legitimate business. Indeed, the cartel members considered the utility of these associations largely by their function as cover or "umbrella"⁶⁶.
- (83) Given the diversity of the price increases agreed (differing by country, type of product and type of customer), it was inevitable that detailed notes were taken during technical meetings of the cartel, that is to say, at the levels of the Technical Committee and at local meetings. It was, however, an agreed rule, at least in later years, that no documents pertaining to the cartel should be kept in the company or even at home, but that they should be destroyed after having

⁶⁶ Consider this statement made at a Technical Committee meeting of the cartel: "Is the umbrella of E.C.G.A still be needed", MLS, EV 1, page 29 [0107]. Or consider this statement made at another Technical Committee meeting under the heading of "Security": "Recommendation is to find subjects to continue our E.C.G.A. meetings.", MLS, EV 1, page 31 [0109].

been implemented⁶⁷. Moreover, for the more strategic Summit meetings, which ratified the price increases agreed at the level of the Technical Committee, participants strictly followed the rule of not keeping any notes, agendas or reports at all⁶⁸.

- (84) In reports on visits or any other company reports no comments were to be made regarding contacts with competitors about prices⁶⁹.
- (85) Especially in earlier years, correspondence was exchanged through post boxes⁷⁰. Faxes were avoided whenever possible and instead the telephone was used⁷¹. SGL used a fax machine installed at the home of one of its representatives⁷².
- (86) A system of code names for the companies was devised to cover their real identities. Correspondence and notes referred to these code names rather than the real names of companies. The system was based on companies' locations:
- SGL was referred to as "B", for Bonn (where Ringsdorff, as SGL's carbon business was previously known, was located; Ringsdorff is sometimes also indicated as R.W., for Ringsdorff Werke);
 - Schunk was "G" for Giessen;
 - Morgan was "S" for Swansea;
 - Carbone Lorraine was "P" for Paris;
 - Hoffmann was "St" for Steeg;
 - NKF, later National, a Dutch Morgan subsidiary, was "H" for Hoorn;

⁶⁷ MLS, EV 1, page 31 [0109]. SGL submission of 17 March 2003, page 12 [10752]: "The participants took notes during the meetings, which were then worked on at home or served to give instructions. Thereafter, these notes were, as a matter of principle, destroyed". In the German original: "Die Teilnehmer machten während der Treffen Notizen, die dann zuhause aufgearbeitet wurden oder der Erteilung von Anweisungen dienten. Danach wurden diese Notizen grundsätzlich vernichtet".

⁶⁸ MLS, page 23 [0025]. This rule was apparently strictly adhered to by participants, as the Commission has found only one written report of a Summit meeting, despite the existence of several leniency applications. See MLS, EV1, 143 [0232]. The fact that these Summits did actually take place regularly and had the functions described to them can, however, not be open to any doubt, given that this information has been confirmed by four of the companies participating in the cartel. See Schunk11, reply to question 8 [9252] and annex 3 [9272-9275], CL pages 4 [5514], 6 [5516] and annex 7, item 17 [5772-5773], MLS page 12 [0014] and appendix 4 [0068]. Schunk submission of 20 February 2003, pages 3-4 [9805-9809] and the submission by SGL of 17 March 2003, pages 6-8 [10746-10748]. For an example of an invitation, see the invitation for the Summit meeting held on 25-26 April 1990 in Evian les Bains, France, in MLS, EV1 293-294 [0392-0393].

⁶⁹ MLS, EV 1, page 31 [0109].

⁷⁰ For examples, see MLS, EV 1, pages 10 [0086], 14 [0090], 16 [0092], 18 [0094], 19 [0095].

⁷¹ SGL submission of 17 March 2003, page 16 [10756].

⁷² Idem, page 17 [10757].

- Morgan's mechanical carbon operations in Capellen, Luxembourg, were "C";
- Conradty was "N" for Nürnberg⁷³.

(87) A Security Committee was established on 13 October 1998, after public authorities in Europe and elsewhere had started taking action against members of the cartel in other product sectors⁷⁴.

(88) These measures show clearly that the members of the cartel were very much aware that their activities were illegal.

6.4. Seeking compliance

(89) The 1937 agreement establishing a European Association of the Producers of Carbon Brushes had provided for an official arbitration procedure to settle disputes among the cartel members regarding alleged non-compliance with the rules of the cartel⁷⁵. Such formal procedures to ensure compliance were no longer possible in the operation of the cartel after the entry into force of the Community competition rules. Instead, cartel members closely monitored each other's price quotations to clients and insisted in meetings and other contacts on compliance with the agreed rules and prices of the cartel. Examples are:

- From a Technical Committee meeting on 16 April 1993:

"G [Schunk] requests that:

1. Quotation to Burgmann [a client] at price 25-30% below bareme must be withdrawn in writing
2. No further quotes at this price level are submitted"⁷⁶.

- From a local meeting in the Netherlands on 27 October 1994:

"Morganite – Belgium problems with the colleagues. No price increase applied in summer"⁷⁷.

(90) Instances of too low prices were discussed at meetings of the cartel and could lead to claims for compensation⁷⁸.

⁷³ MLS, page 11 [0013] and MLS, EV 1, page 2 [0077]. Note that in MLS, EV4, page 6 [1090], "C" is used to denote "Conradty".

⁷⁴ MLS, EV 1, page 36 [0115].

⁷⁵ MLS, EV 4, pages 156 [1315], 157 [1316] and 162 [1321].

⁷⁶ MLS, EV 4, page 143 [1298].

⁷⁷ MLS, EV 2, page 195 [0660]. The original text in Dutch reads "Morganite – België problemen met de kollega's geen prijsverhoging toegepast in de zomer".

⁷⁸ For examples, see MLS, EV 1, pages 33 [0111] and 81-82 [0164-0165], EV 2, page 201 [0667]. See also MLS, page 22 [0024]. As another example, a local meeting in Germany on 7 May 1992 recorded that "Conradty is prepared to stop hostile activities if National [Morgan] is prepared to pay compensation", MLS, EV2, page 245 [0720]. The reason for this disagreement is explained in MLS, EV 2, page 251 [0726]. See also MLS, EV 4, page 42 [1142]: "Compensation should occur also in other case than underquoting".

7. ACTIVITIES OF THE CARTEL, 1988 - 1999

7.1. Prices

7.1.1. Principles

- (91) The most important purpose of the cartel was to agree on the prices to be charged to customers in different countries for the many different varieties of electrical and mechanical carbon and graphite products⁷⁹. For this purpose, the cartel members first agreed on a pricing method which calculated the sales price by reference to a number of factors⁸⁰. The basis of the scheme was the calculation of the price for carbon brushes. These were divided into three groups: industrial brushes, midget brushes and exceptions. Within each of the first two groups, the volume of the carbon or graphite material in question would be determined in cubic centimetre. Depending on the material, each volume corresponded to a "basic material price" figure, which was displayed in identical table format in each company's internal price list. To the basic material would be added a "standard fittings price", calculated by reference to the sectional area of the material in question in square centimetre. To this figure would be added charges for additional machining, such as the inclusion of screws, plugs, springs, grooves and other items. The total figure thus resulting, plus any additional surcharges, was known by the cartel members as the "scheme price" or "bareme price" in an expression borrowed from the French and often used by cartel members.
- (92) The bareme price was not a real sales price in any particular currency, but rather a relative value, indicating, for instance, that a complicated large brush should cost x times more than a small simple brush. In this sense, the bareme prices had a certain commercial logic, as they were based on incremental increases in the costs of materials and tooling. Nevertheless, what was in no way commercially inescapable was the level of detail and uniformity in the price calculation method agreed among members of the cartel, the result of which was that, by using the price calculation scheme, each member would arrive in principle at exactly the same price increase, in relative terms, for each additional cubic centimetre of carbon used or for each additional screw or other tooling added⁸¹. Autonomous commercial conduct of each cartel member would certainly have led to appreciable differences among them in

⁷⁹ MLS, pages 16 [0018] and 18 [0020].

⁸⁰ MLS, page 13 [0015].

⁸¹ To take one concrete example from a Carbone Lorraine bareme price scheme of 1996: According to the scheme, a group II industrial brush of 44 cm³ should have a value of 3.45, a 45 cm³ a value of 3.50 and a 46 cm³ a value of 3.54. The increase from 44 to 45 cm³ therefore causes an increase in value of 0.05, while the increase from 45 to 46 cm³ causes an increase in value of 0.04. See MLS, EV6, tab 7, page 22 [2565]. Note that this corresponds exactly to the values and increases in value in the Morgan internal price list, see MLS, EV6, tab 5, page 4 [2446]. All of these values are very precise and could easily have been different if each company had established its own price calculation method. Even small differences in these values of basic material and tooling costs would have led to considerable price differences to customers, as these values are subsequently multiplied by other factors to arrive at real sales prices.

the exact calculation of these relative values⁸². According to SGL, "it was, in fact, not known whether the bareme prices, at least for mechanical products, covered the actual cost of the products"⁸³.

- (93) Nor did the cartel stop at that. To move from a relative value to a real sales price, the bareme price was multiplied by two "co-efficients". First, the bareme was multiplied by a "currency co-efficient", which converted the value into a real price in the currency of the country where the brushes were being sold. This figure was then multiplied by a "quantity co-efficient", which gave the buyer a discounted unit price in return for purchasing a higher volume of products. The final figure represented the unit price in local currency, franco domicile. The quantity co-efficient differed depending on the customer. OEM customers received a larger volume rebate than either resellers or end-users⁸⁴.
- (94) The calculation of bareme and actual sales prices for mechanical carbon and graphite products followed the same methodology⁸⁵.
- (95) The basic function of the bareme pricing scheme was to provide all participating companies with a uniform and transparent method of calculating prices, thereby allowing them to arrive in an agreed and non-disputable way at identical or at least similar basic prices for a vast array of different, often tailor-made products sold to different customers in different countries⁸⁶. Once the price calculation method had been agreed, it merely needed to be regularly updated with percentage price increases for each country covered by the cartel (the "currency co-efficient"). This regular updating of agreed price levels was indeed one of the most important activities of the cartel. In addition, the price calculation method itself was occasionally revised to account for technological changes⁸⁷.
- (96) This basic system for calculating the prices of carbon and graphite products was already used by the Association of German Carbon Brush Manufacturers before the Second World War⁸⁸ and was extended to Morgan and Carbone

⁸² Carbone Lorraine claims that surcharges ("suppléments" in the French original) were not part of the bareme scheme and did lead to price differences among cartel members. See Carbone Lorraine submission of 13 February 2003, page 4 [9825]. Even if true, this does not diminish the fact that cartel members agreed to calculate a large portion of the product's value in an identical manner.

⁸³ In the German original: "Ob die Preisschemazahlen kostendeckend waren, war nicht bekannt", SGL submission of 17 March 2003, page 9 [10749].

⁸⁴ For a general description of the bareme price system by Carbone Lorraine, see CL, pages 7-8 [5517-5518] and submission of 13 February 2003, pages 3-4 [9824-9825]. For a general description of the bareme price system for mechanical products, see SGL submission of 17 March 2003, pages 9 [10749] and 14 [10754].

⁸⁵ See MLS, Page 25 [0027]. For an example of the calculation by Morgan of a price list for carbon rings for the German market in the early 1990s, see MLS, EV 4, pages 287-291 [1460-1464]. Another Morgan example can be found in MLS, EV 4, pages 87 to 93 [1209-1215]. See also the calculation scheme by Carbone Lorraine for sealing rings, dated 2 January 1992, in MLS, EV 4, page 284 [1456].

⁸⁶ MLS, page 14 [0016]. For an example of a price calculation for a concrete product, see MLS, EV 1, page 295 [0395].

⁸⁷ CL11, reply to questions 5, 6 and 7, annex 1 [6709].

⁸⁸ MLS, EV 4, tab 76, pages 180-208 [1339-1367].

Lorraine through the 1937 agreement creating the European Association of the Producers of Carbon Brushes. It was occasionally updated, as is witnessed by the reference "Last revision: 31.1. 1972" in Morgan's price list for carbon rings for the German market in the early 1990s⁸⁹. In a Technical Committee meeting on 20 April 1989, reference was made to integrating ABB, one of the cartel's major clients, into "the existing European calculation scheme"⁹⁰.

- (97) This pre-1990 European Scheme apparently was difficult to implement in all Member States because of the existence of historic price differences between certain Member States, especially France, Germany, Italy and the United Kingdom. With a - perverted - view to the creation by the European Community of a single Internal Market, the cartel tried to bring prices in all Member States to the level of the European Scheme⁹¹. This European Scheme formed, in terms of its method of calculation, the basis of cartel members' discussions and agreements on changes to price lists throughout the 1990s⁹². The scheme was regularly up-dated to take account of technical developments and with a view to its simplification⁹³. It remained, however, difficult to harmonise agreed prices across the Community, as these had grown apart from each other by many years of differentiated percentage price increases per country and type of product, as well as by differences in labour costs⁹⁴. Efforts at harmonisation of different national price levels in the run-up to the Internal Market and the introduction of the Euro therefore led to regular discussion at meetings of the Technical Committee⁹⁵. In practice, the price level in the Netherlands was taken as the index level of 100, with the bareme price level in other countries expressed in index figures above or below 100⁹⁶. Agreed percentage price increases would then be applied to those national

⁸⁹ MLS, EV 4, pages 287-291 [1460-1464].

⁹⁰ "Das existierende europäische Berechnungsschema" in the original German text MLS, EV 1, page 312 [0413].

⁹¹ Idem. An example of the European Scheme, in German, can be found in MLS, EV 6, tab 6 [2500-2542]. See also the following report from Morgan on a Technical Committee meeting of 20 September 1994: "Sandwich Euro sch much higher than old German. Proposal to reduce euro rejected. Germany has to go up. S [Morgan] will make a proposal" (in the Dutch original: "Sandwich Euro sch veel hoger dan oude duitse. Voorstel om euro te reduceren afgewezen. Duitsland moet omhoog. S komt met voorstel"). This clearly means that the cartel agreed that the bareme prices in the German scheme had to be increased to the level of the European scheme. See also MLS, EV1, page 124 [0211]: "Harmonisation. UK: Well on its way, some large increases were needed".

⁹² For example, see Morgan's scheme in MLS, EV 6, tab 5 [2442-2498] and Carbone Lorraine schemes in MLS, EV 6, tabs 7 [2544-2667] and 8 [2669-2720]. For an example of an Italian bareme price scheme, see MLS, EV 1, pages 325 to 331 [0426-0432]. To be noted that the earliest date on this regularly updated scheme is 1 April 1981. For an example of a European Scheme by SGL, see the submission by SGL of 17 March 2003, annex 4 [10809-10827].

⁹³ For an example of proposed deletions and changes to the European scheme prior to a meeting of the cartel, see MLS, EV 3, pages 166 to 175. The handwritten notes on this Morgan document say "Check and pass on to P [Carbone Lorraine] ("Nakijken en doorgeven aan P" in the Dutch original).

⁹⁴ For a graph illustrating the differences in price levels between different European countries, see MLS, EV 1, page 142.

⁹⁵ For an example, see MLS, EV 1, page 176 [0269]: "Problem harmonisation is too unrealistic". See also point 7 of the agenda for the Technical Committee meeting of 26 April 1990, MLS, EV 1, page 284 [0383].

⁹⁶ MLS, page 16 [0018]. For an example, see MLS, EV 1, page 23 [0100].

coefficients⁹⁷, the overall objective being to reach harmonisation of prices across Europe⁹⁸. Efforts were therefore made to increase prices in countries with a low price level more than price levels in other countries, just as the cartel tried to apply higher price increases to clients with low prices than to clients with higher prices⁹⁹.

- (98) Decisions on price levels and price rises were normally made annually in the autumn meeting of the Technical Committee. Following a discussion, the Technical Committee would agree on price increases for the coming year. In preparation of the Technical Committee meeting, documentation would be prepared showing inflation and currency changes for each country covered by the bareme system. Agreed price increases would be recorded in percentage terms. Typically, the current coefficient for each country would be raised by the amount of the agreed price rise. This would be done for each key category of products. Where cartel members were unable to agree on a price rise in relation to a particular country, the decision would often be referred to the local cartel meeting for that country, with or without guidance from the Technical Committee¹⁰⁰. For example, the notes taken by the Morgan representative at a Technical Committee meeting of 1 July 1994 state:

"In general in the countries France, Germany and U.K. there has to be held local meetings to be discussed price levels. Price supporting by 5-10%. Conclusion is also not to make long term contracts, only for one year"¹⁰¹.

- (99) The price increases agreed in the Technical Committee or local meetings would be ratified at a later date by the Summit meeting.
- (100) Once the autumn Technical Committee meeting had established the annual percentage price increases for different countries, and the Summit had ratified them, the cartel members' sales departments would issue new internal price lists reflecting those agreed changes¹⁰². Morgan would calculate the new prices for the United Kingdom, Carbone Lorraine for France, SGL for Spain and Schunk for Germany. They would circulate their revised price lists or

⁹⁷ MLS, page 16 [0018]. Agreed percentage price increases would be inscribed on the same index table, as in MLS, EV 1, page 57 [0139].

⁹⁸ See, for example, the document dated 30.06.1994 and entitled "Industrial and traction brushes – Schedule for further price increases" in MLS, EV 1, page 140 [0228]. This document foresees the introduction of the European scheme in France, the United Kingdom, Germany and Italy, and to increase the existing special prices (for large customers) to the bareme level.

⁹⁹ As an example, see the conclusions of a Technical Committee meeting on mechanical carbon and graphite products of 24 September 1996: "Increase bareme, increase below bareme higher and more", MLS, EV 4, page 85 [1205].

¹⁰⁰ For an example, see MLS, EV 1, page 21 [0098], document entitled "Notes on T.C. Meeting – Price increases in Europe, dated 13.12.99". This document lists percentage price increases for virtually each European country for five separate electrical product groups, black industrial/traction brushes, copper industrial/traction brushes, midget brushes, trolley bus inserts and pantographs. Decisions on price increases for France, Germany, Italy, Spain and Portugal were in that case left to local meetings.

¹⁰¹ MLS, EV 1, page 138 [0226].

¹⁰² SGL submission of 17 March 2003, page 12: "After the meetings the prices were applied to the customers...". In the German original: "Nach den Treffen wurden die Preise gegenüber den Kunden angewandt...".

announcements of price increases to each other to show that they were complying with the agreed price increases and to ensure that the other cartel members sold at the same prices in the country concerned¹⁰³. Examples are a note from Schunk of 24 March 1998 to the other cartel members providing new coefficients and new price lists for Germany and a note from Morgan of 18 November 1988 to the other cartel members announcing the new coefficients to be applied in the United Kingdom from 1 January 1989¹⁰⁴.

- (101) For the new prices to take effect, one of the cartel members would circulate its new price list to customers at some time between January and March in the year following the Technical Committee meeting. The other cartel members would follow suit and issue their new price lists over the following weeks or months, thereby trying to create the impression that the companies concerned took their pricing decisions autonomously. The cartel members broadly rotated who would issue their price lists first in each country¹⁰⁵. Sometimes they also collectively thought up possible explanations they could give to their clients as justification for the price increases.

7.1.2. *Application*

- (102) General price increases across Europe were discussed¹⁰⁶ and agreed¹⁰⁷ at Technical Committee and Summit meetings at least throughout the years 1988 to 1999¹⁰⁸. These price increases concerned the main types of products and all countries covered by the cartel¹⁰⁹. The percentage price increases were usually

¹⁰³ MLS, page 14 [0016] and CL, page 7 [5517]. Examples of price lists of competitors received by Morgan are given in MLS, EV 6, tabs 6 [2500], 7 [2544] and 8 [2669]. See also MLS, EV 3, pages 279-297 [1064-1082]. Examples of price lists of competitors and announcements of price changes by competitors received by Carbone Lorraine are given in CL, annex 8, items 29 to 34 [6151-6358].

¹⁰⁴ CL, annex 8, items 31 [6247] and 33 [6253].

¹⁰⁵ MLS, page 16 [0018].

¹⁰⁶ For examples of agendas indicating price discussions at Technical Committee meetings, see MLS, EV 1, pages 345 [0447], 315 [0416], 284 [0383], 198 [0293], 196 [0290], 187 [0281], 167 [0260], 154 [0245], 147 [0237], 135 [0222], 118 [0204], 102 [0187], 90 [0174], 53 [0134], MLS, EV4, page 33 [1129]. For a full list of known meetings of the cartel, see annex 1.

¹⁰⁷ For examples of prices agreed at Technical Committee meetings, see MLS, EV 1, pages 228 [0326], 211 [0307], 210 [0306], 175-176 [0268-0269], 173 [0266], 162 [0254], 144 [0234], 138 [0226], 128 [0215], 120 [0206], 106 [0192], 87 [0171], 83 [0167], 57 [0139], 55 [0137], 34 [0113], 21 [0098], MLS, EV4, pages 133 [1281], 130 [1276], 120 [1262], 106 [1238], 104 [1234], 79 [1194], 13 [1100]. For an example of prices agreed at a Summit meeting, see MLS, EV 1, page 143 [0232]. See also the list prepared by Carbone Lorraine of the co-ordinated price increases for different types of mechanical carbon and graphite products from 1979 to 1989, in MLS, EV 4, page 255 [1415], as referred to in MLS, page 26 [0028].

¹⁰⁸ For an overview by Carbone Lorraine of the increases of the bareme prices for the different European countries in national currency over the period 1990 to 1999, see CL, annex 8, item 35 [6360-6369]. A similar summary table of increases for Italy for the period 1983 to 1999 can also be found in CL, annex 8, item 35 [6370]. This table takes prices in July 1983 as the index figure 100 and results through regular price increases that vary between 3 and 15% in an index figure for April 1999 of 322.

¹⁰⁹ Morgan's export price list in CL, item 29, page 2 [6174] excludes brushes used for automobile, domestic appliance and portable tool applications and says that prices are available on request. A German Europa Schema in MLS, EV6, tab 6 [2500], however, specifically applies to electrical tools, domestic appliances and medical equipment. The scheme of Carbone Lorraine

the first point on the agenda. One example, concerning agreed percentage price increases for electrical carbon and graphite products for 1996, is reproduced below:

"TC meeting

Notes

Prices	Brush black	Brush metal	Panto	Trolley
Holland	3	3	3	0
Austria	4	4	5	0
Belgium	5+5	5+5	2	0
Denmark	3	3	1	0
Spain	Local	Local	2	2
Finland	3	3	2	0
Greece	0	0	7	5
Luxembourg	3	5	2	0
Norway	6	5	7	3
Portugal	4	4	4	0
Sweden	5	5	7	6
Switzerland	3	3	2	0
East bloc	8.4	7.3	8	5
Middle East	8.4	8.4	3	5
Turkey				
France	Local		4	10
UK	Local (4/5)		6	
Germany	Local (5+5)			10?
Italy	Local			

applies to industrial and traction brushes only. See CL, item 28 [6063]. Morgan's regular lists of updated currency coefficients state "(OEM only for FR/IT/GB)". See for instance, MLS, EV1, page 77 [0160]. For further explanation on the types of clients against which bareme prices and other price elements were used, see section 7.5 below.

Note UK OEM +10% for brush!"¹¹⁰

(103) Another example, this time of a price increase for mechanical carbon and graphite products for 1998, is reproduced below:

"Price Increases 1998

Market	Carbon Rings	Carbon Bearings	Carbon Vanes	PTS Parts	Comments Inflation
Austria	3	3	3	3	1.9%
Belgium	3.5	3.5	3.5	3.5	1.8%
Denmark	2.5	2.5	2.5	2.5	2.3
E. Europe	Ref. Germany and ex-works				
Finland	2	2	2	2	1.3
France	2	3.5	2	2	1.3
Germany	2	2	2	0-2%	2.0
Greece	3	3	3	3	6
Holland	2.5	2.5	2.5	2.5	2.3
Italy	4	4	4	4	2.0
Luxembourg	3.5	3.5	3.5	3.5	1.2%
Egypt + Middle East	3	3	3	3	
Norway	3	3	3	3	2.5%
Portugal	3	3	3	3	2.4% separate price increase for GR
Spain	3	3	3	3	2.2% separate price increase for GR

¹¹⁰ MLS, EV 1, page 106 [0192]. For other examples of worked-out tables of price changes discussed in Technical Committee meetings, see MLS, EV 1, pages 77 [0160], 88 [0172], 105 [0190]. The reference to "5+5" for Belgium and Germany is explained by the fact that the cartel agreed that price increases between 10 and 20% would be implemented in two steps, see MLS EV1, page 113 [0199].

Sweden	2	2	2	2	0.9%
Switzerland	2	3	3	2	0.9%
Turkey	2	2	2	2	
U.K.	3	3.5	3.5	3	2.9%

G US?

North Africa ?¹¹¹.

(104) Some other examples of discussions and agreements on general price levels in Technical Committee meetings are the following:

- 20 April 1989: "The new calculation scheme for carbon gliding rings is accepted by all participants and will enter into force as soon as possible"¹¹².
- 31 October 1989: "All countries copper brushes 1% higher increase than black brushes"¹¹³.
- Preparatory to the meeting of 31 October 1989, correspondence took place between Carbone Lorraine, SGL and Schunk regarding the appropriate "uniform calculation of [prices for] carbon brushes for constructors of electrical machines, on the basis of the European Scheme"¹¹⁴.
- 3 April 1998: "Action plan is how to increase prices also in relation with Euro"¹¹⁵.

(105) Examples of price increases agreed in local meetings are:

- Local meetings on 9 November 1995, 8 November 1996, 7 November 1997 and 13 November 1998 regarding Spain and Portugal agreed on price increases for these two countries¹¹⁶. A list distributed in the meeting of 7 November 1997 indicates all price increases agreed since 1981¹¹⁷.

¹¹¹ MLS, EV4, page 13 [1100].

¹¹² "Das neue Berechnungsschema fuer Kohlegleitringe wird von allen Beteiligten akzeptiert und sobald wie moeglich in Kraft gesetzt" in the German original MLS, EV 1, page 314. [0415]

¹¹³ MLS, EV 1, page 307 [0407].

¹¹⁴ "Einheitliche Berechnung von Kohlebürsten für Konstrukteure von elektrischen Maschinen, unter Zugrundelegung des Europa-Schemas" in the German original MLS, EV 1, pages 295 to 300 [0395-0400].

¹¹⁵ MLS, EV 1, page 49 [0130].

¹¹⁶ MLS, EV 2, pages 2- 28 [0457-0486].

¹¹⁷ MLS, EV 2, page 8 [0464].

- A local meeting regarding Italy agreed price increases on 7 November 1995¹¹⁸.
 - Local meetings regarding the Benelux agreed price increases on 11 December 1997¹¹⁹ and on 2 February 1999¹²⁰.
 - Local meetings regarding Germany agreed price increases on 1 April 1994¹²¹, 18 May 1995¹²², 15 December 1995¹²³, 9 December 1996¹²⁴, 30 January 1998¹²⁵, 15 December 1998¹²⁶ and 14 December 1999¹²⁷.
- (106) Examples of prices co-ordinated through written communications between cartel members are:
- A note sent by Schunk on 18 September 1989 to Carbone Lorraine complaining that the latter was selling carbon rings to a particular French client at prices 15% to 20% below the normal French level. Schunk invited Carbone Lorraine to a meeting to discuss this issue and explain to Schunk according to what scheme they had determined these prices¹²⁸.
 - A note sent by Morgan on 18 December 1991 to Schunk, SGL and Carbone Lorraine saying that "G [Schunk] and C [Morgan] have agreed to apply the existing European price calculation scheme for carbon sealing rings in Italy as of 1.1.1992, with the exception of Flexibox and Crane [two large customers]¹²⁹. The currency coefficient to be used is 865 lira. A special discount of 25% is applied during 1991. The final coefficient will be 650 Lira....B [SGL] and P [Carbone Lorraine] are invited to apply the same scheme". The reply from SGL was: "We agree with the coefficient of 650.00 Lira from 01.01.1992"¹³⁰.
- (107) An example of differentiated timing of the introduction of price increases is provided by the local meeting concerning Germany of 14 December 1999, where it was agreed:

¹¹⁸ MLS, EV 2, page 157 [0618].

¹¹⁹ MLS, EV 2, page 189 [0653].

¹²⁰ MLS, EV 2, page 185 [0648].

¹²¹ MLS, EV 2, page 224 [0697].

¹²² MLS, EV2, pages 214-215 [0686-0687].

¹²³ MLS, EV 2, pages 212-213 [0683-0684].

¹²⁴ MLS, EV 2, page 208 [0678].

¹²⁵ MLS, EV 2, page 204 [0673].

¹²⁶ MLS, EV 2, page 203 [0672].

¹²⁷ MLS, EV 2, page 202 [0671].

¹²⁸ CL, annex 15, item 72 [6642].

¹²⁹ For some large customers of mechanical carbon and graphite products like Crane and Flexibox, specially agreed price schemes for that particular client were used and regularly updated. See, for example, MLS, EV4, pages 119 [1260], 258-259 [1420-1421]. For the implementation of an agreed up-date, see MLS, EV4, page 139 [1291].

¹³⁰ "Wir sind mit dem Koeffizient von Lira 650,00 ab 01.01.1992 einverstanden" in the German original. See MLS, EV 4, pages 282-283 [1453-1454].

"Timing:

S [Schunk in this case]: 10.03.2000

S.G.L.: 31.03.2000

Mor [Morgan]: 10.04.2000"¹³¹.

- (108) With regard to justifications for price increases, a local meeting in the Netherlands on 19 December 1995 came up with the following agreed explanations to "justify" an impending price increase:

"Explanation for 4% price increase

1. Environmental requirements cost extra.

2. Increase [in price] of raw materials

3. Wages [increased by] 3%"¹³².

- (109) That not all customers simply accepted the announced price increases, is evidenced by a fax of 30 April 1996 from the London Underground Ltd. (LUL) to Morgan, stating:

"Unfortunately your price increases are well above the current rate of inflation (i.e. 2.7%) and a full explanation is required. I also note from our files that at a meeting here on 21st September (when LUL again expressed dis-satisfaction with your pricing and stockholding policy) Morganite agreed to respond within 3 weeks with a full breakdown of costs. This did not happen and we find ourselves no further forward in our relationship than we were this time last year.

I would be pleased if you will now provide the information requested together with the factors underlying this year's increase, i.e. increased costs of materials, wages, etc. supported by relevant indices or letters from suppliers"¹³³.

- (110) How the general price increases agreed compared to inflation levels can be seen in two tables established at the time by Morgan. These tables detail the price increases implemented in the United Kingdom, France, Germany and Holland from 1985 to 1994 and compare them to annual rates of inflation in those countries. In each of these countries the total price increase agreed over the years exceeds the total increase in inflation¹³⁴. Another example of the size of the agreed price increases is from a Technical Committee meeting of 19

¹³¹ MLS, EV 2, page 202 [0669].

¹³² MLS, EV 2, page 198 [0663]. For an example of a letter announcing a price increase to a client, see MLS, EV 4, page 72 [1181].

¹³³ MSLS, EV3, page 169 [4244].

¹³⁴ MLS, EV1, pages 152-153 [0243-0244].

October 1995: "UK achieved price increases between 20 and 100% for smaller quantities"¹³⁵.

7.2. Surcharges

7.2.1. Principles

(111) Where open price increases were too difficult to justify towards customers, they were sometimes camouflaged as charges for particular services performed or costs incurred by the cartel members. Examples are surcharges for recycling of used products, packaging and carriage, environment, and antimony (a costly ingredient required in the production of mechanical carbon products)¹³⁶. The rationale behind these surcharges is clearly stated in the report of a Technical Committee meeting of 19 April 1996:

- "1. Price increases of 3.5 to 6.1% were implemented as of 1 april 1996. Customer reactions were much stronger than last year. Some orders were cancelled.
Customers have no understanding for this level of price increases when inflation in Germany is below 2%.
A further round of price increases is scheduled for July. Focus will be on those accounts which are well below bareme level.
2. A surcharge of 2% for packing and carriage is successfully applied my [sic] MSCL [a Morgan subsidiary] in 1996 on top of increased prices. This has been recommended to other members"¹³⁷.

7.2.2. Application

(112) The Technical Committee meeting of 19 October 1995 agreed on recycling charges to be applied for taking back used pantographs and brushes. It was agreed to charge customers as follows:

"Recycling charges brushes.

- pantographs: DM 6. per piece.
- Brush: DM 6/kg: containing copper and/or flexes.
- Brush: DM 1/kg: without copper or flexes"¹³⁸.

(113) In the Technical Committee meeting of 3 April 1998, Schunk proposed the following increases in recycling charges:

"a. carbon brushes

- Black material, unfitted DM 1.50 p. kg

¹³⁵ MLS, EV1, page 107 [0193].

¹³⁶ MLS, page 28 [0030].

¹³⁷ MLS, EV4, page 94 [1217].

¹³⁸ MLS, EV 1, page 109 [0195].

- All metall containing grades DM 8,- per kg
fitted or unfitted

b. Pantograph carbons

- All grades and executions DM 8,- per piece"¹³⁹.

The agreement reached was "Next meeting to apply"¹⁴⁰.

- (114) A Technical Committee meeting of 19 April 1996 agreed a surcharge of 2% for carriage and recycling of packaging of mechanical carbon products and of 3% for antimony¹⁴¹.

7.3. Discounts for different types of delivery

7.3.1. Principles

- (115) Another pricing element on which cartel members made agreements were the discounts to be granted to clients for other types of delivery than the franco-at-destination price used in the bareme price scheme¹⁴², such as free-on-board (FOB), delivered-at-frontier (DAF) or cost-insurance-freight (CIF).

7.3.2. Application

- (116) On 20 April 1989, a Technical Committee meeting agreed to increase the discounts cartel members could offer to clients, as follows:

FOB: from 5% to 7%

CIF: from 2% to 3%

DAF: from 3% to 5%¹⁴³.

- (117) A local meeting for Spain and Portugal of 8 November 1996 confirmed that the normal delivery condition should always be franco-at-destination and went on to agree the following discounts for other modes of delivery:

"Ex works -2.5, FOB -2%, O.A.F -1.5%, C.I.F. -1%"¹⁴⁴.

7.4. Agreements on payment conditions

7.4.1. Principles

- (118) Cartel members agreed on the conditions to be applied for the different periods within which clients paid.

¹³⁹ MLS, EV 1, pages 50 [0131] and 54 [0135].

¹⁴⁰ MLS, EV 1, page 50 [0131].

¹⁴¹ MLS, EV4, pages 94 [1217], 97 [1222].

¹⁴² MLS, EV 1, page 243 [0341].

¹⁴³ MLS, EV 1, pages 312 [0413], 321 [0423] and 324 [0425].

¹⁴⁴ MLS, EV 2, page 13 [0470].

7.4.2. *Application*

(119) The following example of payment terms agreed in Technical Committee meetings can be mentioned:

- Technical Committee meeting of 4 October 1988: "Payment conditions, -2% - 30 days"¹⁴⁵. In other words, a discount of 2% was agreed if the customer paid within 30 days.

7.5. **Types of clients against which bareme prices and other price elements were used**

(120) Bareme prices were calculated, agreed and at least annually updated for all countries covered, the main types of products covered and most types of clients, including constructors and public transport companies¹⁴⁶. The only type of clients which seem to have been excluded from the calculation of bareme prices are automobile suppliers, and possibly producers of consumer products. Nevertheless, according to Carbone Lorraine, the bareme prices could be effectively enforced only against the multitude of small clients, and much less so against constructors and public transport companies, which were commercially speaking more important¹⁴⁷. Industrial end-users and repair companies had no bargaining power and the bareme prices could therefore be easily enforced against them, even without any direct contact between the cartel members. That was indeed the very purpose of the bareme pricing system. This group of customers represents a large percentage of total turnover for the products concerned of the companies concerned¹⁴⁸. Carbone Lorraine emphasises, however, that such small customers purchased a technical solution, in the form of sound technical advice and service, rather than just parts, and that the price of the parts was only a portion of the total price of the technical solution purchased¹⁴⁹.

(121) The alleged difficulty of applying bareme-level prices against constructors and public transport companies¹⁵⁰ does not mean that the agreed regular percentage price increases did not pertain to these clients. They did. Regarding public transport companies, the agreed general price increases in Technical Committee meetings would normally cover the products current collectors and traction brushes¹⁵¹. As for constructors:

¹⁴⁵ MLS, EV 1, page 341 [0443].

¹⁴⁶ For example, see MLS EV1, pages 77-79 [0160-0162].

¹⁴⁷ CL, pages 8-9 [5518-5519] and submission of 13 February 2003 [9822-9825]. According to SGL, in respect of mechanical products, "The agreed price lists were applied to customers buying small series, but not to large series of construction parts". In the German original, "Die abgestimmten Preislisten wurden für die Kleinserienkunden, jedoch nicht für die Grossserienbauteile, eingehalten", SGL submission of 17 March 2003, page 11 [10751].

¹⁴⁸ Submission of Carbone Lorraine of 26 February 2003, annex 1 [9842-9847].

¹⁴⁹ Submission of 13 February 2003, pages 3-4 [9824-9825].

¹⁵⁰ "Panto: Prices are always below calculation!!" ("Panto: Prijzen liggen altijd onder calculatie!!" in the Dutch original), MLS, EV1, page 151 [0242].

¹⁵¹ For an example, see MLS, EV1, page 87-88 [0171-0172].

- a Technical Committee meeting of 1 July 1994 agreed that "Germany OEM 2-2,5% price increase in general after 1-6-94. In 1995 2-2,5% increase 1-4-95"¹⁵².
 - A Technical Committee meeting of 4 April 1995 stated that "Germany: New [OEM] bareme has been introduced to OEM"¹⁵³.
 - A Technical Committee meeting of 13 October 1998 recommends specific price increases for OEM customers in Germany, Italy, the United Kingdom and France, but leaves the decisions to local meetings¹⁵⁴.
 - Technical Committee meetings would sometimes agree general price increases for specific constructors¹⁵⁵.
- (122) In certain important markets like Germany, local meetings would sometimes determine general price increases, if the Technical Committee could not agree. These price increases specifically covered constructors and public transport companies¹⁵⁶.
- (123) Information provided by Carbone Lorraine tends to show that sales to constructors and public transport companies is a relatively small part of total sales (compared to sales to car producers, producers of consumer products and the very large group of small end users) and is declining over time, due to technological change¹⁵⁷.

7.6. Account leadership, market sharing and bid rigging

7.6.1. Principles

- (124) With respect to large customers, whether OEMs like constructors or end-users like public transport companies, the bareme-level prices remained at a minimum relevant as a measure of comparison and an agreed price objective to be pursued¹⁵⁸. However, in the reality of the market, the agreed bareme

¹⁵² MLS, EV1, page 138 [0226].

¹⁵³ MLS, EV1, page 128 [0215]. For a specific OEM constructors currency coefficient schedule, see MLS, EV1, page 79 [0167].

¹⁵⁴ MLS, EV1, page 34 [0113].

¹⁵⁵ For example, see MLS, EV1, page 298-300 [0398-0400] regarding the constructor ABB.

¹⁵⁶ See, for example, the local German meetings of 15 December 1995 in MLS, EV2, page 212 [0683], 9 December 1996 in MLS, EV2, page 208 [0678], 30 January 1998 in MLS, EV2, page 204 [0673], 15 December 1998 in MLS, EV2, page 203 [0671] and 14 December 1999 in MLS, EV2, page 202 [669].

¹⁵⁷ Submission by Carbone Lorraine of 26 February 2003, annex 1 [9842-9847].

¹⁵⁸ See, for example, MLS, EV1, page 49: "P [Carbone Lorraine] investigates OEM prices in Europe against bareme and will send a list. H [Morgan] will investigate Traction real price levels against bareme and send to P [Carbone Lorraine]. Extra meeting to be held in A-dam [Amsterdam] on 19-06-98 to examine the price differences in the countries. Action plan is how to increase prices also in relation with Euro." See also CL item 38 [6408-6410], a table registering for the years 1983 to 1992 the bids made by cartel members for the Régie Autonome des Transports Parisiens ("RATP") as compared to the bareme prices. Regarding the Portuguese railways, a Technical Committee meeting of 20 April 1989 agreed "to offer

price levels could frequently not be achieved in respect of such large customers with bargaining power. In the view of Carbone Lorraine¹⁵⁹, the most difficult category of customer was that of automobile suppliers and producers of consumer products. Less difficult large clients were constructors of industrial motors. The least difficult large clients were public transport companies. According to Carbone Lorraine, the first category of clients were not the object of discussion and agreement at European level meetings of the cartel, but only of direct contacts between potential suppliers prior to annual negotiations¹⁶⁰. The alleged object, moreover, was not so much to agree prices as to agree on arguments for resisting requested price reductions. Carbone Lorraine admits, however, that the fixing of specific prices for constructors and public transport companies did form the object of discussion at cartel meetings, as well as of direct contacts among cartel members prior to negotiations and bids¹⁶¹.

- (125) In respect of multinational constructors, the cartel faced a danger that these customers would benefit from diverging prices among countries. In the words of Morgan: "The cartel members were concerned that large OEMs who had unified purchasing policies would be able to exploit export price differences across Europe by purchasing all of their requirements from a single, cheap source of supply. In response, the cartel adopted special rules to cover the harmonisation of prices to OEMs. As a result, the cartel agreed product prices for sales to individual OEMs, which were not calculated by reference to any country"¹⁶².
- (126) In order to stabilise, harmonise and, if possible, increase price levels to large customers, the cartel explored several strategies over time. A first strategy was that of harmonised prices. This strategy was first discussed in a Technical Committee meeting of 20 April 1989¹⁶³. It was based on a proposal from Carbone Lorraine, entitled "Draft of a uniform European pricing scheme for brushes destined for constructors of electrical industrial machines"¹⁶⁴. The proposal stated as its guiding principle that every European constructor could obtain current brushes destined for its own machines at the same price calculated in ECU, whatever the European country it wished to order from and whatever the national currency used. The proposal took the company ABB as an example. The meeting concluded that "Contrary to previous discussions, we will try to bring the prices for all plants of the ABB concern into the existing

and charge, as of now, only the exact scheme prices" ("Ab sofort wird nur noch zu den exakten Schemapreisen angeboten und berechnet"), MLS, EV1, page 312 [0413]. See also, SGL submission of 24 March 2003 [11035-11040].

¹⁵⁹ Submission of 13 February 2003 [9822-9826].

¹⁶⁰ Idem, page 2 [9823].

¹⁶¹ Idem, page 3 [9824]. See also, CL, page 8 [5518].

¹⁶² MLS, page 22 [0024].

¹⁶³ MLS, EV 1, page 315 [0416].

¹⁶⁴ "Projet de tarification unique européenne pour les balais destinés aux constructeurs de machines électriques industrielles" in the French original, MLS, EV 1, page 336 [0437].

European calculation scheme"¹⁶⁵. A worked-out price example by Carbone Lorraine of 7 July 1989 again took the company ABB as an example¹⁶⁶.

- (127) The strategy of harmonised prices throughout Europe for OEM customers proved difficult to implement in practice. A special Technical Committee meeting on OEM prices, held on 22 February 1994, provides indications of the continuation of wide differences in bareme prices and even more in achieved prices for OEMs between countries. Taking the bareme prices for OEMs in the Netherlands as the index figure of 100, the real bareme in France, which had the worst price level for the cartel, was only 61, and the actually achieved prices 40. Members agreed in this meeting to "close up the "corridor""¹⁶⁷. A subsequent Technical Committee meeting of 20 September 1994 agreed to bring OEM customers in France, the United Kingdom and Germany into the European scheme before the end of the year and then to approximate the national coefficients¹⁶⁸.
- (128) Probably because of the difficulty of implementing uniform prices for large customers throughout Europe, SGL proposed, in a Technical Committee meeting held on 18 April 1996 in Cologne, Germany, a second strategy, namely a policy of account leadership (also referred to as market leadership or customer leadership). Account leadership would be determined based on the market shares of each of the cartel members for each major customer for the years 1994/1995. SGL agreed to model such a list and to distribute it after the next Summit meeting¹⁶⁹. The policy was based on the following key principles:
- The current market shares of the cartel members should be frozen at all accounts and per each item sold where applicable.
 - For each major customer an account leader should be agreed, which normally should be the cartel member with the largest share of that customer's purchases.
 - This account leader leads the pricing efforts, that is to say, the other members must follow its advice before quoting a price to the customer in question.
 - The account leader is responsible for achieving sufficient price increases.
 - Pricing for new products should be cleared with the account leader.

¹⁶⁵ "Entgegen frueherer Diskussionen wollen wir versuchen, die Preise fuer alle ABB-Konzernwerke in das existierende europaeische Berechnungsschema einzuordnen" in the German original, MLS, EV 1, page 312 [0413].

¹⁶⁶ MLS, EV 1, page 332 [0433].

¹⁶⁷ MLS, EV 1, pages 157-160 [0249-0252].

¹⁶⁸ MLS, EV1, page 149 [0240]. The Dutch original reads: "OEM op euroschema in FR/UK/DL voor eind vh jaar!! Daarna coëff naar elkaar toe werken!".

¹⁶⁹ MLS, EV 1, page 93 [0178].

– The Summit meeting determines the account leaders¹⁷⁰.

- (129) The Technical Committee agreed to these principles at the same meeting and decided to start with pantographs, which are bought by public transport companies¹⁷¹.

7.6.2. *Application*

- (130) A Technical Committee meeting held on 22 June 1998 confirmed the basic principles of account leadership in respect of pantographs, as follows:

"Panto's.

All members agreed on the 6 Principles:

- 1) Freeze market shares for existing designs.
 - 2) Establish market leader for each customer on basis 94/95 deliveries (rotation is part of this).
 - 3) If technically new design is introduced the present market leader has to be contacted before first quotation.
 - 4) Account leader is responsible for bringing up prices.
 - 5) Customers not in the list must get bareme prices or must be included in the list.
 - 6) Customers using no carbon strips, but testing different carbon strips: bareme price has to be applied; The one who gets the first order is the account leader"¹⁷².
- (131) The meeting then proceeded to agree on a list indicating the account leaders for specific public transport customers in most countries of the EEA. This agreement became effective immediately. The stated target was to bring the prices up to bareme level. This list of clients and account leadership shows a continuing national bias. Carbone Lorraine, for instance, was account leader for all clients in France, Morgan for British Rail and Morgan (through its Hoorn subsidiary) for the Dutch Railways. With four German/Austrian cartel

¹⁷⁰ MLS, EV 1, pages 94-96 [0179-0181].

¹⁷¹ MLS, EV 1, page 93 [0178]. For SGL's description of this meeting, see SGL submission of 17 March 2003, page 15 [10755]. According to SGL, its proposal for account leadership was not taken up by the other participants.

¹⁷² MLS, EV 1, pages 37 [0117] and 46 [0126]. According to Carbone Lorraine, these six principles had first been discussed in two meetings on 28-29 October 1996 and 10 December 1996, at which time no agreement on them could be reached. See CL, pages 10-11 [5520-5521] and annex 11, item 45 [6438-6444]. In preparation of the meeting on 28-29 October 1996, a detailed list of 82 pages had been prepared indicating deliveries in 1994 and 1995 and last prices by each cartel member to each major client for collectors and pantographs in Europe. See CL, annex 11, item 46 [6448-6530].

members at the time, account leadership for Deutsche Bahn had to be resolved in a special local meeting in Germany¹⁷³.

- (132) The same principles of customer leadership were agreed and applied for mechanical carbon and graphite products¹⁷⁴. A document of 12 August 1997, agreed at a meeting of the Technical Committee in Weilburg, Germany, between Morgan, SGL and Schunk, deserves to be quoted extensively because of its clarity:

"Agreement in cooperation"

General

Beginning now a confidential working together.
Every account leader has the right to invite for meetings.

Objectives

- Increase of prices
- constant market shares

Rules

- define leadership
 - company, persons + reserve
- determine market informations
 - incl. price + complet exchange-
- establish information flow
 - esp. correct prices-
- follow the leader
- defined compensation for lost turnover
 - (how)-
- determine contact persons
- regular meetings, review status

How to do

- To be honest and say the truth
- If something happened, that you must inform as soon as possible
- Suggestion: Compensation for lost turnover due to price reduction to be suggested by the guilty party; also guilty party to increase prices to old level as soon as possible
- Account leader to determine actions required to counter outsiders
- To inform directly the leader, when the inquiry arrived
- Included are all mechanical carbons:
 - rings – bearings – vanes
 - PTS-Carbon
 - PTS- resin-bonded
 - Carbon-disc

¹⁷³ MLS, EV 1, pages 37 to 39 [0117-0119].

¹⁷⁴ For a general description, see SGL submission of 17 March 2003, pages 11-12 [10751-10752].

- Carbon-metal-housing parts
- Quotation with the technical advantage + service is allowed to do in the rules of the scheme of the customer
- Projects are free in the discussion with customers until the price negotiations
- These rules are also important for daughter companies agents in Europe

Partners

- A [Rekofa – later bought by Morgan] is possible, but just in Germany + Switzerland
- N [Conradty], P [Carbone Lorraine] today not an account leader, because they will not have responsibility. If necessary members should contact on particular customers
- Gledco, if necessary members shall make influence on them
- Topolcany; every member has to attack them; before attack informations to the members

Responsibilities

C [Morgan]: [*]

[*]

B [SGL]: [*]

G [Schunk]: [*]¹⁷⁵.

- (133) The document continues with a list of 35 large customers in Europe, indicating for each customer which company has leadership. For some clients agreed price increases are indicated. Examples of large customers mentioned are Burgmann, Crane, Flexibox, Wilo-Group¹⁷⁶.
- (134) Specific instances over the years of co-ordination among cartel members to rig bids and co-ordinate prices to large clients, in particular public transport companies and mechanical clients, are manifold. This is true both for meetings at local level and for meetings at Technical Committee level. The latter would often either agree directly on how to deal with the client or agree that a local meeting was required to sort things out. Examples of discussions and agreements on bids and prices to clients in Technical Committee meetings are:
- Prices to the Société des Transports Intercommunaux Bruxellois (STIB) in Brussels and to the Portuguese Railways were discussed on 14 April 1993. For STIB, participants agreed "For next tender, contact". For the Portuguese railways, "special meeting required"¹⁷⁷.

¹⁷⁵ MLS, EV 4, pages 52 to 65 [1155-1169].

¹⁷⁶ Idem.

¹⁷⁷ MLS, EV 1, pages 179 to 187[0273-0281]. For an exchange of correspondence between SGL, Schunk and Morgan regarding bids made for the Portuguese Railways, see MLS, EV 1, pages 220 to 223 [0318-0321].

- "Pantographs NS [Dutch Railways]. Swansea [Morgan] shall inform in 2 weeks what they will quote"¹⁷⁸.
- "Price increase trolley. Follows same rules as panto. Period 3 years, frozen market shares, after that, only technical/service competition"¹⁷⁹.
- "How can we proceed with the pantograph situation?
 - Competition on technical performance and service only
 - No competition on prices
 - Bareme is the rule
 - In case the actual price is below the bareme, certain points have to be redefined in order to have common understanding and to bring up price levels.
 - What does protection mean? (same price or fixed gap?)
 - Freezing of market shares? (when, how long what to do?)
 - What to do in case of outsiders?
 - If third parties are to be supplied with blocks, the supplier is responsible to control the finish product price"¹⁸⁰.
- Regarding pantographs, a Technical Committee meeting of 3 April 1998 concluded: "Every member agreed to inform each other in case of an enquiry. Target is to bring up the prices to bareme"¹⁸¹.

(135) Prices for specific clients were often co-ordinated at local level. For example, a local meeting held on 9 November 1995 regarding Spain and Portugal agreed to "lift Portuguese railways in one or two steps to the level of industrial brushes"¹⁸². Notes from that meeting also show a comparative table of price bids by different members of the cartel for tenders put out by EMEF, a Portuguese railway equipment manufacturer¹⁸³. Extensive exchanges of bid information between cartel members for EMEF and the Portuguese railways can be found in Morgan Leniency Statement¹⁸⁴. These documents show an almost complete transparency of bidding information between the cartel members for these large customers in Portugal.

¹⁷⁸ MLS, EV 1, page 170 [0263]. Morgan reports this meeting as having taken place on 14 October 1993.

¹⁷⁹ MLS, EV 1, page 113 [0199].

¹⁸⁰ MLS, EV 1, page 75 [0158].

¹⁸¹ MLS, EV 1, page 50 [0131].

¹⁸² "Portugese spoorwegen in een of 2 stappen naar het nivo van industrieborstels tillen" in the Dutch original.

¹⁸³ MLS, EV 2, pages 25-26 [0483-0484].

¹⁸⁴ Exhibits Volume 2, pages 30 to 155 [0490-0615].

- (136) Morgan's notes of a local meeting regarding the Netherlands of 11 December 1997 record:

"Baumüller [a client] is given a special price by "Le C". At the next enquiry [by Baumüller] make contact with "Le C". Made it clear that this has to be known to the other members otherwise it is difficult to explain why there is a factor 2 to 3 of [price] difference"¹⁸⁵.

- (137) Meetings in the Netherlands regularly record agreed price increases for each participating member for the client Hoogovens [now Corus], a major steel producer in the Netherlands. Examples are the meetings of 19 December 1995 and of 11 December 1997¹⁸⁶.
- (138) A local meeting in Germany on 18 May 1995 had "Deutsche Bahn AG" as its first item on the agenda. Participants exchanged information on the bids they had made and agreed new prices to be applied to this client¹⁸⁷.
- (139) A local meeting in Germany on 26 February 1996 agreed price increases for mechanical carbon and graphite products for around twenty major customers in the German market¹⁸⁸.
- (140) A local meeting between Morgan and Carbone Lorraine on 8 March 1991 in the United Kingdom exchanged pricing information regarding major UK clients of the two companies¹⁸⁹.
- (141) Notes by Carbone Lorraine show how Carbone Lorraine, as customer leader, co-operated with Morgan and Schunk to regularly rotate which company would win tenders organised by the Régie Autonome des Transports Parisiens (RATP) in France for a particular type of current collector shoe¹⁹⁰. Information concerning the bids made by each company cover the period 1983 to 1992. In one table, Carbone Lorraine traces which company won which bids from April 1989 to November 1991 and which company should win which bids in the next three years to arrive at an equal number of bids won by the end of 1994. Another table indicates that a bid scheduled to be won by Carbone Lorraine had to be given to Schunk as compensation for other models.

¹⁸⁵ MLS, EV 2, page 189 [0653]. The original text in Dutch reads "Baumüller wordt door "Le C" een speciale prijs gehanteerd. Bij eerst volgende aanvraag kontakt opnemen met "Le C". Duidelijk gemaakt dat dit bij de overige leden bekend moet zijn anders is het moeilijk te verklaren waarom er een faktor 2 tot 3 verschil is".

¹⁸⁶ MLS, EV 2, pages 189 [0653], 193 [0658].

¹⁸⁷ MLS, EV 2, pages 214-221 [0686-0693]. Other examples of price information exchanged and price increases agreed between cartel members in regard to this client can be found in MLS, EV 2, pages 235 [0709], 239 [0714].

¹⁸⁸ MLS, EV 4, page 99-100 [1226-1227].

¹⁸⁹ LC11, annex 6, item 10 [7860-7862]. Similar meetings between the two companies have been recorded there for 21 December 1994 [7864-7866], 12 January 1995 [7868-7871], 26 May 1995 [7873-7877] and 19 November 1997 [7879-7880].

¹⁹⁰ CL, page 9 [5519] and annex 9, items 37 to 40 [6406-6414].

- (142) Exchanges of price information regarding specific bids for tenders were also frequently made through direct contacts by phone between contact persons in companies' headquarters. Examples pertain to the following clients:
- Finnish State Rail (VR) in Finland¹⁹¹;
 - Nederlandse Spoorwegen (NS) in the Netherlands¹⁹²;
 - Chemins de Fer Luxembourgeois (CFL) in Luxembourg¹⁹³;
 - Nationale Maatschappij der Belgische Spoorwegen (NMBS) in Belgium¹⁹⁴;
 - Wiener Stadtwerke in Austria¹⁹⁵;
 - Österreichische Bundesbahnen (ÖBB) in Austria¹⁹⁶;
 - Société Nationale des Chemins de fer Français (SNCF) in France¹⁹⁷;
 - Régie des Transports de Marseille (RTM) in France¹⁹⁸;
 - Société Lyonnaise de Transports en Commun (SLTC) in France¹⁹⁹.
- (143) Morgan's record of a telephone conversation with SGL on 5 January 1997 describes that in respect of Grundfos and Becker, two large clients for mechanical carbon and graphite products, SGL acted in accordance with instructions from Morgan. In return, SGL wanted Morgan to offer a particular mechanical carbon product to Becker in accordance with instructions from SGL. Morgan staff was therefore to ask SGL the price which Morgan could offer²⁰⁰. In another instance, Carbone Lorraine asked Morgan what price it could offer to Grundfos for a particular product²⁰¹.
- (144) Information on prices to specific major clients was sometimes also exchanged in writing. For example, on 14 February 1994, Schunk sent a list with its prices for Burgmann, a major client for mechanical carbon and graphite products, to Morgan and SGL. Schunk had written by hand its basic prices for

¹⁹¹ MLS, EV3, pages 4 [0759], 5 [0760], 8 [0763], 9 [0764], 14 [0769], 16 [0771], 31 [0786].

¹⁹² MLS, EV 3, pages 37 [0793], 39 [0795], 40 [0796].

¹⁹³ MLS, EV 3, pages 49 [0805], 50 [0806], 58 [0814].

¹⁹⁴ MLS, EV 3, page 55 [0811].

¹⁹⁵ MLS, EV 3, page 75 [0833].

¹⁹⁶ MLS, EV 3, pages 76 [0834], 80 [0838].

¹⁹⁷ MLS, EV 3, pages 91 [0850], 100 [0859], 103 [0862], 105 [0864], 109 [0868], 114 [0873].

¹⁹⁸ MLS, EV 3, pages 116 [0875], 118 [0877], 122 [0881], 124 [0883], 126 [0885], 137 [0896]. For a table indicating the prices practised for this client by Carbone Lorraine, Schunk, Morgan and Gerken, see the submission of Carbone Lorraine of 13 September 2002 - Communication (non-exhaustive) de documents, France 3 [5462-5463].

¹⁹⁹ MLS, EV 3, pages 127 [0886], 132 [0891].

²⁰⁰ MSLS, EV 3, page 21 [4080].

²⁰¹ MSLS, EV3, page 27 [4091].

this client on a typed basic price list that Schunk had received from Morgan. Schunk asked SGL to also send in its basic prices for this client²⁰².

- (145) On 6 January 1995, Morgan faxed its 1995 price list for brushes supplied to Boss, a UK client, to Carbone Lorraine's UK subsidiary²⁰³.
- (146) On 15 August 1995, Morgan sent a proposed list of prices for a client, Faber, to SGL, which was customer leader for Faber. SGL added a column with the prices Morgan was allowed to quote to the client and sent back the list on 16 August 1995. Morgan then checked off on the list those products where its proposed prices exceeded the minimum prices indicated by SGL and which Morgan could therefore "safely" sell²⁰⁴.
- (147) On 22 April 1996, two tables were established detailing the turnover of each cartel member to individual clients in Germany and Switzerland for the year 1995 and indicating the price level obtained in those sales as a percentage of the European scheme for carbon products²⁰⁵. Apart from the intrinsic value of this information for each cartel member, these charts were also used to determine who should become the account leader in the next period²⁰⁶.
- (148) A table dated 23 October 1996 produced by Morgan lists the major customers of the cartel in Germany for mechanical carbon and graphite products, the price level achieved for each customer in 1996 as a percentage of the scheme prices, the price increase agreed by the cartel for 1997, the current customer leader for each client and the new customer leader as agreed by the cartel²⁰⁷.
- (149) An exchange of e-mails between Schunk and Morgan illustrates the close co-operation between the two companies in submitting price offers to a large OEM client, John Crane & Co. On 7 January 1999, Schunk sent Morgan a list of carbon products for which John Crane & Co. requested price offers. The next day, Morgan e-mailed back to Schunk with the following message:

"Having studied the detail on the lists I think we should consider the following points which we have discussed previously.
If you are still in agreement with these we can proceed with the task of pricing the items accordingly.

1. Position prices to retain business share (80/20) at approx middle price.
2. Raise our base prices by 4 to 5% (single list for MAMAT).

²⁰² MLS, EV 4, pages 136-137 [1286-1287].

²⁰³ Submission by Carbone Lorraine of 13 September 2002 – Communication (non-exhaustive) de documents, United Kingdom 8 [5490-5498].

²⁰⁴ MLS, EV4, pages 113-114 [1251-1252].

²⁰⁵ MLS, EV 4, pages 95-96 [1219-1220]. See page 80 [1196] for France. In these tables "ML" stands for Marshall, a Morgan subsidiary, "PIL" stands for Pure Industries, Ltd, a European subsidiary of Pure Carbon Corporation of the USA, which was taken over by Morgan in 1995. "SKT" stands for "Schunk Karbon Technology, a Schunk subsidiary specialised in mechanical carbon and graphite products. "RFA" stands for Rekofa, purchased by Morgan in 1998.

²⁰⁶ MLS, page 27 [0029].

²⁰⁷ MLS, EV 4, pages 81-82 [1198-1199].

2. No contract prices will be given for any item with an APU<4 (50 per year).
3. We will not quote for more than 12 month quantities.
4. We will not give "next break" prices for less than 95% of total quantity.
5. We should request written contractual agreement stipulating that all un-shipped contract items will be taken within 1 month of the expiry of the contract period. (or equivalent compensation paid)
6. All items will be quoted with a commercial lap finish only and if requested there will be a 5% surcharge for super-lapping²⁰⁸.

(150) On 5 July 1994, the Spanish subsidiary of SGL faxed a drawing of a brush with its calculation of the price to be used to the Spanish subsidiary of Carbone Lorraine²⁰⁹.

(151) Morgan has provided examples of order confirmations of bids agreed between itself and Carbone Lorraine in 1997 regarding the customer GEC Alsthom, showing that the prices agreed did indeed lead to orders by the client²¹⁰. An example of a complete cycle of bid rigging has also been provided by Carbone Lorraine²¹¹. The cycle starts with a tender issued by the Régie des Transports de Marseille (RTM) of 27 October 1998. Bids are requested for a number of types of carbon brushes and current collectors²¹². Based on contacts with competitors, Carbone Lorraine then compiled a comparative table, indicating which companies won which bids and for which quantity and price in past years, and co-ordinating with them the bids each would make for the new tender. The agreed winning bids are circled²¹³. Carbone Lorraine also prepared a table indicating each company's turnover for each type of product covered by the tender²¹⁴, probably to ensure that the agreements made were "fair" in terms of total turnover. After having reached agreement with competitors on the prices to be quoted, Carbone Lorraine instructed its sales representative on 16 November 1998 to quote to RTM the prices agreed with competitors²¹⁵. These were indeed the bids that Carbone Lorraine effectively made²¹⁶. Finally, an order from RTM confirms that Carbone Lorraine won exactly the bids it had agreed with competitors²¹⁷. These examples show that the cartel was indeed highly effective in achieving results in the market in respect of tenders, in particular by public transport companies.

²⁰⁸ MSLS, EV3, page 64 [4131] See also pages 65 to 98 [4133-4166]. On this client, see also MSLS, page 7 [3106].

²⁰⁹ CL, page 13 [5523] and annex 14, item 70 [6625].

²¹⁰ MLS, EV2, pages 159-184 [0621-0646].

²¹¹ CL, page 12. [5522].

²¹² CL, item 61 [6586-6589].

²¹³ CL, item 62 [6591-6592].

²¹⁴ CL, item 63 [6594].

²¹⁵ CL, item 64 [6596].

²¹⁶ CL, item 65 [6598-6601].

²¹⁷ CL, submission of 19 February 2003 [9812-9813].

7.7. Ban on advertising

7.7.1. Principles

(152) The cartel agreed not to advertise, nor to participate in sales exhibitions²¹⁸.

7.7.2. Application

(153) The Technical Committee meeting of 3 April 1998 stated under the heading of "Advertising rules" that "Morgan Cupex and Pantrak advertised for carbon brushes, which is not allowed"²¹⁹.

7.8. Cutting out "cutters"

7.8.1. Principles

(154) Apart from selling finished products made from carbon, such as carbon brushes, members of the cartel also sold "blocks" of carbon, which have been pressed but not yet cut and tooled into brushes or other products. A number of third-party "cutters" purchase these blocks of carbon, cut and work them into final products and sell them to customers. These cutters, while customers of the cartel members, also represent competition to them for finished products. Such cutters are typically located in the Middle East or Eastern Europe, but a number of them are located in the EEA²²⁰. The policy of the cartel consisted in fixing the prices of carbon blocks sold to cutters in such a way that competition from them for the finished products made out of those blocks would be limited²²¹. As a result, cutters would usually only obtain small customers that were of no interest to the large suppliers. Ideally, at least in the view of some members, cutters should be eliminated altogether by refusing to supply to them²²².

(155) A similar policy of cutting out intermediate producers existed in respect of mechanical carbon and graphite products, as testifies the following conclusion from a Technical Committee meeting on mechanical products of 19 April 1996:

²¹⁸ MLS, page 22 [0024]. MLS, EV 1, page 250 [0348].

²¹⁹ MLS, page 22 [0024]. MLS, EV 1, page 52 [0133].

²²⁰ For a list of cutters located in the EEA, see MLS, EV 1, pages 72-73 [0155-0156]. Luckerath and Rekofa are examples mentioned there. Eurocarbo in Italy is an example of a cutter mentioned in a letter by Morgan of 2 July 2002 [4792].

²²¹ MLS EV1, page 75 [0158]: "If third parties are to be supplied by blocks, the supplier is responsible to controle the finish product price". Although blocks could be purchased from some alternative sources of supply, these were either far away, in Japan or the United States, or allegedly produced blocks of lower quality: "The only reason why they buy from any of us [the cartel members] is that the application requires a much higher quality product", MLS EV1, page 108 [0194].

²²² MLS, pages 19-20 [0021-0022]. Carbone Lorraine was an exponent of this view, see recital (159) below. See also the submission by SGL of 17 March 2003, page 6: "It was agreed that no semi-manufactured goods would be sold to independent machine shops" (in the German original: "Es wurde vereinbart, dass kein Halbzeug an unabhängige Machine Shops verkauft werden sollte". SGL claims that it did not comply with this agreement.

"Blank prices to 3rd party customers should be increased much more than prices for finished products to deter customers from buying blanks. This is especially the case for eastern countries "²²³.

7.8.2. *Application*

- (156) A European Scheme of September 1990 stipulated that within the EEA, carbon blocks should be sold using the same price calculation as for carbon brushes²²⁴. This meant that the price for the semi-manufactured product had to be as high as the price of finished products like brushes. If this rule had been implemented by all members, this would effectively have made competition from cutters within the EEA impossible, at least to the extent that cutters were supplied by members of the cartel. Apparently, however, some of the cartel's members did not want to give up the European cutters' business altogether and continued to supply them at prices below those of brushes. A list identifying cutters in Western Europe and their suppliers, lists SGL and Schunk as suppliers, together with certain small suppliers like Gerken²²⁵.
- (157) A local meeting in Germany on 7 May 1992 records a discussion among cartel members on how best to act against EKL, a competitive East-German cutter that had entered aggressively into the West-German market after unification. Two strategies were agreed: First, none of the members of the cartel would supply any graphite to EKL. Secondly, EKL would be denied any market share by systematically undercutting it with all customers, so that it would not be able to sell anywhere²²⁶. EKL was taken over by SGL in 1997.
- (158) On 2 April 1993, a bilateral meeting took place between Morganite and Hoffmann in Windsor, United Kingdom, in which Morgan asked Hoffmann to stop supplying carbon blocks to Gerken. In a phone call with Morgan on 20 April 1993, Hoffmann told Morgan that it had initiated the measures discussed in respect of Gerken²²⁷.
- (159) On 14 October 1993, a discussion took place in a Technical Committee meeting regarding the question "Should we sell blocks and give our margin away or not?" SGL was identified as selling blocks. Carbone Lorraine, on the other hand, "tries to sell as less blocks as possible and believes it is better to only sell to own companies". It was agreed that the "Price outside own companies should be at least 53,- DM per KG"²²⁸.

²²³ MLS, EV 4, page 94 [1217].

²²⁴ MLS, EV 6, tab 6, page 3a [2502].

²²⁵ MLS, EV 1, pages 72-73 [0155-0156]. Gerken does not produce blocks but purchases and, to some extent, re-sells them.

²²⁶ MLS, EV 2, pages 247-248 [0722-0723].

²²⁷ In the German original: Ich...habe auch darüber informiert, daß in Richtung Gerken die besprochenen Maßnahmen eingeleitet sind". With "the measures discussed" was meant the termination of supplies of blocks to Gerken. See reply from Hoffmann to Statement of Objections, 21 July 2003, page 8 and annexes 2 and 3.

²²⁸ MLS, EV1, page 170 [0263]. Carbone Lorraine did sell to cutters outside the EEA, but is reported as wanting to stop that as well, MLS EV1, page 83 [0167].

(160) Morgan's notes of a Technical Committee meeting of 19 October 1995 record: "J.K. suggested to apply major price increases for blocks to third party, or to avoid selling to them!". The notes continue by saying that "Cutters buy their material from Mega and Rekofa at appr. 20-25 Dm./KG. The only reason why they buy from any of us is that the application requires a much higher quality product (Rekofa and Mega do not have any railway business or suitable grades). If we would increase the price of appr. 42 Dm to 85 Dm/KG they will still buy from us. The advantages are:

- Better profit
- Better price level for finished product
- Possible to take over business at good price level.

All participants agreed to study the proposal for the next meeting (to be discussed at Summit)" ²²⁹. In the same meeting it was agreed to increase block prices by 5%²³⁰.

(161) A Technical Committee meeting of 18 April 1996 discussed blocks supplied to third parties. It was recorded that "G [Schunk] supplies blocks to Star Delta North Ireland and assure that they use bareme price levels and is not prepared to stop block supplies. Summit has to make decision. Conradt confirmed to calculate bareme prices"²³¹.

(162) On 27 September 1996, a Technical Committee meeting recorded the successful introduction of a 25% price increase in blocks, saying "After the 25% increase business reduced heavily. The TC [Technical Committee] wants to keep the prices at present level to see how the market reacts". The same meeting records: "It was agreed not to supply to any new cutter. Summit to confirm"²³².

(163) The notes by the Morgan representative of the Technical Committee meeting of 15 April 1997 are revealing: "B [SGL] supplies more blocks to independent third parties. Can they assure that price limits of finished products are fully controled?"²³³. Later on, the notes record: "If third parties are to be supplied with blocks, the supplier is responsible to controle the finish product price"²³⁴.

(164) Correspondence between Morgan and the Polish trading company Centrozap in 1997 sheds light on the agreed mechanism used by cartel members to ward off competition in the EEA market from cutters. A fax sent by Morgan on 13 February 1997 to Centrozap states:

²²⁹ MLS, EV 1, page 108 [0194].

²³⁰ MLS, EV 1, page 115 [0201].

²³¹ MLS, EV 1, page 98 [0183].

²³² MLS, EV 1, page 83 [0167]. See also MLS, EV1, page 97 [0182].

²³³ MLS, EV 1, page 74 [0157].

²³⁴ MLS, EV 1, page 75 [0158].

"Unfortunately our investigations strongly support the view that these materials will be used to manufacture brushes for customers in Europe outside Poland who we currently supply. We feel sure that you will agree that this is not a satisfactory situation for ourselves, and is the reason that we regrettably have to withdraw our offer against this particular enquiry".

(165) The Polish trading company responded:

"With reference to your a.m. fax we herewith present the reply received from o/customer ELEKTROCARBON Tarnowskie Gory [a Polish cutter trying to enter the EEA market]:

"We cannot agree with MORGANITE's decision as it implies that through interfering in our internal affairs, they claim the right to determine the markets for ELEKTROCARBON's sales of carbon brushes made of MORGAN's materials..."²³⁵.

(166) Finally, SGL recalls that it was under pressure from the other cartel members to cut off supplies of blocks to Gerken, but refused to do so: "In a meeting in October 1998 in Berlin there were as usual complaints about the market situation and pressure was exerted on SGL not to deliver semi-manufactured products (brush plates) to other producers such as Gerken and Carbonex (Sweden). Pressure was exerted in particular regarding Gerken, so as to persuade SGL to stop the deliveries of semi-manufactured products to Gerken from St Mary's [where Gerken's traditional supplier of blocks, the US Carbon/Graphite Group, taken over by SGL in 1994, is located], in order to push Gerken out of the market"²³⁶.

7.9. Co-ordinated attacks on competitors

7.9.1. Principles

(167) According to Morgan, another way in which cartel members tried to ensure that the price levels which they had agreed could be maintained in practice in the marketplace was by exchanging information on and jointly acting against competitors²³⁷. Agenda's of Technical Committee meetings often had a separate point called "Competition"²³⁸. Under this heading the cartel's strategy to take action against troublesome competitors was discussed and co-ordinated. The main strategies in this respect were:

- To lure competitors into co-operation.

²³⁵ MSLS, EV3, pages 180-188 [4257-4265].

²³⁶ In the German original: "In einem Treffen im Oktober 1998 in Berlin hat man sich wie üblich über das Marktgeschehen beklagt und es ist auf SGL Druck ausgeübt worden, kein Halbzeug (Bürstenplatten) an andere Hersteller wie Gerkenh [sic] und Carbonex (Schweden) zu liefern. Druck wurde insbesondere wegen Gerken ausgeübt, man wollte SGL dazu bewegen, die Lieferungen von Halbzeug an Gerken aus St Mary's einzustellen, um Gerken aus dem Markt zu drängen", SGL submission of 17 March 2003, page 7 [10747].

²³⁷ MLS, page 22 [0024].

²³⁸ For examples, see MLS, EV 1, pages 199 [0294], 167 [0260].

The cartel members succeeded in occasionally including smaller, local producers into their local meetings. Such local producers were not, however, allowed to participate in Technical Committee or Summit meetings at the European level. They often remained troublesome, by not strictly following cartel prices, which led to further co-ordinated actions against them by the cartel.

- To pressure competitors into co-operation.
- To drive competitors out of business in a co-ordinated fashion or at least teach them a serious lesson not to cross the cartel.
- To buy up competitors. Once such companies had been taken over, the parent company would ensure that they complied with the rules of the cartel²³⁹.

7.9.2. *Application*

(168) An example of the implementation of the strategy of luring competitors into co-operation is provided by Morgan's notes of a Technical Committee meeting on 4 April 1995:

- "If Gerken would be willing to increase his prices to the official level we could agree not to fight him on price. (he might loose share but gain more)"²⁴⁰.

(169) Similarly, the notes of a local mechanical carbon meeting in Germany of 15 January 1998 read:

- "Competition Gledco, Rekofa, Tolcany [Topolcany] should not influence our price policy
Make them confident to include in boat"²⁴¹.

(170) An example of pressure put on competitors to comply with the cartel's price levels,

- regarding the Belgian company Gerken, is in the notes of a Technical Committee meeting of 27 September 1996 :

"Sometimes too difficult to reach. He is not pro-reactive and waits for the others to take an initiative. Suggested another special meeting with one member of each company and Mr. Gerken"²⁴².

(171) Examples of co-ordinated attempts to drive competitors out of business are:

²³⁹ MLS, page 24 [0026].

²⁴⁰ MLS, EV 1, page 126 [0213].

²⁴¹ MLS, EV 4, page 42 [1142].

²⁴² MLS, EV1, page 86 [0170].

- "Gerken + Gladhill in industrial 30% below UK prices. Strong – Belgium, Spain, Sweden. Conclude to attack where we can"²⁴³.
- "Morganite consider Ian Watson to be an increasingly dangerous competitor. It is felt that collectively we should attack his business"²⁴⁴.
- Another example concerns Topolcany, a Slovakian company that seriously undercut the prices of the cartel in the EEA market. A document agreed in 1997 between Morgan, Schunk and SGL dealing with the European market for mechanical carbon and graphite products, reads:

"Topolcany; every member has to attack them; before attack informations to the members"²⁴⁵.
- "E.K.L should under no conditions be allowed to obtain a market share in the West"²⁴⁶.

(172) Examples of competitors that at one time or another started to become a nuisance to the cartel and that were subsequently purchased or commercially tied by one of the cartel members are:

- Gerken from Belgium: SGL tried to buy Gerken in 1995, but Gerken refused²⁴⁷. However, already in 1994 SGL had purchased the specialty graphite business of the US Carbon/Graphite Group, Gerken's main supplier of blocks. Through its control over Gerken's raw materials purchase prices, SGL now started to exert pressure on Gerken not to underquote the cartel prices, apparently with some success. In a Technical Committee meeting on 18 April 1996, "B [SGL] asked P [Carbone Lorraine] not to attack Gerken in Belgium because of the raise of his price level but to support him. Each member confirmed that Gerken follows the rules"²⁴⁸.
- EKL from Germany: Taken over by SGL in 1997²⁴⁹.
- Pure Carbon from the USA: Taken over by Morgan in 1995²⁵⁰.

²⁴³ MLS, EV 1, page 182 [0276].

²⁴⁴ CL11, annex 6, item 10 [7879-7880], report of meeting between Carbone Lorraine and Morgan in Birmingham, United Kingdom, 19 November 1997.

²⁴⁵ MLS, EV 4, page 52 [1155].

²⁴⁶ In the Dutch original: "E.K.L. mag absoluut geen marktaandeel in het westen verkrijgen", see MLS, EV2, page 240 [715].

²⁴⁷ MLS, EV 1, page 125 [0212].

²⁴⁸ MLS, EV1, page 99 [0184].

²⁴⁹ See, for example, the discussion on EKL in the Technical Committee meeting of 8 July 1994, where the notes state "Price control in case of take-over" (Preiskontrolle falls Übernahme" in the German original), MLS, EV 4, page 133 [1281].

²⁵⁰ For a discussion by the Technical Committee in 1993 of the problems caused by Pure Carbon, see MLS, EV 4, page 143 [1298]: "Pure Carbon and its pricing policy is a major threat to all TC-members. Recent comparisons show that their prices for standard products are between 1/3 and 1/2 of our prices" and "All members request a 15 to 20% price increase for

– Rekofa from Germany: Bought by Morgan in 1998.

- (173) These different actions took care of virtually all of the "outsiders" active in the EEA market²⁵¹.

8. THE ROLE OF TRADE ASSOCIATIONS

8.1. The Association of European Graphite Electrode Producers (AEGEP)

- (174) Little is known about this association, other than that it was established around 1990, with headquarters in Brussels. It was formally dissolved on 1 March 1995 and replaced by the European Carbon and Graphite Association (ECGA)²⁵². According to Morgan, during the mid-1980's to the mid-1990's, the European cartel was run "under the auspices" of the AEGEP²⁵³. SGL also lists several meetings of the AEGEP as forums that were used for cartel meetings in the early nineties²⁵⁴. However, the Commission has no evidence that AEGEP meetings themselves were used to discuss anti-competitive practices.

8.2. The European Carbon and Graphite Association (ECGA)

- (175) This association was founded on 25 January 1995 as the successor to AEGEP. It was created under Belgian law as a non-profit organisation. Membership is open to producers in the EEA of carbon and graphite products. Membership fees are based on each member's turnover in the preceding year. The main objectives of the association are the collection of non-proprietary general information regarding the industries which use carbon and graphite products, co-operation in setting common industrial standards, exchange of experience concerning such issues as environmental protection and safety at work, and forming an active link between the producers and the Community authorities.
- (176) The Commission has not found evidence that staff of the ECGA participated in the cartel meetings or that anti-competitive activities were discussed in official meetings of the Association. Such use of the association's meetings would, in any case, not have been easy (nor indeed, as the facts show, necessary). Firstly, Article 5 of the statutes of the Association obliges the association (and its members) to interpret those statutes in strict respect of the competition rules of the Treaty and national laws. ECGA staff participated in all official ECGA meetings. Secondly, and more importantly from a practical

mechanical products. The actual prices are far too low compared to costs. All agree that this increase should be implemented within the next 2-3 years provided the question of Pure Carbon is resolved". A year later Pure Carbon had been integrated into the cartel by reason of Morgan having purchased it.

²⁵¹ Compare MLS, EV1, page 137 [0225].

²⁵² ECGA11, answer to question 1 [4808 and 4831-4832] and Schunk11, answer to questions 1 to 6 [9247-9249].

²⁵³ MLS, page 10 [0012].

²⁵⁴ Submission by SGL of 17 March 2003, annex 1, pages 1 and 2 [10788-10789]. The German acronym for AEGEP is IEKGH – Interessengemeinschaft europäischer Kohle- und Graphitherstellern.

point of view, the membership of the association was from the beginning larger than the membership of the cartel, thus making it impractical for the cartel members to discuss their business in official ECGA meetings. The only exception to this was the meetings of the graphite specialties electrical committee, where all participating members were cartel members. In the graphite specialties mechanical committee, all participating members were cartel members, with the exception of UCAR²⁵⁵.

- (177) What can be deduced from the available evidence is that a number of meetings of the ECGA Graphite Specialties Electrical and Mechanical Committees coincided with meetings of the cartel's Technical Committee. This is clear when the list of known cartel meetings in Annex I is compared with the list of ECGA meetings in Annex II. Just to take one example, on 19 April 1996, a meeting of the ECGA Graphite Specialties Committee took place in Cologne, Germany. At the same location, on 18 and 19 April 1996, a meeting of the cartel's Technical Committee took place, both for electrical and mechanical products²⁵⁶. A similar correlation exists between ECGA General Assembly or Board of Directors meetings and Summit meetings of the cartel, as evidenced by the ECGA meetings on 23-24 October 1997, 20 April 1998 and 17-18 May 1999, all of which were used by the cartel to organise Summit meetings. It would therefore appear evident that cartel members took the opportunity of official ECGA meetings to meet, often both before and after the ECGA meeting, among themselves to co-ordinate their anti-competitive activities²⁵⁷. Indeed, for at least some members of ECGA, the usefulness of the existence of ECGA, or at least of its Graphite Specialties Committee, appears to have been largely determined by its function of providing a legitimate cover for meetings of representatives of the members of the cartel. After Carbone Lorraine had left the cartel by the middle of 1999, a Technical Committee meeting of the cartel on 4 October 1999 discussed the question "Is the umbrella of E.C.G.A. still be needed [sic]?"²⁵⁸. With effect from the year 2000, Carbone Lorraine, Schunk and Morgan all left the association²⁵⁹. The ECGA abolished the Graphite Specialties Committee in that year. Since 1 July 2000, a lawyer acting for the ECGA attends ECGA meetings.

²⁵⁵ ECGA11, answer to question 4, organization charts of February 1997 [4917], April 1998 [4918], October 1998 [4919] and May 1999 [4920].

²⁵⁶ Other examples of meetings of the ECGA Specialty Graphite Electrical and Mechanical Committee that coincided with meetings of the cartel are: 19-20 October 1995, in Vienna, Austria; 19 April 1996, in Cologne, Germany; 26 September 1996, in Hamburg, Germany; 24-25 April 1997, in Amsterdam, the Netherlands; 9 October 1997, in Vienna, Austria; 2 April 1998, in Bandol, France; 12 October 1998, in Berlin, Germany; and 8 April 1999, in Stratford upon Avon, United Kingdom.

²⁵⁷ A typical example can be found in Schunk11, annex 4 [9283]: Hoffmann sent the other cartel members an invitation for an ECGA meeting in Vienna on 9 and 10 October 1997. The schedule indicates a mechanical cartel meeting before the official ECGA meeting and an electrical cartel meeting after the official ECGA meeting. According to SGL, "Invitations to the Technical Meetings arrived via the ECGA, in so far as the meetings took place in connection with an ECGA-meeting". In the German original: "Einladungen zu den *Technical Meetings* erfolgten über die ECGA, sofern die Meetings im Anschluss an ein ECGA-Treffen stattfanden", SGL submission of 17 March 2003, page 11 [10751].

²⁵⁸ MLS, EV1, page 29 [0107].

²⁵⁹ ECGA11, History of ECGA, pages 5-6 [4933-4934].

- (178) It is not known to the Commission to what extent the ECGA was aware that some of its meetings were used as a cover for cartel meetings. Already at the founding meeting of the ECGA, on 1 March 1995, some members identified the need for a special graphite committee, without, however, being able at that time to indicate what legitimate issues that committee should discuss²⁶⁰. This could be called unusual. A letter by Schunk of 26 April 1995 to the ECGA then recommended the precise committees to be established. This letter recommends the creation of a committee for electrical and mechanical products, with two subcommittees, one for electrical products and one for mechanical products. According to Schunk, "the committee understands itself as a steering committee, coordinating the activities of the subcommittees"²⁶¹. This corresponds exactly to the way the cartel operated, and the participants Schunk mentions for the committee correspond to the participants in the cartel's Summit (also called Steering Committee) meetings, while the participants Schunk mentions for the two sub-committees correspond to the cartel's participants in the Technical Committee meetings, which at that time normally met in separate sessions for electrical and mechanical products²⁶².
- (179) It is also curious that a decision was taken at the same founding meeting of the ECGA to continue the tradition of the AEGEP "that the host company invite all members for dinner and lunch the following day (emphasis added)", that is to say, the day following the official end of the ECGA meeting²⁶³. Moreover, ECGA meetings were, for now apparent reasons, held in hotels across Europe, rather than in ECGA offices in Brussels. Illustrative is a letter from SGL of 10 April 1996, inviting the members of the ECGA specialty graphite committee to an official ECGA meeting in the Excelsior Hotel in Cologne on 19 April 1996. According to the letter, "[t]he meeting will start at 9.00 h and hopefully not take longer than 2 hours"²⁶⁴. From other documents, we know of course, that the real interest in organising this meeting was to hold cartel meetings of the Technical Committee on electrical products, before the ECGA meeting, on 18 April 1996, and on mechanical products after the ECGA meeting, in the afternoon of 19 April 1996²⁶⁵.
- (180) Finally, it is also interesting that the ECGA organisation charts for every year except the very first one indicate for all the committees the names of the individuals participating, except for the Graphite Specialties Electrical and Mechanical Committees, where only the company names are listed. This suggests that for the Electrical and Mechanical Committees, the most important aspect was which companies participated (irrespective of which representative the company sent), whereas for the other committees the most

²⁶⁰ ECGA, answer to question 1 [4841]: "Special graphite companies will shortly inform the Secretariat about their decisions concerning working committees" and ECGA Working Committees organisation chart [4858].

²⁶¹ MLS, EV5 [2159-2161].

²⁶² Some legitimate topics for the committees were finally suggested in October 1995. See MLS, EV5 [2068] and letter from SGL of 12 October 1995, in MLS, EV5 [2026-2029].

²⁶³ ECGA11, reply to question 1, annex 4 (minutes of the first ECGA meeting, 1 March 1995), page 7 [4843].

²⁶⁴ CL11, item 5 [6807].

²⁶⁵ See the list of cartel meetings in annex I.

important aspect was the personal qualifications and contributions of the individuals participating (irrespective of which company they belonged to).

9. THE UNRAVELLING OF THE CARTEL

- (181) By the middle of 1997, public authorities in the US, Canada and the Community had started taking action against a global cartel for graphite electrodes. One of the members of that cartel was SGL. That investigation led to the opening of another investigation in the three jurisdictions against anti-competitive practices regarding specialty graphite. SGL and Carbone Lorraine were found by the Commission to have participated in those activities.
- (182) On 1 March 1999, Mr. Ian Norris, Morgan's senior representative on the Board of the ECGA withdrew from the Board, to be replaced from May of that year and for the remainder of the year by Mr. Kroef of Morgan.²⁶⁶ Morgan withdrew from the ECGA with effect from the year 2000. The reason stated to the Commission was that "a large proportion of ECGA members (but not Morgan) had been implicated in the graphite cartel"²⁶⁷. Morgan representatives continued, however, to attend meetings of the cartel for electrical and mechanical carbon and graphite products until the end of 1999. Morgan filed an application for immunity from fines with the Commission on 5 October 2001.
- (183) The participation in the cartel by some of the other members also became less wholehearted towards the end of the 1990s.
- (184) With respect to SGL, Morgan's notes of a Technical Committee meeting of 15 April 1997 record that "T.C. [Technical Committee] unhappy of the current situation with the relationship with B [SGL]", listing a number of questions that SGL should answer at the next Summit²⁶⁸.
- (185) A Technical Committee meeting of 9 April 1999 noted strong disagreement between Schunk and Hoffmann regarding pantographs:

"G [Schunk] was very upset about Hoffmann who did not follow the rules and took 2 orders from them. No trust has been established with Hoffmann and proposal from Schunk is that there must be a clear sign from Hoffmann and compensation for Schunk otherwise they will not take part of any meeting concerning panto's. Summit will be informed"²⁶⁹.

Hoffmann was taken over by Schunk in October of the same year.

²⁶⁶ CL11, volume 2, annex 7 [7734]; ECGA 11, History of ECGA, page 5 [4933].

²⁶⁷ MLS, page 10 [0012].

²⁶⁸ MLS, EV 1, pages 72-82 [0155-0165].

²⁶⁹ MLS, EV 1, page 33 [0111].

- (186) By April 1999, Carbone Lorraine had ceased to attend Technical Committee meetings²⁷⁰ and was considered a major problem, at least by Schunk. Morgan's notes of a Technical Committee meeting of 4 October 1999 state:

"Situation in relation to P [Carbone Lorraine].

1. G [Schunk] recommended to see P. as an outsider because there is no communication possible. Still a controlled competition amongst the 3 other parties is possible. G further claimed that P was undercutting price levels. S [Morgan], B [SGL] and H [Morgan's National subsidiary] have not seen yet real price undercutting by P. G is willing to attack to send them a clear message"²⁷¹.

- (187) As for Conradty, the same meeting noted that "N [Conradty] has to be clarified if we can contact him and if he is still a member of the S.C. [Steering Committee, another term for Summit]"²⁷².

- (188) According to the same meeting, whether the cartel should continue, had to be decided by the Summit:

"Steering Committee has to decide how we should act in the near future.

- Price levels 2000.

If the S.C. decide to continue we could have a meeting with only 3 persons involved to increase price levels in Europe with the same security conditions as today"²⁷³.

- (189) According to SGL, the last Summit took place in Rome, Italy, in May 1999. At that time, SGL reported on the witness interviews that had taken place in its respect in the US, whereas Carbone Lorraine informed the other members that it had received a formal letter from the US Department of Justice. After this, the meeting "spontaneously dissolved", in the words of SGL²⁷⁴.

- (190) Nevertheless, at least at first, the cartel members continued to meet at the level of the Technical Committee and bilaterally. Annex I indicates seven more reported cartel meetings between May 1999 and the end of 1999. Most importantly, a Technical Committee meeting took place on 13 December 1999 and agreed price increases in Europe for the next year²⁷⁵.

²⁷⁰ MLS, page 23 [0025].

²⁷¹ MLS, EV 1, page 29 [0107].

²⁷² Idem.

²⁷³ MLS, EV 1, pages 29-30 [0107-0108].

²⁷⁴ SGL submission of 17 March 2003, pages 7 and 8 [10747-10748]. In the German original: "woraufhin sich die Versammlung spontan aufgelöst hat".

²⁷⁵ MLS, EV 1, page 21 [0098].

- (191) It has already been noted²⁷⁶ that in 2000, the ECGA abolished the Specialty Graphite Electrical and Mechanical Committees and that Schunk, Morgan and Carbone Lorraine all left the association with effect from that year. Carbone Lorraine and Morgan effectively ended their participation in the cartel by the middle and towards the end of 1999 respectively. In all likelihood, the cartel stopped functioning by the year 2000²⁷⁷.

10. DEGREE AND DURATION OF INVOLVEMENT IN THE CARTEL

10.1. Carbone Lorraine, Morgan, Schunk and SGL

- (192) These four producers were all very active members of the cartel throughout its period of operation, each participating in all the activities described in Chapter IV and most of the meetings listed in Annex I²⁷⁸. The only nuance to be made to this is that Carbone Lorraine, because of its relatively small turnover in mechanical products, played a less important role in the cartel's activities on those products than Morgan, Schunk and SGL. This is demonstrated, for instance, by the fact that the client leadership list for mechanical products mentioned in recital (132) allocates customers only among the latter three companies. Also, Carbone Lorraine did not participate in a number of meetings on mechanical products that were organised between two or all three of the other companies²⁷⁹. Nevertheless, Carbone Lorraine participated in the Technical Committee meetings regarding mechanical products as well as in the Summits, where mechanical products were also discussed. Carbone Lorraine also complied with the cartel's agreements on mechanical products

²⁷⁶ See recital (177) above.

²⁷⁷ Schunk claims that the cartel has stopped functioning since "a considerable time" ("seit geraumer Zeit") in the German original. See Schunk11, page 5 [9246].

²⁷⁸ Instances of participation by each of the four companies in the cartel's activities during the period of its operation are too numerous to list individually. A complete list of reported cartel meetings has been provided in annex 1. Meeting agenda's, where available, indicate the companies to which the agenda was sent and the items members proposed for discussion. It may at least be assumed that members that proposed items for discussion, participated in the actual meeting. Such agenda's can be found in MLS, EV1, pages 348-349 [0450-0451], 315-316 [0416-0417], 289-290 [0388-0389], 284-285 [0383-0384], 224-225 [0322-0323], 216 [0313], 198-199 [0293-0294], 191 [0285], 187 [0281], 167 [0260], 154-155 [0245-0246], 147 [0237], 135-136 [0222-0223], 102 [0187], 90 [0174], 53 [0134], MLS, EV4, page 33 [1129]. The meeting reports provided by Morgan in MLS, EV 1, MLS, EV2 and MLS, EV4, in particular, detail the actual discussions held among participants, thus providing further clear evidence of participation by each of these four companies in cartel meetings throughout the period in question.

²⁷⁹ See MLS EV4, pages 6-7 [1090-1091]. On the other hand, at least six company employees of Carbone Lorraine participated at one time or another in cartel activities regarding mechanical products, see MLS EV4, page 8 [1093]. Carbone Lorraine moreover does not deny that it regularly participated in Technical Committee and Summit meetings where mechanical products were discussed, see CL, pages 4-6 [5514-5516]. See also Carbone Lorraine's reply of 25 July 2003 to the Statement of Objections, page 14: "Far from denying its presence at mechanical meetings of the Technical Committee..." (in the French original: "Loin de nier sa présence aux réunions du comité technique mécaniques...").

by, for instance, seeking the advice of the appointed client leaders when it came to offering mechanical products to particular clients²⁸⁰.

- (193) In its reply to the Statement of Objections, Schunk argued that Morgan and Carbone Lorraine were leading the cartel and that its own role had been less important. The Commission finds no indications for this claim in the evidence. On the contrary, the evidence presented in Chapter IV shows that Schunk was very active in the cartel, to at least the same degree as Morgan, Carbone Lorraine and SGL. Schunk was particularly active in checking and ensuring that other cartel members complied with the rules of the cartel²⁸¹. It also took a number of initiatives. It and not SGL or Conradty was responsible within the cartel for calculating the bareme prices for Germany²⁸². It proposed increasing recycling charges²⁸³. It, together with Morgan and SGL, set up the important account leadership list for mechanical products²⁸⁴. And it was Schunk that took the initiative towards the ECGA in 1995 to establish a committee for electrical and mechanical products, with subcommittees for electrical products and for mechanical products²⁸⁵. Finally, the agendas of the cartel meetings listed in Annex I show that Schunk raised many of the issues to be discussed at the meetings, as indeed did Morgan, Carbone Lorraine and SGL.
- (194) As for the period of involvement of those four companies in the cartel, there are a number of indications that the cartel was active long before October 1988, indeed that it possibly started as early as 1937. The Commission has, however, clear evidence of an uninterrupted series of cartel meetings from October 1988 to December 1999, in which all four of these companies regularly participated²⁸⁶. The only exception to this is that Carbone Lorraine terminated its participation in the cartel in June 1999²⁸⁷, half a year before Morgan and the others did so. In this case, Schunk, SGL and Morgan should be held responsible for their participation in the cartel from October 1988 to December 1999 (eleven years and two months), and Carbone Lorraine from October 1988 to June 1999 (ten years and eight months).

10.2. Conradty

- (195) Conradty was a smaller player in the market and a less important member of the cartel than Carbone Lorraine, Morgan, Schunk and SGL. According to Morgan, due to its small market share, Conradty left the electrical discussions in the Technical Committee around May 1994²⁸⁸. Before then, it had been a

²⁸⁰ See recital (143), last sentence.

²⁸¹ For examples, see recital (89), first indent, recital (106), first indent, recital (141) last sentence, recital (185), recital (186).

²⁸² See recital (100).

²⁸³ See recital (113).

²⁸⁴ See recital (132).

²⁸⁵ See recital (178).

²⁸⁶ See the list of reported cartel meetings in annex I.

²⁸⁷ Letter from Carbone Lorraine of 22 August 2002, page 4 [4629].

²⁸⁸ MLS, EV 1, page 3 [0078]. Evidence of Conradty's having contributed to the agenda of a Technical Committee meeting on electrical products held on 21 April 1994 can be found in MLS, EV1, page 147 [0237]. Conradty does not figure on the annual ECGA membership lists

regular participant²⁸⁹. This absence from European-level Technical Committee discussions on electrical carbon and graphite products appears to have continued, at least for some meetings, thereafter²⁹⁰. However, the fact that Conradty may not have participated in certain Technical Committee meetings regarding electrical carbon and graphite products, does not detract from the fact that it continued to participate in other Technical Committee meetings, both for electrical and mechanical products, as well as in local meetings and in the day-to-day operational contacts between cartel members regarding prices to specific clients²⁹¹. The following indications exist of Conradty's continued active participation in the cartel in the years since 1994:

- Conradty was present at a Technical Committee meeting of 4 April 1995: "[*] will investigate"²⁹².
- A Technical Committee meeting on 19 October 1995 makes the following comment regarding Conradty's plant in Ireland:

"Investigation by [*] [a high-ranking Conradty official] to control price levels and next year will be controlled by [*]"²⁹³.
- A local electrical meeting in Germany on 15 December 1995 records the name of the new contact person for Conradty starting in 1996²⁹⁴. The same meeting notes the information provided by Conradty that "Conradty does not have any ongoing tests with Deutsche Bahn"²⁹⁵.
- A Technical Committee meeting of 18 April 1996 stated: "Conradty confirmed to calculate bareme prices"²⁹⁶.

of the Graphite Specialties Electrical Committee, which run from 1995 to 1999. See ECGA11, answer to question 3 [4915-4924].

²⁸⁹ Indications of Conradty's participation in the cartel until the end of 1994 can be found in MLS, EV1, page 348-349 [0450-0451], page 332 [0433], 324 [0425], 317 [0418], 298 [0398], 295 [0395], 293 [0392], 292 [0391], 224 [0322], 217 [0314], 215 [0311], 202 [0297], 198 [0293], 196 [0290], 193 [0287], 191 [0285], 187 [0281], 176 [0269], 167 [0260], 163 [0255], 147 [0237], MLS, EV2, page 239 [714].

²⁹⁰ "Conradty was not invited for 28-29 October in Giessen and also no invitation for summit meeting" MLS, EV 2, 210 [0680]. "Conradty will no longer be invited for T.C. or E.C.G.A. ("Conradty wordt niet meer uitgenodigd voor T.C. of E.C.G.A" in the Dutch original), Technical Committee meeting of 18 May 1995, in MLS, EV2 214 [0686]. But Conradty seems to have been present at this latter meeting, given that it supplied detailed information regarding the products it sold to Deutsche Bahn, see MLS, EV2, page 215 [0687].

²⁹¹ SGL submission of 17 March 2003, page 17 [10757]: "With Conradty, LCL [Carbone Lorraine] and Deutsche Carbone [Carbone Lorraine's German subsidiary] we talked around every six weeks. The phone calls at this level were about price requests from individual customers and about what offers for large customers (over 40.000 DM) should be made". In the German original: "Mit Conradty, LCL und Deutsche Carbone sprach man ca. alle sechs Wochen. In den Telefonaten auf dieser Ebene ging es um Anfragen von Einzelkunden und darum, welche Angebote für Grosskunden (über 40.000 DM) abgegeben wurden".

²⁹² See MLS, EV1, page 131 [0218].

²⁹³ MLS, EV1, page 117 [0203]. See also MLS, EV1, page 131 [0218]: "Mr B. will investigate".

²⁹⁴ MLS, EV2, page 212 [0683].

²⁹⁵ Idem, "Conradty heeft geen proeven lopen met Deutsche Bahn" in the Dutch original.

²⁹⁶ MLS, EV 1, page 98 [0183].

- A Technical Committee report of 26 September 1996 confirms that information on agreed price increases has been sent to Conradty²⁹⁷. SGL also confirms that Conradty participated in this meeting²⁹⁸.
- Conradty participated in a Summit meeting in Hamburg, Germany on 30 September–1 October 1996²⁹⁹.
- An account leadership and price increases list for mechanical products of 23 October 1996 indicates Conradty as account leader for 3 clients³⁰⁰.
- A local meeting in Germany on 10 December 1996 on current collectors and pantographs registers Conradty's complaint that it had not been invited to a previous Technical Committee meeting and a previous Summit³⁰¹.
- An undated cartel document which according to Morgan dates from 1997 lists Conradty as "not an account leader, because they will not have responsibility. If necessary, members should contact on particular customers"³⁰².
- According to SGL, Conradty participated in a local electrical meeting on 30 January 1998³⁰³.
- Conradty participated in a Technical Committee meeting on mechanical products on 2 April 1998³⁰⁴.
- A Technical Committee meeting on 3 April 1998 on electrical products notes:

"N. [Conradty] has promised to instruct his company in Ireland"³⁰⁵.
- According to SGL, Conradty participated in a Technical Committee meeting on 18-19 or 22 June 1998³⁰⁶.

²⁹⁷ MLS, EV4, page 85 [1205]

²⁹⁸ Submission by SGL of 17 March 2003, annex 1, page 4 [10744].

²⁹⁹ Idem.

³⁰⁰ MLS, EV4, page 81-82 [1198-1199].

³⁰¹ MLS, EV2, page 210 [0680]. See also the following statement regarding the same meeting: "Conradty was not invited to participate on the first meeting (28.-29. Oct 96) therefore Conradty could not give any position today", MLS, EV2, page 211 [0681].

³⁰² MLS, EV4, page 52 [1155].

³⁰³ Submission by SGL of 17 March 2003, annex 1, page 6 [10793].

³⁰⁴ MLS, EV4, page 6 [1090].

³⁰⁵ MLS, EV1, page 51 [0132]. Conradty was invited for this meeting, MLS, EV1, page 53 [0134]. Conradty's participation in the electrical discussions is confirmed by the submission of SGL of 17 March 2003, annex 1, page 7 [10794]. According to Morgan, Conradty participated (also) in the mechanical part of this Technical Committee meeting in Bandol, France, see MLS, EV4, page 6 [1090]. The same source lists Conradty as having participated in a Technical Committee meeting in Berlin on 12-13 October 1998, a Summit in Berlin on 19-20 October 1998 and a Technical Committee meeting in Vienna on 8-9 October 1997. Conradty was also invited for a Technical Committee meeting on 13 April 1996, see MLS, EV 1, page 102 [0187].

- A Technical Committee meeting on 22 June 1998 makes reference to a local meeting to be held with N [Conradty] on 28 July 1998³⁰⁷.
 - A Technical Committee meeting on 9 April 1999 records: "Italy: Conradty is supplying brushes to a reseller "GEI" at very low prices. P [Carbone Lorraine] will send examples of cases to Conradty"³⁰⁸.
 - A Technical Committee meeting 4 October 1999 stated:

"N [Conradty] has to be clarified if we can contact him and if he is still a member of the S.C. [Steering Committee]"³⁰⁹.
- (196) Conradty should be held responsible for having participated in the cartel from at least October 1988 to December 1999, a period of eleven years and two months.

10.3. Hoffmann

- (197) Like Conradty, Hoffmann was a smaller company and a less important cartel member than Carbone Lorraine, Morgan, Schunk and SGL. Its interests did not pertain equally to all products subject to this proceeding and therefore it had no need to participate in all meetings of the cartel. Rather, Hoffmann had an interest only in electrical carbon and graphite products, and its contributions to and participation in the cartel are focused on these products. Until Hoffmann was taken over by Schunk in October 1999, it participated in a number of the European-level meetings, in particular at the Summit level, in the person of [*] and later [*]. Hoffmann was a member of the ECGA's Graphite Specialties Electrical Committee³¹⁰ and participated in some of the cartel's Technical Committee meetings on electrical products, in particular where they dealt with pantographs. It also participated in some of the local meetings.
- (198) A degree of uncertainty exists regarding the precise moment when Hoffmann first started to participate in the illegal activities of the cartel. In the early years of the cartel, until in fact a Technical Committee meeting of 28 September 1994³¹¹, there is no evidence of Hoffmann's participation in cartel meetings. In those years, Hoffmann was usually mentioned in agenda's of cartel meetings under the heading of "Competition" and the participants in the discussion would regularly complain about Hoffmann's behaviour in the market.
- (199) The Commission has, nevertheless, some indications of inappropriate contacts between Hoffmann and the members of the cartel in those early years. For instance, a Technical Committee meeting held on 31 October 1989 reported

³⁰⁶ Submission by SGL of 17 March 2003, annex 1, page 7 [10794].

³⁰⁷ MLS, EV1, page 38 [0118].

³⁰⁸ MLS, EV1, page 32 [0110]. SGL confirms Conradty's participation in this meeting, see submission by SGL of 17 March 2003, annex 1, page 9 [10796].

³⁰⁹ MLS, EV1, page 29 [0107].

³¹⁰ Hoffmann was not a member of the ECGA's Graphite Specialties Mechanical Committee. See ECGA11, answer to question 3 [4915-4924].

³¹¹ See Hoffmann's reply to the Statement of Objections, page 8.

Hoffmann as providing assurances to the cartel that its agent in the Netherlands would conform to the agreed price level. Regarding pantographs, mention was made of a proposal by Hoffmann and/or a paper of Hoffmann³¹². On 7 May 1992, a local cartel meeting in Germany reported:

"[*]

- S [Morgan] informs that [Hoffmann] has been offering below schedule prices since fall. "H" [Hoffmann] thought that the schedule no longer existed.
- H will join again"³¹³.

- (200) At the same or another cartel meeting in spring 1992, [*], although not participating in the meeting, is reported as having complained that the others did not take his company seriously enough and that they should have more frequent contacts with him³¹⁴.
- (201) Schunk, as Hoffmann's current parent company, admits that Hoffmann had contacts with the cartel before 1995, but claims that its participation was "sporadic"³¹⁵. It also claims that Hoffmann used the information obtained from the cartel to cheat on the other members.

³¹² MLS, EV1, page 307 [0407].

³¹³ In the Dutch original: "[*]. – S bericht. Sinds herfst onder schema aangeboden. "H" dacht dat schema niet meer bestond. – H zal zich weer aansluiten", MLS, EV2, page 241 [0716]. In its reply to the Statement of Objections, Hoffmann noted that "Clearly Morgan reported here about a bilateral discussion with Hoffmann, which took place before the meeting". In the German original: "Offenbar berichtete Morgan hier über ein bilateral Gespräch mit Hoffmann, das vor der Sitzung stattgefunden hatte". Reply to the Statement of Objections from Hoffmann, 21 July 2003, page 7.

³¹⁴ MLS, EV2, page 249 [0724]. Although not dated, the meeting can be identified as having taken place in Spring 1992. At one place, the four page meeting report [0722-0725] mentions that EKL, a competitor, expects a turnover of DM 10 million in 1992. At another place, mention is made of an offer of keeping the prices at the 1991 level. This places the meeting in 1992. Other references identifying the meeting as having taken place in spring are to a time limit of 19 May and to renewed discussions after the summer.

³¹⁵ See Schunk submission of 20 February 2003, page 2 [9807]: "Before 1995, Hoffmann always used the circle of competitors sporadically, to obtain information about data relevant for the market. With the information it thus gathered at these meetings, it became easier for Hoffmann to enlarge its market share at the expense of the competitors. In this respect Hoffmann invited itself to meetings of the loose IEKGH [Interessengemeinschaft europäischer Kohle- und Graphitherstellern] association, when this appeared opportune to him. Morganite but also Carbone Lorraine were particularly affected by the aggressive strategy of Hoffmann, because they possessed market segments that were comparable with those of Hoffmann and were also generally most exposed as market leaders with the highest market shares. As can be expected, both resisted Hoffmann. Morganite, which more generally played a prominent part at the different meetings, exerted the biggest pressure in this respect." In the German original: "Vor 1995 nutzte Hoffmann den Kreis der Wettbewerber immer wieder sporadisch, um Informationen über marktrelevanten Daten zu bekommen. Mit den bei diesen Treffen gewonnenen Informationen fiel es Hoffmann leichter, den Marktanteil auf Kosten der Wettbewerber zu vergrößern". Dabei lud sich Hoffmann selbst zu Treffen des losen IEKGH-Verbundes ein, wenn ihm dies opportun erschien. Morganite aber auch Le Carbone Lorraine waren in erster Linie von der aggressiven Strategie von Hoffmann betroffen, weil sie über Produktsegmente verfügten, die mit denjenigen von Hoffmann vergleichbar waren und auch sonst als Marktführer mit den größten Marktanteilen am meisten exponiert waren. Erwartungsgemäß wehrten sich die beiden gegen Hoffmann, wobei Morganite, das auch sonst bei den diversen Treffen den Ton angab, den größten Druck ausübte".

- (202) Taking account of the available evidence, Hoffmann should be held responsible for participating in the illegal activities of the cartel as of 28 September 1994, the first Technical Committee meeting in which the company admits having participated.
- (203) Once Hoffmann had started to participate in the cartel meetings, it continued to do so regularly, albeit it not in every meeting, as its business interests were more limited than those of other cartel members. The following indications exist of Hoffmann's participation in subsequent cartel meetings:
- Technical Committee meeting on 4 April 1995: Agenda sent to Hoffmann and relation between Hoffmann and Carbo Electric, a Spanish cutter, mentioned as a point on the agenda³¹⁶.
 - Special Technical Committee meeting on 18 October 1995 on collectors and trolleybus inserts: Hoffmann proposed a number of items for the agenda and participated³¹⁷.
 - Summit meeting in Vienna, Austria on 30 October 1995: Hoffmann organised the meeting³¹⁸.
 - Local electrical carbon meeting on 9 November 1995: Hoffmann participated³¹⁹.
 - Technical Committee meeting of 18 April 1996: Hoffmann proposed an item for the agenda³²⁰.
 - Summit meeting of 29-30 April 1996: Hoffmann participated on second day³²¹.
 - Technical Committee meeting of 27 September 1996: Hoffmann is mentioned as wanting to continue to supply a cutter in Yugoslavia³²².
 - Summit meeting of 30 September – 1 October 1996: Hoffmann participated³²³.
 - A local meeting in Germany on 10 December 1996 on current collectors and pantographs registers a proposal made by Hoffmann³²⁴.

³¹⁶ MLS, EV1, pages 131 [0218] and 135-136 [0222-0223].

³¹⁷ MLS, EV1, pages 113 and 119 [0199 and 0205].

³¹⁸ Submission by SGL of 17 March 2003, annex 1, page 3 [10790]. SGL indicates as topic of discussion: "Integration of [*]".

³¹⁹ Idem.

³²⁰ MLS, EV1, page 102 [0187]. For evidence that Hoffmann actually participated, see MLS, EV4, page 95 [1217].

³²¹ Schunk submission of 20 February 2003, page 3 [9808].

³²² MLS, EV1, page 83 [0167]. Schunk claims, however, that Hoffmann did not participate in this Technical Committee meeting, see Schunk submission of 20 February 2003, page 3 [9808].

³²³ Schunk submission of 20 February 2003, page 3 [9808]. This is also confirmed by the submission of SGL of 17 March 2003, annex 1, page 4 [10791].

³²⁴ MLS, EV2, page 210 [0680].

- Summit meeting of 24-25 April 1997: Hoffmann participated³²⁵.
- Technical Committee meeting of October 9, 1997 in Vienna, Austria, for both electrical and mechanical products: Hoffmann is the inviting company, organised the meeting and sent round the draft agenda³²⁶.
- Summit of 22-23 October 1997: Hoffmann participated³²⁷.
- Technical Committee meeting of 3 April 1998: Hoffmann proposed two items for the agenda³²⁸.
- Technical Committee and Summit meetings on 21 April 1998: Hoffmann participated³²⁹.
- Technical Committee meeting of 18-19 or 22 June 1998: Hoffmann obtained account leadership for several large public transport customers. The meeting also agreed that "Local meeting will be held with G [Schunk], B [SGL], St [Hoffmann] and N [Conradty] on 28 July in Munich to solve the conflicts". Moreover, the same meeting noted that "St [Hoffmann] will also investigate surcharges on curved panto's and a new Euro scheme coefficient for the next meeting"³³⁰.
- A Technical Committee meeting on 9 April 1999 records: "Carbo Elektrik purchase material from Hoffmann and price levels are not under control. The new member of Hoffmann has been asked to investigate and improve the situation"³³¹.

(204) Moreover, Schunk, as Hoffmann's current parent company, admits Hoffmann's participation in cartel meetings on the following dates:

- 28 November 1994 – type of meeting not identified;
- 13 March 1995 – type of meeting not identified;
- 18-19 October 1995 – Technical Committee meeting;
- 30 April 1996 – Steering Committee meeting;
- 30 September-1 October 1996 – Steering Committee meeting;
- 9-10 October 1996 – Steering Committee meeting;
- 28-29 October 1996 – Technical Committee meeting;

³²⁵ Schunk submission of 20 February 2003, page 3 [9808].

³²⁶ MLS, EV1, page 61-62 [0143-0144]. See also MLS, EV4, page 66 [1171].

³²⁷ Schunk submission of 20 February 2003, page 4 [9809].

³²⁸ MLS, EV1, page 53 [0134].

³²⁹ Submission by SGL of 17 March 2003, annex 1, page 7 [10794].

³³⁰ MLS, EV1, page 38-39 [0118-0119]. Hoffmann's participation is confirmed by the submission of SGL of 17 March 2003, annex 1, page 7 [10794].

³³¹ MLS, EV1, page 32 [0110].

- 17 December 1996 – Steering Committee meeting;
 - 24-25 April 1997 – Summit meeting;
 - 10-11 September 1997 – Steering Committee meeting;
 - 21-22 October 1997 – Steering Committee meeting;
 - 23-24 October 1997 – Summit meeting;
 - 19-21 April 1998 – Summit meeting;
 - 12 August 1998 - Steering Committee meeting;
 - 12 October 1998 – Technical Committee meeting;
 - 14-15 October 1999 - Steering Committee meeting³³².
- (205) As of 28 October 1999, when Schunk acquired Hoffmann, Schunk controlled the commercial policy of Hoffmann. The last reported meeting of the cartel, on 13 December 1999, notes: "Hoffmann from 01.11.99 officially under the control of Schunk. Contact has to be made through G [Schunk]"³³³.
- (206) Hoffmann should be held responsible for having participated in the cartel from at least 28 September 1994 to 28 October 1999, a period of five years and one month.

V. Application of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement

11. RELATIONSHIP BETWEEN THE TREATY AND THE EEA AGREEMENT

- (207) The arrangements described in Chapter IV applied to all the territory of the EEA for which a demand for electrical and mechanical carbon and graphite products existed, as the cartel members had sales in practically all the Member States and EFTA States parties to the EEA Agreement. The arrangements extended to Austria, Sweden and Finland prior to their accession to the Community on 1 January 1995.
- (208) The EEA Agreement, which contains provisions on competition analogous to the Treaty, came into force on 1 January 1994. For the period prior to that date, the only provision applicable in this proceeding is Article 81 of the Treaty. For the period after 1 January 1994, this Decision includes the application of the relevant EEA rules (primarily Article 53(1) of the EEA Agreement) to the arrangements to which objection is taken.

³³² Submission by Schunk of 12 February 2003 [9405]. Schunk notes that "Summit = Steering Committee".

³³³ MLS, EV1, page 22 [0099].

- (209) In so far as the arrangements affected competition and trade between Member States, Article 81 of the Treaty is applicable. The operation of the cartel in EFTA States that are part of the EEA and its effect upon trade between the Community and EEA States or between EEA States falls under Article 53 of the EEA Agreement.

12. JURISDICTION

- (210) On the basis of Article 56 of the EEA Agreement, the Commission is, in this case, the competent authority to apply both Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement, since the cartel had an appreciable effect on trade between Member States and on competition within the Community.

13. APPLICATION OF ARTICLE 81 OF THE TREATY AND ARTICLE 53 OF THE EEA AGREEMENT

13.1. Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement

- (211) 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.
- (212) 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) of the Treaty to "trade between Member States" is replaced in the EEA Agreement 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".

13.2. Agreements and concerted practices

13.2.1. Principles

- (213) Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement prohibit *agreements* between undertakings, decisions by associations of undertakings and *concerted practices*.
- (214) An *agreement* can be said to exist when the parties, expressly or implicitly, jointly adopt a plan determining the lines of their mutual action (or abstention) on the market³³⁴ It does not have to be made in writing. No formalities are

³³⁴ 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.

necessary, and no contractual sanctions or enforcement measures are required. Parties do not need to feel bound by it. The agreement may be express or implicit in the behaviour of the parties, since a line of conduct may be evidence of an agreement. If an undertaking is present at meetings that have a manifestly anti-competitive purpose, unless it openly distances itself from what is agreed, it will be considered to be a party even if it does not in fact abide by the outcome of the meetings. Furthermore, 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 may apply to the inchoate understandings and partial and conditional agreements in the bargaining process which lead up to the definitive agreement.

- (215) Although 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”, the object is to bring within the prohibition of those Articles 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 competition³³⁵.
- (216) The criteria of co-ordination and co-operation 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 economic operators 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 market³³⁶.
- (217) 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 action in the market but knowingly adopt or adhere to collusive devices which facilitate the co-ordination of their commercial behaviour³³⁷. Furthermore, the process of negotiation and preparation culminating effectively in the adoption of an overall plan to regulate the

See recitals No 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 December 1994, recitals 32-35.

³³⁵ Case 48/69 *Imperial Chemical Industries v Commission* [1972] ECR 619 at paragraph 64.

³³⁶ Joined Cases 40-48/73, etc. *Suiker Unie and others v Commission* [1975] ECR 1663.

³³⁷ See also the judgement of the Court of First Instance in Case T-7/89 *Hercules v Commission* [1991] ECR II-1711, at paragraph 256.

market may well also (depending on the circumstances) be characterised as a concerted practice³³⁸.

- (218) Although in terms of Article 81(1) of the Treaty the concept of a concerted practice requires not only concerting behaviour between undertakings but also conduct on the market resulting from the concerting behaviour and having a causal connection with it, it may be presumed, subject to proof to the contrary, that undertakings taking part in such concerting behaviour and remaining active on 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 concerting behaviour occurs on a regular basis and over a long period. Such a concerted practice is caught by Article 81(1) of the Treaty even in the absence of anti-competitive effects on the market³³⁹.

13.2.2. *Application*

- (219) The facts described in Chapter IV demonstrate that during the relevant period Conradty, Hoffmann, Carbone Lorraine, Morgan, Schunk and SGL:
- agreed and occasionally updated a uniform, highly detailed method of calculating prices to customers, covering the main types of electrical and mechanical carbon and graphite products, different types of customers and all EEA countries where demand existed, with a view to arriving at identically or similarly calculated prices for a wide variety of products;
 - agreed regular percentage price increases for the main types of electrical and mechanical products and all EEA countries where demand existed, for different types of customers;
 - agreed on certain surcharges to customers, on discounts for different types of delivery and on payment conditions;
 - agreed account leadership for certain major customers, agreed to freeze market shares in respect of those customers, and regularly exchanged pricing information and agreed specific prices to be offered to those customers;
 - agreed a ban on advertising and on participation in sales exhibitions;
 - agreed quantity restrictions, price increases or boycotts in respect of re-sellers that offered potential competition;
 - agreed price undercutting in respect of competitors; and

³³⁸ See, for example, Case T-148/89 *Trefilunion v Commission* [1995] ECR II-1063, paragraph 82.

³³⁹ See also the judgement of the Court of Justice in Case C-199/92 P *Hüls v Commission*, [1999] ECR I-4287, at paragraphs 158-166.

- operated a highly refined machinery to monitor and enforce their agreements.
- (220) Most of these activities qualify as an "agreement" within the meaning of Article 81(1) of the Treaty, in the sense that the undertakings concerned expressed their joint intention to conduct themselves on the market in a specific way, as the facts in Chapter IV show.
- (221) However, it is not necessary for the Commission, particularly in the case of a complex infringement of long duration, to characterise conduct as exclusively one or other of these forms of illegal behaviour. The concepts of agreement and concerted practice are fluid and may overlap. The anti-competitive behaviour may well be varied from time to time, or its mechanisms adapted or strengthened to take account of new developments. Indeed, it may not even be possible 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 different forms of infringement.
- (222) In its *PVC II* judgement, the Court of First Instance confirmed 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”³⁴⁰.
- (223) An agreement for the purposes of Article 81(1) of the Treaty 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. As the Court of Justice, upholding the judgement of the Court of First Instance, has pointed out in Case C-49/92P *Commission v Anic Partecipazioni SpA*³⁴¹ 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.

³⁴⁰ Joined cases T-305/94, T-306/94, T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94, *Limburgse Vinyl Maatschappij NV, Elf Atochem SA, BASF AG, Shell International Chemical Company Ltd, DSM NV and DSM Kunststoffen BV, Wacker-Chemie GmbH, Hoechst AG, Société artésienne de vinyle, Montedison SpA, Imperial Chemical Industries plc, Hüls AG and Enichem SpA v Commission*, [1999] ECR II-00931, at paragraph 696.

³⁴¹ See [1999] ECR I - 4125, at paragraph 81.

13.3. Single and continuous infringement

13.3.1. Principles

- (224) A complex cartel like the one which is the subject of this proceeding may properly be viewed as a *single and continuous 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.
- (225) The activities of the cartel formed part of an overall scheme which laid down the lines of cartel members' action in the market and restricted their individual commercial conduct with the aim of pursuing an identical anti-competitive object and a single economic aim, namely to distort the normal movement of prices and to restrict competition in the EEA market for electrical and mechanical carbon and graphite products. The Commission considers that it would be artificial to split up such continuous conduct, characterised by a single purpose, by treating it as consisting of several separate infringements, when what was involved was in reality a single infringement which manifested itself in a series of anti-competitive activities throughout the period of operation of the cartel.
- (226) Although a cartel is a joint enterprise, each participant in the agreement may play its own particular role. Some participants may have a more dominant role than others. Internal conflicts and rivalries, or even cheating may occur, but that will not 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.
- (227) The mere fact that each participant in a cartel may play the role which is appropriate to its own specific circumstances does not exclude its responsibility for the infringement as a whole, including acts committed by other participants but which share the same unlawful purpose and the same anti-competitive effect. An undertaking which takes part in the common unlawful enterprise by 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 risk³⁴².
- (228) In fact, as the Court of Justice stated in its judgement in *Commission v Anic Partecipazioni*, the agreements and concerted practices referred to in Article 81(1) of the Treaty necessarily result from collaboration by several

³⁴²

See judgement in *Commission v Anic Partecipazioni*, at paragraph 83.

undertakings, who are all co-perpetrators of the infringement but whose participation can take different forms according, in particular, to the characteristics of the market concerned and the position of each undertaking on that market, the aims pursued and the means of implementation chosen or envisaged. It follows that infringement of that Article may result not only from an isolated act but also from a series of acts or from a continuous conduct. That interpretation cannot be challenged on the ground that one or several elements of that series of acts or continuous conduct could also constitute in themselves an infringement of Article 81 of the Treaty³⁴³.

13.3.2. Application

- (229) In this case, the Commission considers that the behaviour of Carbone Lorraine, Morgan, Schunk and SGL, all of which regularly participated in most or all of the Summit, Technical Committee and local meetings listed in Annex I, as well as in the other contacts described in Chapter IV, during the entire period for which each undertaking is held responsible, constitutes a single and continuous infringement.
- (230) Despite the argument of Carbone Lorraine that blocks of carbon and graphite are not substitutable with finished products of carbon and graphite³⁴⁴, the Commission considers that the entire product group covered by this proceeding was the object of a single complex infringement. In this respect, the Commission observes that the substitutability of products is merely one element which it takes into consideration. Other factors can play an important role. This applies in particular to the functioning of the cartel itself. In this proceeding, the same cartel members co-ordinated their commercial behaviour in the same meetings in respect of an entire group of related (albeit not substitutable) products which all or most of them produced and sold. Moreover, the main purpose of the cartel's agreement not to sell blocks to third parties or at very high prices was to strengthen and defend against possible competition the cartel's principal agreement on the products made from those blocks. The agreement on blocks was therefore ancillary to the principal agreement on finished products. In the light of these factual circumstances, the Commission has chosen to treat the activities of the cartel as a single complex infringement. None of the addressees of this Decision has argued that there were several infringements.
- (231) As all the illegal activities of the cartel together constitute a single continuous and complex infringement, the fact that Carbone Lorraine played a somewhat less active role in the cartel when it came to mechanical products than when it concerned electrical products, because of its smaller market share for mechanical products³⁴⁵, does not relieve Carbone Lorraine of its responsibility for the infringement as a whole. The same applies to Carbone Lorraine's claim that it did not participate in the cartel's illegal activity against cutters. It is settled case-law that "an undertaking may be held responsible for an overall

³⁴³ See the judgement in *Commission v Anic Partecipazioni*, paragraphs 78-81, 83-85 and 203.

³⁴⁴ See recitals (12) and (13).

³⁴⁵ See recital (192).

cartel even though it is shown that it participated directly only in one or some of the constituent elements of that cartel, if it is shown that it knew, or must have known, that the collusion in which it participated was part of an overall plan and that the overall plan included all the constituent elements of the cartel”³⁴⁶.

- (232) The Commission does not, in any case, accept Carbone Lorraine's claim that it did not participate in the cartel's activity of cutting out cutters, because it used all the blocks it produced internally. As described in section 7.8, Carbone Lorraine did participate in the cartel's practice of either not selling blocks to cutters at all or only at very high prices. In particular, in the cartel meeting of 14 October 1993, in discussing the question "Should we sell blocks and give our margin away or not?", Carbone Lorraine is reported as stating that it "tries to sell as less blocks as possible and believes it is better to only sell to own companies"³⁴⁷. Even if Carbone Lorraine had not itself participated in the actual boycotting of cutters, it clearly subscribed to the general policy of the cartel to stop supplying cutters or to supply to them only at very high prices and, like the other members of the cartel, it benefited from the reduced competition from cutters. These facts suffice to establish the responsibility of Carbone Lorraine³⁴⁸.
- (233) The same considerations as in recital (231) above apply to Conradty's and Hoffmann's responsibility for the infringement. In this case, it is clear that Conradty and Hoffmann, over and above the anti-competitive activities in which they directly participated, knew very well the overall anti-competitive scheme and functioning of the cartel, given that they were among its members throughout the period for which each is held liable. The fact that these two companies may not have participated in some of the meetings of the European-level Technical Committee, because of their limited size or specific product interests, in no way detracts from the assessment of their participation in the cartel, the more so as both of them continued to have contacts with other cartel members for the purpose of co-ordinating behaviour in the market and have provided no indication that they explicitly dissociated themselves from the cartel and conducted an autonomous commercial policy at any time before the end of 1999. Both certainly subscribed to the overall scheme and it was implemented over a period of many years employing the same mechanisms and pursuing the same common purpose of restricting competition.
- (234) The fact that Conradty and Hoffmann may not have participated in all the meetings of the cartel, produced or sold only part of the product group covered by the cartel and were less important cartel members than the others cannot,

³⁴⁶ See the judgements of the Court of First Instance in Cases T-295/94, T-304/94, T-310/94, T-311/94, T-334/94, T-348/94, *Buchmann v Commission*, *Europa Carton v Commission*, *Gruber + Weber v Commission*, *Kartonfabrik de Eendracht v Commission*, *Sarrió v Commission* and *Enso Española v Commission*, at paragraphs 121, 76, 140, 237, 169 and 223, respectively. See also the judgement of the Court of First Instance of 20 mars 2002, in case T-9/99, *HFB Holding and Isoplus Fernwärmetechnik v Commission*, paragraph 231.

³⁴⁷ See recital (159) above.

³⁴⁸ See the judgement of the Court of First Instance of 20 mars 2002, in case T-16/99, *Lögstör Rör (Deutschland) GmbH v Commission*, [2002] ECR II-01633, paragraphs 124 to 130.

therefore, relieve them of responsibility for the infringement of Article 81(1) of the Treaty.

13.4. Conclusion

(235) On the basis of the above considerations, the Commission considers that the complex of infringements in this case present all the characteristics of a single and continuous agreement and/or concerted practice in the sense of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement, in which all addressees of this Decision participated.

13.5. Restriction of competition

(236) The anti-competitive behaviour in this case had the object and effect of restricting competition in the Community and the EEA.

(237) Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement expressly mention as restrictive of competition agreements and concerted practices which:

- (a) directly or indirectly fix selling prices or any other trading conditions;
- (b) share markets³⁴⁹.

(238) These are precisely the essential characteristics of the horizontal arrangements under consideration in this case.

(239) The first main activity of the cartel was to fix selling prices and other trading conditions. Price being the main instrument of competition, the most important and most frequently used arrangements of the cartel were related to the fixing of selling prices. In particular the uniform and highly detailed method of calculating sales prices³⁵⁰, the regular percentage price increases³⁵¹ and the frequent agreements on specific bids made to large customers³⁵² are examples of the fixing, directly or indirectly, of selling prices. Other arrangements of the cartel fixed other trading conditions than the selling price. This concerned in particular the agreements on surcharges to customers, discounts for different types of delivery and payment conditions³⁵³.

(240) The second main activity of the cartel was to share markets. Markets were shared by the members of the cartel by agreeing account leadership for major customers, by agreeing to freeze market shares in respect of those customers and by regularly exchanging pricing information³⁵⁴. The agreement not to

³⁴⁹ The list is not exhaustive.

³⁵⁰ See section 7.1 .

³⁵¹ Idem.

³⁵² See section 7.6 .

³⁵³ See sections 7.2 to 7.4 .

³⁵⁴ See section 7.6 .

advertise or participate in sales exhibitions can also be considered a form of avoiding competition and maintaining existing market shares³⁵⁵.

- (241) As their third main activity, the members of the cartel agreed to apply co-ordinated quantity restrictions, price increases or boycotts to re-sellers that offered potential competition³⁵⁶. They also agreed co-ordinated price undercutting in respect of competitors³⁵⁷.
- (242) This complex of agreements and concerted practices, as described in Chapter IV, had as its **object** the restriction of competition within the meaning of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement.
- (243) 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 proved³⁵⁸. The same applies to concerted practices³⁵⁹.
- (244) In this case, however, the Commission considers that, on the basis of the elements which are put forward in Chapter IV, it has also proved that the anti-competitive cartel arrangements have been implemented and that therefore actual anti-competitive effects have taken place.
- (245) The general percentage price increases agreed were implemented by each cartel member issuing new price lists. The lead in this was taken by the "national" companies, that is to say, Carbone Lorraine for France, Morgan for the United Kingdom, etc. The evidence shows how national price lists were exchanged for the purpose of being followed by the subsidiaries of the other cartel members in the country concerned, and for the purpose of monitoring that the agreed price increases were actually implemented. Carbone Lorraine has further admitted that bareme-level prices, including the agreed price increases, were effectively enforced against a multitude of small customers. The regular percentage price increases applied also to large customers like constructors and public transport companies and their implementation did lead to documented complaints from large customers like the London Underground. The cartel also co-ordinated the justifications it could offer for the price increases it implemented.
- (246) The implementation of account leadership and agreements on bids was ensured by frequent direct contacts among cartel members regarding specific clients and specific tenders. Examples of full cycles from the first request for bids by the client via the co-ordination of bids among cartel members to the

³⁵⁵ See section 7.7 .

³⁵⁶ See section 7.8 .

³⁵⁷ See section 7.9 .

³⁵⁸ See, for example, case T-62/98 *Volkswagen AG v Commission* [2000] ECR II-2707, paragraph 178 and case-law cited therein.

³⁵⁹ See recital (218) above.

final agreed bids made and the order confirmation by the client have been given. The information exchanged among cartel members regarding bids actually won in the past also shows that the cartel was effective in ensuring which company won which tenders. Evidence has also been provided showing that bids were so arranged as to maintain existing market shares.

- (247) The cartel was effective in ensuring that cutters could not offer real competition, by either not supplying them at all or by supplying them only at very high prices. Examples of refusal to supply and of steep price increases (25% at one time) have been given.
- (248) Given that the cartel members controlled over 90% of the EEA market, the implementation of their anti-competitive agreements could not fail to significantly restrict competition. The possibility for customers, including cutters, to find alternative sources of supply was in most cases non-existing.

13.6. Effect upon trade between Member States and between EEA Contracting Parties

- (249) The complex of agreements and concerted practices between the cartel members had an appreciable effect on trade between Member States and between EEA Contracting Parties.
- (250) As explained in section 1.6, all four major suppliers to the EEA market, members of the cartel, supply to all EEA Contracting Parties where demand exists from production sites spread out over a number of EEA Contracting Parties. The volume of trade between Member States is therefore necessarily considerable. There is also trade between the Community and EFTA countries belonging to the EEA³⁶⁰.
- (251) 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 those provisions to apply, to show that the individual conduct of each participant, as opposed to the cartel as a whole, affected trade between Member States³⁶¹.
- (252) In this case, the cartel arrangements covered virtually all trade throughout the Community and EEA. The existence of a price-fixing mechanism, a market sharing system and an agreed policy of applying dissimilar conditions to cutters and other competitors must have resulted, or was likely to result, in the automatic diversion of trade patterns from the course they would otherwise have followed³⁶².

³⁶⁰ See also section 1.5 .

³⁶¹ See the judgement of the Court of First Instance in Case T-13/89 *Imperial Chemical Industries v Commission* [1992] ECR II-1021, at paragraph 304.

³⁶² See the judgement 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.

13.7. Duration of the infringement

- (253) As explained in section 10, the cartel lasted at least from October 1988 to December 1999, a period of eleven years and two months. This applies to all members of the cartel, with the exception of Carbone Lorraine, which left the cartel in June 1999 (its period of participation thus being ten years and eight months) and of Hoffmann, which participated in the cartel at least from 28 September 1994 until it was taken over by Schunk on 28 October 1999 (its period of participation thus being five years and one month).

13.8. Addressees of this Decision

- (254) For the reasons mentioned in sections 10 and 13.3, the Commission considers that Conradty, Hoffmann, Carbone Lorraine, Morgan, Schunk and SGL should bear responsibility for their respective infringements.
- (255) 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 may be possible to treat as the relevant “undertaking” for the purposes of Article 81 of the Treaty and Article 53 of the EEA Agreement the whole group of companies or individual subgroups or individual subsidiary companies.
- (256) In the case of Hoffmann, during the period from 28 September 1994 until its acquisition by Schunk on 28 October 1999, Hoffmann & Co Elektrokohle AG was an autonomous undertaking and a cartel member in its own right. This constitutes a separate infringement from the one committed by Schunk over the same period. Regarding the question whom to address for Hoffmann's infringement, the Commission observes that since its acquisition by Schunk, Hoffmann has continued to have separate legal personality, business activities and adequate assets, even if management of the company is now in the hands of Schunk. The Commission therefore considers that Hoffmann & Co Elektrokohle AG is the appropriate addressee for the infringement of Hoffmann & Co Elektrokohle AG during the period from 28 September 1994 to 28 October 1999.
- (257) In the case of Schunk, the Commission has chosen to address this Decision to Schunk GmbH and Schunk Kohlenstofftechnik GmbH, jointly and severally. Together those entities form the economic unit that is responsible for the sale and production of electrical and mechanical carbon and graphite products in the EEA and which participated in the cartel during the period October 1988 to October 1999. Although Schunk Kohlenstofftechnik GmbH was the legal entity that directly participated in the cartel, as a 100% parent company, Schunk GmbH was able to exercise decisive influence on the commercial policy of Schunk Kohlenstofftechnik GmbH at the time of the infringement and, it may be presumed, in fact did so, including regarding the latter's

participation in the cartel³⁶³. For the last two months of proven operation of the cartel, November and December 1999, Schunk GmbH was also the ultimate parent company of Hoffmann & Co Elektrokohle AG, the three companies together forming an economic unit.

- (258) In its reply to the Statement of Objections, Schunk GmbH claims that it acted only as a financial holding company and that Schunk Kohlenstofftechnik GmbH determined its own commercial policy. Schunk GmbH has, not, however, submitted any evidence to support those claims. Moreover, as will be explained in recitals (259) to (262) below, the Commission has several additional indications of fact that confirm its conclusion that Schunk GmbH must be held liable for the cartel actions of Schunk Kohlenstofftechnik GmbH.
- (259) The liability of Schunk GmbH follows, firstly, from the very fact of Schunk Kohlenstofftechnik's constitution as a GmbH, with Schunk GmbH exerting 100% ownership. Under German corporate law³⁶⁴, the shareholders of a limited liability company (GmbH) exert a strong control over the management of the GmbH. Among other things, they appoint and dismiss the managing directors of the GmbH. They also take the necessary measures to examine and supervise the way the GmbH is managed³⁶⁵. Moreover, the managing directors of the GmbH have the obligation, at the request of any shareholder, to immediately provide information about the affairs of the company and to allow access to its books and documents³⁶⁶. Those structural elements show that Schunk Kohlenstofftechnik GmbH is not independent in its commercial policy, but is subject to the close supervision and direction of its sole shareholder, Schunk GmbH.
- (260) This conclusion is reinforced by Article 3 of the Statute of Schunk GmbH. This provision states that "the object of the enterprise is... the administration, in particular the strategic management of industrial participations. The company is competent to take all actions that are appropriate to serve, directly or indirectly, the above-mentioned purpose"³⁶⁷. This provision therefore

³⁶³ See the judgements of the Court of Justice in Case 107/82 *AEG v Commission* [1983] ECR 3151, at paragraph 50, and in Case C-286/98 P, *Stora v Commission* [2000] ECR I-9925, at paragraph 29.

³⁶⁴ Gesetz betreffend die Gesellschaften mit beschränkter Haftung, RGBI 1892, 477, as amended.

³⁶⁵ Gesetz betreffend die Gesellschaften mit beschränkter Haftung, RGBI 1892, 477, as amended, § 46.

³⁶⁶ Gesetz betreffend die Gesellschaften mit beschränkter Haftung, RGBI 1892, 477, as amended, § 51a.

³⁶⁷ Article 3 of the statute of Schunk GmbH ("Gesellschaftsvertrag" in the German original) stipulates:

"Object of the enterprise is the acquisition, the sale, the administration, in particular the strategic management of industrial participations.

The company is competent to take all actions that are appropriate to serve, directly or indirectly, the above-mentioned purpose".

In the German original:

clearly places the strategic direction of Schunk Kohlenstofftechnik GmbH into the hands of Schunk GmbH. Schunk GmbH has not provided any evidence that would indicate that contrary to German law and its own Statute, it did not actually exert the strategic direction of Schunk Kohlenstofftechnik GmbH.

- (261) Furthermore, the Commission has found that the name and private address of [*] were indicated in the address book of a Morgan participant in the cartel as the person and address to send the cartel's correspondence to in the late 1980s³⁶⁸. [*] later became [*]. This gentleman could therefore hardly have been unaware of the participation in a cartel by Schunk Kohlenstofftechnik GmbH when he later rose to [*]. He must therefore at least have knowingly tolerated this behaviour.
- (262) Finally, in presenting its turnover figures for 1998 to the Commission, Schunk Kohlenstofftechnik GmbH argued that it had the right to exclude from its turnover the value of brushes built into brush holders. However, those brush holders are produced by Schunk Metall- und Kunststofftechnik GmbH, another subsidiary in the Schunk Group. If Schunk Kohlenstofftechnik GmbH had truly conducted an autonomous commercial policy, it would as a matter of course have included the sales of those brushes to Schunk Metall- und Kunststofftechnik GmbH in its turnover figures. The fact that it proposed not to do so indicates that it considers that these were transfer sales to another group company, subject to the control of higher-placed legal entities in the Schunk Group, not autonomous sales to an independent buyer. In fact, Schunk Kohlenstofftechnik GmbH has described those sales to Schunk Metall- und Kunststofftechnik GmbH as "internal turnover" and "own use"³⁶⁹.
- (263) The Commission considers that those elements together are amply sufficient to engage the liability of Schunk GmbH.
- (264) The addressees of this Decision are therefore:
- C. Conradty Nürnberg GmbH;

"Gegenstand des Unternehmens ist der Erwerb, die Veräußerung, die Verwaltung, insbesondere die strategische Führung industrieller Beteiligungen.

Die Gesellschaft ist zu allen Handlungen berechtigt, die unmittelbar oder mittelbar dem vorstehenden Zweck zu dienen geeignet sind".

See submission of Schunk of 28 March 2003 [15195].

³⁶⁸ See MLS, annex A8 [0040]: "Mail to" ("post naar" in the Dutch original). [*]'s name and address have been crossed out and replaced by a new name and address, with the mention: "As of 18.4.89" ("per 18.4.89" in the Dutch original). In this respect, there can have been no confusion with [*], as the latter is mentioned separately with a separate address on the same page, [*]. It is clear therefore that until 18 April 1989, [*] served as Schunk's contact person for the other cartel members, in the sense that written communications from the other cartel members were addressed to him and sent to his private address. [*] went on to become, as of 1 January 1993, [*]. See also Schunk submissions of 10 March 2003 [10874-10883] and of 14 April 2003 [15044-15046].

³⁶⁹ "Innenumsätze" and "Eigenverbrauch" in the German original., see reply from Schunk Kohlenstofftechnik GmbH of 9 September 2003 to the Commission's Article 11 letter of 20 August 2003, pages 2 and 4 respectively.

- Hoffmann & Co. Elektrokohle AG;
- Le Carbone Lorraine S.A.;
- Morgan Crucible Company plc;
- Schunk GmbH and Schunk Kohlenstofftechnik GmbH, jointly and severally;
- SGL Carbon AG.

(265) In their respective replies to the Statement of Objections, Hoffmann and Carbone Lorraine draw attention to the role of the Belgian company Gerken. Hoffmann claims that its own participation in the cartel is comparable to that of Gerken and notes that the Commission has not addressed a Statement of Objections to Gerken. Carbone Lorraine, for its part, considers that the Commission should have addressed a Statement of Objections to Gerken.

(266) In the Commission's view, the role of Gerken was quite different from that of Hoffmann during the period for which Hoffmann is held liable. In particular, to the Commission's knowledge, Gerken never participated in any European-level meetings of the cartel, whether in the form of Technical Committee meetings or Summit meetings. Gerken cannot, therefore, be considered to have been a member of the cartel like Hoffmann. Gerken may, like some other relatively small companies, have participated in one or a few local meetings organised by the cartel. However, the Commission's evidence of any such participation is quite limited and sporadic, as opposed to the ample evidence the Commission has of Hoffmann's continuous participation in the period for which it held liable. Finally, it should be noted that as a cutter, Gerken was dependent on the continued supply of blocks at reasonable prices. The one period where Gerken appears to have been most inclined to follow the cartel in terms of prices charged to customers is exactly the period following SGL's acquisition of the specialty graphite business of Gerken's US supplier of blocks. But a few years later, Gerken seems to have re-established itself as one of the few remaining competitors to the cartel in the EEA. According to Morgan's notes of a Technical Committee meeting on 11 December 1997, Gerken was visiting all large end users in the Netherlands and Belgium and offering prices that were 20 to 25% lower:

"General impression is that "G" (Gerken) is now an even bigger danger than 2 years ago. Absolutely no control"³⁷⁰.

³⁷⁰

MLS, EV2, page 190 [0654]: The Dutch original reads: "Algemene indruk is dat "G" nu een nog groter gevaar is dan 2 jaar geleden. Absoluut geen controle".

14. REMEDIES

14.1. Article 3 of Regulation No 17

- (267) 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 17³⁷¹.
- (268) Under the current circumstances it is not possible to declare with absolute certainty that the infringement has ceased. It is therefore necessary for the Commission to require the undertakings to which this Decision is addressed to bring the infringement 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 a similar object or effect.

14.2. Article 15(2) of Regulation No 17

14.2.1. General approach to the setting of the fines in this case

- (269) Under Article 15(2) of Regulation No 17, the Commission may by decision impose upon undertakings fines of from one thousand to one million Euro, or a sum in excess thereof not exceeding 10% of the turnover in the preceding business year of each of the undertakings participating in an infringement where, either intentionally or negligently, they infringe Article 81(1) of the Treaty and/or Article 53(1) of the EEA Agreement.
- (270) In fixing the amount of any fine the Commission must have regard to all relevant circumstances and particularly the gravity and duration of the infringement, which are the two criteria explicitly referred to in Article 15(2) of Regulation No 17.
- (271) 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 Commission will also take account of the specific weight and, therefore, the real impact of the offending conduct of each undertaking on competition. Moreover, the Commission will ensure that the fines are set at a level which ensures a sufficiently deterrent effect.
- (272) The Commission will then determine for each undertaking whether any aggravating and/or attenuating circumstances apply. The basic amount for each undertaking will be increased or reduced accordingly.

³⁷¹ Under Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements of 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 305/6 of 30 November 1994).

- (273) Thirdly, the Commission will, where applicable, limit the fine amount thus calculated for each undertaking to the level of 10% of the undertaking's turnover in the preceding business year, as provided in Article 15(2) of Regulation 17.
- (274) Fourthly, the Commission will then, where applicable, apply the 1996 Leniency Notice to the amount of the fines which would otherwise apply³⁷².
- (275) Finally, the Commission will assess any claims for lack of ability to pay. The Commission will also consider any other relevant objective factors capable of affecting the level of the final amount of the fine.

14.2.2. The basic amount of the fines

- (276) The basic amount is determined according to the gravity and duration of the infringement.

14.2.2.1. The gravity of the infringement

- (277) 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.

The nature of the infringement

- (278) It follows from the facts described in Chapter IV that this infringement consists essentially in the direct and indirect fixing of selling prices and other trading conditions to customers, the sharing of markets, in particular through client allocation, and in co-ordinated actions against competitors not members of the cartel. Such practices are by their very nature the worst kinds of violations of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement.
- (279) For the sake of completeness, it may also be noted that the cartel arrangements involved all of the main operators in the EEA, controlling together more than 90% of the EEA market. Those arrangements were directed or at least knowingly tolerated by very high levels of management within the undertakings concerned. The cartel members had taken extensive precautions to avoid detection, thereby leaving no doubt that they were fully aware of the illegal nature of their activities. The cartel had achieved a high level of institutionalisation and compliance, and cartel members had frequent and regular meetings and other contacts. The cartel operated entirely for the benefit of the participating companies and to the detriment of their customers and ultimately the general public.

The actual impact of the infringement on the EEA market

- (280) 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 the anti-competitive

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See also recital (54).

arrangements in question. 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.

- (281) For the reasons mentioned in recitals (244) to (248), the Commission considers that the cartel's anti-competitive arrangements have clearly been implemented throughout the infringement period. Given the long duration of that period and the fact that the undertakings in question together controlled more than 90% of the EEA market, there can, in the Commission's view, be no doubt that actual anti-competitive effects on this market have taken place. Such effects took place through regularly agreed and implemented general price increases to the multitude of small clients, by public transport companies awarding tenders to the company whose bid had been pre-arranged to be slightly less high than the bids of other cartel members, by private customers having no choice but to purchase from a particular pre-arranged supplier at a particular pre-arranged price, without effective competition being allowed to play a role and by cutters being unable to purchase blocks or only at artificially high prices, so that they were unable to offer effective competition on the market for finished products.
- (282) In their respective replies to the Statement of Objections, Carbone Lorraine and Schunk Kohlenstofftechnik GmbH make several arguments to contest the fact that the cartel's arrangements had an impact on the market, or to contest that impact for parts of the market.
- (283) Firstly, in respect of automobile suppliers and producers of consumer products, which were the two categories of clients best able to withstand the upward price pressure from the cartel, both companies claim, but without providing evidence, that prices to those clients in fact decreased year after year and that the main objective of the cartel was to prevent or limit those price decreases. However, even if it could be shown that prices did decrease, this does not show that they would not have decreased even further if the cartel had not made a co-ordinated effort to resist price decreases.
- (284) Secondly, Carbone Lorraine argues that for small clients, the price of brushes was a minor element in the price of the overall "technical solution" they bought. However, whether minor or not, whenever the cartel members implemented price increases for brushes, this affected the "brushes element" in this overall technical solution and therefore the price of the overall technical solution as a whole.
- (285) Finally, Carbone Lorraine claims that constructors and public transport companies could have purchased from other suppliers, but didn't, and therefore must have been reasonably satisfied. However, the option of buying from other suppliers must be considered fairly theoretical in a situation where the cartel members control over 90% of the market. Moreover, a more pertinent question is whether those clients would still have been satisfied had they known about the secret bid rigging, price collusion and client allocation that took place. Finally, the fact that some types of buyers may have been able to pass on to tax payers and final consumers the artificially high prices they paid

to the cartel, does not mean that the cartel did not have any impact on the market.

- (286) In conclusion on this point, the Commission considers that the cartel agreements were implemented and did have an impact on the EEA market for the product concerned, but that this impact cannot be precisely measured.

The size of the relevant geographic market

- (287) For the purpose of assessing gravity it is important to note that the cartel covered the whole of the common market and, following its creation, the whole of the EEA.

The Commission's conclusion on the gravity of the infringement

- (288) Taking all those factors into account, the Commission considers that the undertakings concerned by this Decision have committed a very serious infringement. In the view of the Commission, the nature of the infringement and its geographic scope are such that the infringement must qualify as very serious, irrespective of whether or not the impact of the infringement on the market can be measured. It is, in any case, clear that the cartel's anti-competitive arrangements were implemented and did have an impact on the market, even if that impact cannot be precisely measured.

14.2.2.2. Differential treatment

- (289) Within the category of very serious infringements, the scale of likely fines makes it possible to apply differential treatment to undertakings in order to take account of the effective economic capacity of the offenders to cause significant damage to competition, as well as to set the fine at a level which ensures that it has sufficient deterrent effect. This exercise is particularly necessary where, as in this case, there is considerable disparity in the market size of the undertakings participating in the infringement.
- (290) 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. For this purpose, the undertakings concerned can be divided into different categories, established according to their relative importance in the relevant market.
- (291) As the basis for the comparison of the relative importance of the undertakings concerned, the Commission considers it appropriate in this case to take each undertaking's turnover in the product concerned by this proceeding in the EEA in 1998, including the value of each undertaking's captive use of the product concerned by this proceeding. This results in a market share figure which represents the relative weight of each company in the infringement and each company's effective economic capacity to cause significant damage to competition. These figures can be found in Table 1 in recital (37).

- (292) With respect to the inclusion of captive value in these turnover and market share figures, the Commission considers that if the value of captive use were ignored, that would inevitably give an unjustified advantage to vertically integrated companies. In such a situation, the true benefit derived by the vertically integrated company from the cartel would not be taken into account and the undertaking in question would avoid the imposition of a fine proportionate to its importance on the product market to which the infringement relates³⁷³.
- (293) The fact that vertically integrated companies benefited from the cartel's price agreements on the product concerned can be illustrated as follows. If, for instance, a company sells brush holders in two possible configurations, either with brushes pre-installed or without, a customer could, in a situation where free competition existed in respect of brushes, buy the brush holder without brushes and then buy the brushes separately. That option might be cheaper than buying the brush holder with brushes pre-installed from one and the same company. But if the company producing the brush holder knows that there is a price agreement on the brushes, among companies controlling more than 90% of the market for brushes, it can pass on the artificially high price for the brushes into its price for a brush holder with brushes pre-installed. The customer then no longer has the option of buying the brushes separately at a cheaper price.
- (294) The same would apply if brush holders were always sold with the brushes pre-installed. In that case, a buyer would normally have the choice among several suppliers of brush holders, each of which would calculate its price for the brush holder based on a different, competitive price for brushes. But if a price agreement exists on the brushes, the sellers of brush holders know that they can safely charge at least that price for the brushes pre-installed in the brush holder.
- (295) Even if the value of the finished product far outweighs the value of the brushes that are part of it, which may be the case for complex modules, the vertically integrated producer still draws a benefit from the cartel in knowing that at least for the part represented by the brushes, it can charge the artificially high prices of the cartel.
- (296) As for the geographic scope, section 1.5 explains why the Commission considers that the geographic scope of business for the product concerned is the EEA rather than the world. The year 1998 has been chosen because this was the last full year in which all members participated in the cartel.
- (297) Table 1 shows that Carbone Lorraine and Morgan were the largest sellers of electrical and mechanical carbon and graphite products in the EEA in 1998, with market shares of [above 20*]% and [above 20*]% respectively. They are therefore placed in the first category, consisting of companies with a market share of more than 20%. In this market, companies with a market share of

³⁷³ See the judgement of the Court of First Instance in Case T-16/99, *Lögstör Rör v Commission*, [2002] ECR II-01633, at paragraph 360.

more than 20% can be considered as large operators. Schunk and SGL, with market shares of [between 10% and 20%*] and [between 10% and 20%*] respectively are placed in a second category, consisting of companies with a market share of between 10% and 20%. In this market, companies with a market share of between 10% and 20% can be considered as medium-size operators. Finally, Hoffmann and Conradty, with market shares of [below 10%*] and [below 10%*] respectively, are placed in a third category, consisting of companies with a market share of below 10%. In this market, companies with a market share of less than 10% can be considered as small operators.

(298) On the basis of the foregoing, the appropriate starting amounts for the fines to be imposed in this case are as follows:

- First category (Carbone Lorraine and Morgan): EUR 35 million;
- Second category (Schunk and SGL): EUR 21 million;
- Third category (Hoffmann and Conradty) EUR 6 million.

14.2.2.3. The duration of the infringement

(299) As explained in section 13.7, the undertakings concerned participated in the infringement during at least the following periods:

- Conradty: from October 1988 to December 1999, a period of 11 years and 2 months;
- Hoffmann: from September 1994 to October 1999, a period of 5 years and 1 month;
- Carbone Lorraine: from October 1988 to June 1999, a period of 10 years and 8 months;
- Morgan: from October 1988 to December 1999, a period of 11 years and 2 months;
- Schunk: from October 1988 to December 1999, a period of 11 years and 2 months;
- SGL: from October 1988 to December 1999, a period of 11 years and 2 months.

(300) All undertakings committed an infringement of long duration. The starting amounts of the fines should consequently be increased by 10% for each full year of infringement. They should be further increased by 5% for any remaining period of 6 months or more but less than a year. This leads to the following percentage increases to each undertaking's starting amount:

- Conradty: 110%;
- Hoffmann: 50%;

- Carbone Lorraine: 105%;
- Morgan: 110%;
- Schunk: 110%;
- SGL: 110%.

14.2.2.4. Conclusion on the basic amounts

(301) The basic amounts of the fines are therefore as follows:

- Conradty: EUR 12 600 000;
- Hoffmann: EUR 9 000 000;
- Carbone Lorraine: EUR 71 750 000;
- Morgan: EUR 73 500 000;
- Schunk: EUR 44 100 000;
- SGL: EUR 44 100 000.

14.2.3. *Aggravating and attenuating circumstances*

14.2.3.1. Aggravating circumstances

(302) The Commission considers that there are no aggravating circumstances in this case.

(303) Schunk claims in its reply to the Statement of Objections that Morgan and Carbone Lorraine had a leadership role in the cartel. It is clear that Morgan and Carbone Lorraine were the largest producers. This circumstance is already reflected in the specific weight given to them for the basic amount of the fines. But the Commission does not agree that Carbone Lorraine or Morgan were the leaders of the cartel. In fact, as mentioned in recitals (192) and (193) above, the evidence available shows that Morgan, Carbone Lorraine, Schunk and SGL were equally active in the cartel. As indicated by the agendas of the cartel meetings, each of those four companies often took the initiative in placing certain issues on the agenda. All four companies participated in most meetings of the cartel. All four did significant preparatory work. No particular company among these four persuaded the others to participate, took the lead role in organising meetings or imposed its will upon the others.

14.2.3.2. Attenuating circumstances

Exclusively passive role

(304) Conradty claims to have played a passive role only. It states that it never provided any written information to the other members of the cartel.

- (305) The Commission considers that the facts in Chapter IV, and in particular section 10.2, show that Conradty's role in the cartel was not exclusively passive. It is true that Conradty's participation in the cartel was less active than other companies for products that it did not sell or hardly sold. This does not, however, mean that Conradty was exclusively passive in the cartel. Firstly, Conradty regularly participated in cartel meetings throughout the infringement period. Secondly, Conradty complained when on one occasion it had not been invited to a Technical Committee meeting and Summit³⁷⁴. Conradty also promised to instruct its subsidiary in Ireland to follow the cartel's prices³⁷⁵. Finally, price information and other sensitive commercial information from Conradty regularly appeared in the hands of competitors³⁷⁶. These are not indications of an exclusively passive role.

Non-implementation

- (306) Conradty and Hoffmann each claim that they did not apply the agreed prices. Carbone Lorraine, for its part, claims that it cheated most of all.
- (307) As for Conradty and Hoffmann, Chapter IV, and in particular sections 10.2 and 10.3, shows that both companies were occasionally reprimanded by the other cartel members for allegedly deviating from the price levels agreed by the cartel. However, it also shows that both companies promised to take corrective action. As for Carbone Lorraine, there seem to be no serious complaints from fellow cartel members about alleged instances of low pricing until the first half of 1999, when Carbone Lorraine prepared to leave the cartel.
- (308) The Commission observes in respect of all three companies that occasional cheating is quite common in a cartel, if and when companies think that they can get away with it. Such cheating is not evidence of non-implementation of the agreements reached in the cartel. Rather, it merely shows that the company concerned was trying to exploit the cartel to its own best interest. Moreover, none of the three companies that make this claim have provided any evidence that in practice they refrained, on a consistent basis, from applying cartel prices and from implementing the other agreements reached by the cartel on bid rigging, client allocation and actions against competitors. Under those circumstances, those claims cannot be accepted.

Early termination of the infringement

- (309) Carbone Lorraine claims that the fact that it stopped attending cartel meetings by June 1999, about half a year before the cartel in all likelihood dissolved, should be taken into account as an attenuating circumstance.
- (310) Cartel infringements are by their very nature hard-core anti-trust violations. Participants in these infringements normally realise very well that they are engaged in illegal activities, as witnessed in this proceeding by the measures

³⁷⁴ See footnote 301.

³⁷⁵ See footnote 305.

³⁷⁶ See section 10.2.

the participants took to hide the cartel³⁷⁷. In the Commission's view, in such cases of deliberate illegal behaviour, the fact that a company terminates this behaviour before any intervention of the Commission does not merit any particular reward other than that the period of infringement of the company concerned will be shorter than it would otherwise have been. Indeed, if the infringement had continued after the intervention of the Commission, this would have constituted an aggravating circumstance.

- (311) It does not, in any case, make much sense to talk about an early termination where the infringement committed by Carbone Lorraine lasted ten years and eight months. Moreover, Carbone Lorraine itself admits that its decision to terminate its participation in the cartel in June 1999 was inspired by the fact that the US authorities had launched an investigation into the same product market in May/June of 1999, including in respect of Carbone Lorraine³⁷⁸. Carbone Lorraine's decision to terminate its participation in the European cartel was therefore probably based on fear of being found out by the Commission, which were, in any case, already investigating at that time the related market of graphite electrodes. The Commission notes that while terminating its own participation in the cartel, Carbone Lorraine did not, however, report the cartel to the Commission under the latter's leniency programme. The Commission does not consider that such behaviour deserves any particular reward.

Introduction of a compliance programme

- (312) Carbone Lorraine also draws attention to the fact that starting in June 1999, when it left the cartel, it set up and implemented an intensive compliance programme.
- (313) The Commission welcomes this initiative on the part of Carbone Lorraine, which will hopefully prevent any new infringements. However, the Commission considers that it is not appropriate to take the existence of a compliance programme into account as an attenuating circumstance for a cartel infringement, whether committed before or after the introduction of such a programme.

Effective cooperation outside the scope of the 1996 Leniency Notice

- (314) Carbone Lorraine has claimed as an attenuating circumstance that it provided the Commission with certain elements of information regarding the role of Gerken and regarding the cartel's activities in years preceding October 1988.
- (315) As the Commission has not brought proceedings against Gerken³⁷⁹ and has not included the period before October 1988 in this proceeding³⁸⁰, those elements of information have not materially contributed to establishing the existence of the infringement, within the meaning of section D of the 1996 Leniency

³⁷⁷ See section 6.3.

³⁷⁸ Remarques de Carbone Lorraine à l'audition du 18 septembre 2003, under point III.

³⁷⁹ See recitals (265) and (266) above.

³⁸⁰ See recital (194) above.

Notice. As for effective cooperation outside the scope of the 1996 Leniency Notice there is well-established case law that such cooperation may only come into play in situations where the 1996 Leniency Notice for one reason or the other does not apply but "the conduct of the undertaking in question enabled the Commission to establish the existence of an infringement more easily and, where relevant, bring it to an end"³⁸¹. Information which neither assists the Commission in establishing the existence of an infringement³⁸² nor in determining the fines to be imposed on the undertakings (if the latter type of cooperation could be considered at all³⁸³), does not qualify as effective cooperation outside the scope of the 1996 Leniency Notice.

14.2.3.3. Conclusion on aggravating and attenuating circumstances

- (316) It is therefore concluded that there are neither aggravating nor attenuating circumstances applicable in this case. Therefore, the fine amounts calculated by taking aggravating and attenuating circumstances into account are the same as the basic amounts set out in recital (301) above.

14.2.4. Application of the 10% turnover limit

- (317) Article 15(2) of Regulation 17 provides that each undertaking's fine shall not exceed 10% of its turnover. Conradty's worldwide turnover in 2001, the last full year before it entered into insolvency, was EUR 10 600 000³⁸⁴, 10% of which is EUR 1 060 000. The fine imposed on Conradty should therefore be limited to that amount. Hoffmann's worldwide turnover in 2002, the last full year before this Decision, was EUR 40 400 000³⁸⁵, 10% of which is EUR 4 040 000. The fine imposed on Hoffmann should therefore be limited to that amount.
- (318) Schunk has argued that the fine imposed on it should be limited to 10% of the worldwide turnover of Schunk Kohlenstofftechnik GmbH. However, for the reasons set out in recitals (257) to (263) above, the Commission holds Schunk GmbH and Schunk Kohlenstofftechnik GmbH jointly and severally liable. The amount of the fine calculated for Schunk does not exceed the 10% worldwide turnover limit of Schunk GmbH.

³⁸¹ See the judgement of the Court of Justice in Case C-279/98 P *SCA Holding v Commission*, [2000] ECR I-10101, at paragraph 36.

³⁸² See also the judgement of the Court of First Instance in Case T-224/00 *Archer Daniels Midland Company v Commission*, [2003] ECR not yet published, at paragraph 301: "In the present case, the information supplied by ADM concerning the supposed existence of collusion between lysine producers in the 1970s and 1980s did not enable the Commission to establish the existence of any infringement whatsoever inasmuch as the Decision is concerned only with the existence of the cartel between the producers in question from July 1990 onwards".

³⁸³ See the judgement of the Court of First Instance in Case T-224/00 *Archer Daniels Midland Company v Commission*, [2003] ECR not yet published, at paragraph 305.

³⁸⁴ Conradty's letter of 10 April 2003 [15050].

³⁸⁵ Hoffmann's reply of 8 September 2003 to the Commission's Article 11 letter of 13 August 2003.

14.2.5. *Application of the 1996 Leniency Notice*

14.2.5.1. Morgan

- (319) As mentioned in recital (54), Morgan applied for leniency in respect of possible cartel activity in the European market for electrical and mechanical carbon products before 14 February 2002, the date from which the 2002 Commission notice on immunity from fines and reduction of fines in cartel cases (hereinafter "the 2002 Leniency Notice")³⁸⁶ applies. As a result, the leniency aspects of the entire proceeding continue to be governed by the 1996 Leniency Notice, even those applications made after 14 February 2002.
- (320) Morgan presented its evidence to the Commission at a time when the Commission had not yet undertaken an investigation, ordered by decision, of the alleged infringement and when it did not yet have sufficient information to establish the existence of the alleged cartel. Morgan was the first company to adduce decisive evidence of the cartel's existence. That the evidence presented was decisive is clear from the voluminous, highly inculpatory documents provided by Morgan³⁸⁷, in particular the contemporaneous reports of Technical Committee and local meetings of the cartel which covered the main activities of the cartel, the entire infringement period and most meetings within that period³⁸⁸. Morgan ended its involvement in the cartel no later than the time at which it disclosed the cartel to the Commission and did not compel any other enterprise to take part in the cartel. Nor did it act as an instigator or play a determining role in the cartel. As explained in recitals (192) and (303) above, Morgan, Carbone Lorraine, Schunk and SGL were all equally active in the cartel and it is not possible to indicate a clear leader. Finally, Morgan provided the Commission with all the relevant information and all the documents and evidence available to it regarding the cartel at the time when it made its application and has maintained continuous and complete cooperation throughout the investigation.
- (321) In so doing, Morgan has met the conditions stipulated in Part B of the 1996 Leniency Notice, which states that an undertaking which meets those conditions will benefit from a reduction of at least 75% of the fine or even from total exemption from the fine that would have been imposed if it had not cooperated. Given in particular the quantity and quality of the evidence presented by Morgan, the Commission considers that Morgan should benefit from a reduction of the fine of 100%.

14.2.5.2. Carbone Lorraine

- (322) Carbone Lorraine claims application of Part B of the 1996 Leniency Notice. However, Carbone Lorraine cannot qualify for Part B of the 1996 Leniency Notice, because it was not the first undertaking to adduce decisive evidence of

³⁸⁶ OJ No C 45 of 19.2.2002, page 3. Point 28 of this notice states that "From 14 February 2002, this notice replaces the 1996 notice for all cases in which no undertaking has contacted the Commission in order to take advantage of the favourable treatment set out in that notice".

³⁸⁷ See pages [0001] to [4599] of the Commission's file.

³⁸⁸ See EV 1, 2, 3 and 4 [0072 – 1584].

the cartel's existence. Nor can it qualify for Part C of the 1996 Leniency Notice, as that part also requires the undertaking concerned to be the first to adduce decisive evidence of the cartel's existence.

(323) Part D of the 1996 leniency Notice states that an undertaking may benefit from a reduction of 10% to 50% of the fine that would have been imposed if it had not cooperated where, without having met the conditions set out in parts B or C, it, *inter alia*,:

- provides the Commission, before a statement of objections is sent, with information, documents or other evidence which materially contributes to establishing the existence of the infringement;
- informs the Commission, after receiving a statement of objections, that it does not substantially contest the facts on which the Commission bases its allegations.

(324) Carbone Lorraine applied for leniency soon after having received the Commission's Article 11 letter. Its co-operation largely exceeded the required replies to the Article 11 letter. Carbone Lorraine spontaneously provided a considerable number of contemporaneous documents, including several reports of cartel meetings not identified in the Commission's Article 11 letter³⁸⁹. Carbone Lorraine also provided several signed declarations from company officials and former company officials, attesting to their part in the cartel's activities. Finally, it provided a detailed and useful description of the product market and the cartel's activities in respect of each type of client. Because of the quantity and quality of the evidence already provided by Morgan, the voluntary evidence submitted by Carbone Lorraine, as indeed that of the other leniency applicants, added only limited value to the evidence already in the possession of the Commission. Nevertheless, the Commission considers that the voluntary evidence provided by Carbone Lorraine as a whole did materially contribute to establishing the existence of the infringement.

(325) Moreover, after receiving the Statement of Objections, Carbone Lorraine informed the Commission that it did not substantially contest the facts on which the Commission based its allegations.

(326) Taking account of the different elements of cooperation mentioned in recitals (324) and (325), the Commission considers that Carbone Lorraine is entitled to a 40% reduction of the fine that would have otherwise have been imposed.

(327) Carbone Lorraine argues that the Commission should also apply certain elements from the 2002 Leniency Notice. In this respect, Carbone Lorraine claims that it has fulfilled the requirement of having furnished "significant added value" in point 21 of the 2002 Leniency Notice. The Commission, from its side, has already indicated in recital (319) that according to the terms of the

³⁸⁹ The most useful evidence provided by Carbone Lorraine can be found in CL, items 20 to 25 [5831-5859], 26 to 36 [5862-6403], 37 to 40 [6406-6414], 41 to 46 [6417-6530], 61 to 66 [6586-6604], 67 to 71 [6607-6633], 72 [6636-6683] and 73 to 77 [6686-6698].

2002 Leniency Notice, the 1996 Leniency Notice is to be applied in this case. Such application has to take in place in full. Each Leniency Notice has its own carefully constructed balance of advantages and requirements. Depending on the moment of the first application, either the one Leniency Notice is applied or the other. When Carbone Lorraine cooperated in the investigation it was fully aware that the 1996 Leniency Notice was applicable and therefore no legitimate expectations can have been frustrated by applying that Notice. It is not permissible for undertakings to select those elements they consider most favourable in each Leniency Notice and then expect the Commission to apply those. In any case, it may be noted that the practical result which Carbone Lorraine claims under the 2002 Leniency Notice, a reduction of between 30% and 50%, is no different from what it is to be granted under the 1996 Leniency Notice.

14.2.5.3. Schunk

- (328) Like Carbone Lorraine, Schunk applied for leniency after having received the Commission's Article 11 letter. But Schunk submitted its evidence a month later than Carbone Lorraine³⁹⁰. In this submission, Schunk admitted to the existence of the cartel and its participation therein. However, Schunk did not submit any contemporaneous reports from cartel meetings. The most useful parts of the evidence submitted consisted of a list of cartel meetings which Schunk acknowledged to have taken place³⁹¹. This list included some meetings the Commission was not yet aware of. Schunk also submitted a set of travel documents relating to various meetings. Most of these related to meetings the Commission was already aware of and for which the Commission had asked to receive all available documents in its Article 11 letter. In the course of the investigation, Schunk also replied to a number of questions posed by the Commission in the framework of Schunk's cooperation with the investigation, in order to complete information it had previously voluntarily submitted. However, the Commission notes that, unlike Carbone Lorraine, Schunk was not pro-active in supplying additional information about the cartel to the Commission. On the whole, the Commission considers that the voluntary evidence provided by Schunk has fulfilled the criterion of materially contributing to the establishment of the existence of the infringement.
- (329) Moreover, after receiving the Statement of Objections, Schunk informed the Commission that it did not substantially contest the facts on which the Commission based its allegations.
- (330) Taking account of the different elements of cooperation mentioned in recitals (328) and (329), the Commission considers that Schunk is entitled to a 30% reduction of the fine that would have otherwise have been imposed.

³⁹⁰ As mentioned in recital (57), Schunk submitted its evidence on 25 October 2002. Full evidence by Carbone Lorraine was provided on 24 September 2002.

³⁹¹ See Schunk11, annex 3 [9272-9275], as amended by Schunk's submission of 12 February 2003 [9401-9405].

14.2.5.4.Hoffmann

- (331) Schunk's application for leniency and the material it provided also covered Hoffmann, which became a Schunk subsidiary in October 1999.
- (332) After receiving the Statement of Objections, Hoffmann claimed that it did not substantially contest the facts on which the Commission based its allegations. However, in the same submission, Hoffmann claimed not to have participated in the cartel before 1994, whereas the Statement of Objections alleged that Hoffmann had participated in the cartel since October 1988. The Commission has accepted Hoffmann's claim. As Hoffmann does not contest any of the other facts on which the Commission based its allegations, the Commission considers that Hoffmann is still entitled to a reduction for not having contested the facts on which the Commission based its allegations.
- (333) Taking account of the different elements of cooperation mentioned in recitals (331) and (332), the Commission considers that Hoffmann, like Schunk, is entitled to a 30% reduction of the fine that would have otherwise have been imposed.

14.2.5.5.SGL

- (334) SGL applied for leniency only in March 2003, well after the other leniency applicants and at an advanced stage in the Commission's investigation. Nevertheless, it submitted a comprehensive voluntary corporate statement describing the cartel's functioning in considerable detail. It also provided some contemporaneous documents, a general list of participants in meetings and a specific list of admitted cartel meetings, with participants³⁹². SGL subsequently answered several questions which the Commission put to it in the framework of SGL's cooperation with the investigation, in order to complete information it had previously voluntarily submitted. On the whole, the Commission considers that the voluntary evidence provided by SGL has narrowly fulfilled the criterion of materially contributing to the establishment of the existence of the infringement. However, the evidence was provided at an advanced stage of the proceeding, several months later than that of Schunk. The Commission also notes that SGL was not, as Carbone Lorraine had been, pro-active in supplying further information about the cartel to the Commission.
- (335) After receiving the Statement of Objections, SGL informed the Commission that it did not substantially contest the facts on which the Commission based its allegations.
- (336) Taking account of the different elements of cooperation mentioned in recitals (334) and (335), the Commission considers that SGL is entitled to a 20% reduction of the fine that would otherwise have been imposed.

³⁹² See submissions of SGL of 17 March 2003 [10740-10827] and 21 March 2003 [11035-11040].

14.2.5.6. Conradty

(337) Conradty did not cooperate with the Commission.

14.2.5.7. Conclusion on the application of the 1996 Leniency Notice

(338) The conclusion on the application of the 1996 Leniency Notice is therefore as follows:

Conradty:	no reduction;
Hoffmann:	30% reduction of the fine that would otherwise have been imposed;
Carbone Lorraine:	40% reduction of the fine that would otherwise have been imposed;
Morgan:	100% reduction of the fine that would otherwise have been imposed;
Schunk:	30% reduction of the fine that would otherwise have been imposed;
SGL:	20% reduction of the fine that would otherwise have been imposed.

14.2.6. Conclusion on the level of the fines

(339) The following fines should therefore be imposed on the individual undertakings:

Conradty:	EUR 1 060 000;
Hoffmann:	EUR 2 820 000;
Carbone Lorraine:	EUR 43 050 000;
Morgan:	EUR 0;
Schunk:	EUR 30 870 000;
SGL:	EUR 35 280 000.

14.2.7. *Ability to pay and other factors*

14.2.7.1. Ability to pay

Carbone Lorraine

- (340) In its reply to the Statement of Objections, Carbone Lorraine claims that a new fine in this proceeding³⁹³ risks considerably "handicaping" Carbone Lorraine, "at a time when Carbone Lorraine needs all of its resources to resist the worsened [business] climate"³⁹⁴. The Commission observes that, under current economic conditions, this argument could apply to any company that incurs a fine from the Commission or any other public authority. Indeed, if the Commission accepted this argument for Carbone Lorraine but still imposed fines on any other company in this proceeding, it would rightly stand accused of discrimination.
- (341) In order to argue the seriousness of its financial situation, Carbone Lorraine in the same submission draws attention to what it considers to be its high level of [*]. It then goes on to explain, however, that this high level of [*] in fact has been caused by a major acquisition in 1999 of another enterprise. [*]. The Commission considers that acquisitions of other companies cannot be used as an argument to claim inability to pay a fine for a cartel violation.
- (342) In the same submission, Carbone Lorraine also informs the Commission that following the acquisition, its level of [*] has [*]³⁹⁵. Moreover, it mentions that despite the generally bad economic climate, the company's operational results over the year 2002 [*].
- (343) At the hearing on 18 September 2003, Carbone Lorraine made a new presentation on its financial situation. There it showed that [*] for the first half of 2003, despite [*]³⁹⁶.
- (344) In fact, the only concrete argument presented by Carbone Lorraine that it might not be able to pay a fine, was that its financing contracts with banks included [*] financial ratios that the company should respect. Breach of [*] of those ratios could, according to Carbone Lorraine, lead the banks to call in the loans, which could cause the bankruptcy of the company.
- (345) Upon examination, it is clear that the first ratio, that of [*], would only be breached if the Commission imposed a fine in this proceeding far exceeding the amount mentioned in section 14.2.6³⁹⁷. Carbone Lorraine confirmed in the hearing that this ratio is not of concern.

³⁹³ In December 2002, the Commission imposed a fine of EUR 6,97 million on Carbone Lorraine for its participation in the isostatic specialty graphite cartel. See Commission Decision of 17 December 2002 in case COMP/E-1/37.667 – Specialty Graphite, not yet published.

³⁹⁴ Carbone Lorraine's reply of 25 July 2003 to the Statement of Objections, page 31. In the French original: "Une nouvelle sanction dans le cadre de la présente procédure ne manquera pas d'handicaper considérablement LCL à une époque où LCL a justement besoin de toutes ses ressources pour résister à l'environnement dégradé".

³⁹⁵ This ratio [*] in 1999 to [*] at the end of December 2002. It was [*] at the end of July 2003, see Argumentaire financier de Carbone Lorraine, 18 September 2003.

³⁹⁶ Argumentaire financier de Carbone Lorraine, 18 September 2003.

³⁹⁷ According to the Argumentaire financier de Carbone Lorraine, 18 September 2003, payment of the earlier Commission fine had [*]. The limit agreed in Carbone Lorraine's financing arrangements for this ratio is [*].

- (346) As for the second ratio, that of [*], the Commission accepts that this ratio may indeed be breached by a combination of weak operational results and a significant increase in the level of debt due to a high fine in this proceeding³⁹⁸. However, the Commission observes that whether this second ratio will be breached depends for half of the equation on the operational results of Carbone Lorraine. These results for the year 2003 are not known yet. [*].
- (347) Even if one or more of Carbone Lorraine's financial ratios were to be breached, the Commission considers that such contractually agreed provisions, freely entered into between private parties, should not be a reason for public authorities not to impose a fine or to limit its amount. Indeed, if this were different, it would be only too easy for companies involved in cartels to avoid or limit fines, simply by agreeing in their financing contracts that the company is not allowed to pay any fines or only to a certain amount.
- (348) Moreover, in practice the likelihood is much higher, given Carbone Lorraine's overall size and operational profitability, that if a financial ratio were breached, the banks concerned would simply re-negotiate the financing arrangement, admittedly at possibly less favourable conditions to Carbone Lorraine, than that they would call in the loans.
- (349) Finally, to take account of the mere fact of the difficult financial situation undertakings may be in, mainly due to general market conditions, would in the Commission's view be tantamount to conferring an unjustified competitive advantage on those undertakings that are least well adapted to the conditions of the market.
- (350) Carbone Lorraine has not presented any arguments to claim that its alleged inability to pay should be seen in a specific social context. While Carbone Lorraine has mentioned the closing of production units and the laying off of workers, it confirmed at the hearing that the reason for those measures was that the production capacities in question had become uneconomic.

SGL

- (351) [Like Carbone Lorraine, SGL has made detailed submissions to the Commission trying to establish its inability to pay a fine in this proceeding.] [*]³⁹⁹ [*]⁴⁰⁰.
- (352) [In the view of the Commission, the financial situation of SGL is not so critical as to justify, by itself, an adjustment of the fine.]
- (353) In coming to this conclusion, the Commission takes particular account of certain recent figures publicised by SGL itself⁴⁰¹. According to those figures, SGL's profit from operations rose to EUR 18 million in the first half of 2003,

³⁹⁸ The ratio [*] Carbone Lorraine agreed with its banks is [*]. Its achieved ratio at the end of the first half of 2003 (annualised for the full year) was [*].

³⁹⁹ [*].

⁴⁰⁰ [*].

⁴⁰¹ SGL Carbon Group press release of August 12, 2003.

up from EUR 8,1 million in the first half of 2002. SGL reduced its net financial liabilities by EUR 22 million in the first half of 2003 and is expecting additional cost savings of around EUR 10 million by the end of 2003. Those figures, achieved in a difficult business climate, show that SGL has good operational prospects. The figures which SGL provided to the Commission⁴⁰² also show that SGL [*] the level of its current liabilities, whereas total liabilities [*]⁴⁰³.

(354) [*]⁴⁰⁴. [*]⁴⁰⁵.

(355) However, as in the case of Carbone Lorraine, the Commission considers that if such contractual provisions, freely entered into between two private parties, could be a reason for the public authorities not to impose a fine, or only up to a certain amount, it would be only too easy for cartel participants to avoid fines. [*]⁴⁰⁶. [*]⁴⁰⁷. [*]⁴⁰⁸.

(356) Finally, in the Commission's view, to take account of the mere fact of the difficult financial situation undertakings may be in, mainly due to general market conditions, would be tantamount to conferring an unjustified competitive advantage on those undertakings least well adapted to the conditions of the market.

(357) SGL has not presented any arguments to claim that its alleged inability to pay had to be seen in a specific social context. While SGL has mentioned a number of redundancies in the last couple of years, it has not shown that those redundancies did not occur as part of the company's normal efforts at achieving greater efficiencies.

14.2.7.2. Other factors

(358) On 18 July 2001, the Commission imposed a fine on SGL of EUR 80,2 million for its participation in the graphite electrodes cartel. On 17 December 2002, the Commission imposed a further fine on SGL of EUR 27,75 million for its participation in the isostatic specialty graphite cartel and the extruded specialty graphite cartel. In this Decision, SGL is being held liable for its participation in a cartel on electrical and mechanical carbon and graphite products. All of these different cartel activities occurred simultaneously.

⁴⁰² SGL's reply of 5 September 2003 to the Commission's Article 11 letter of 13 August 2003
⁴⁰³ SGL confirmed its good operational prospects in a press release of 5 November 2003 on the results of the first three quarters of 2003. There, SGL indicated that its profits from operations for the first three quarters of 2003 (EUR 24,7 million) had gone up 29% compared to the first three quarters of 2002 (when it was EUR 19, 2 million), despite declining sales revenues due to the weak general economic climate and the depreciation of the US dollar. SGL was expecting a clear improvement in earnings in the fourth quarter of 2003 and substantial further improvements in 2004.

⁴⁰⁴ [*].

⁴⁰⁵ [*].

⁴⁰⁶ [*].

⁴⁰⁷ [*].

⁴⁰⁸ [*].

- (359) SGL has argued that following the previous two fines imposed on it, it is not necessary to impose a fine on SGL in this proceeding to attain the objective of deterrence. The Commission disagrees. The Commission considers that each separate infringement merits a separate fine. If not, an undertaking involved in one or two cartels would have nothing to lose by entering into further cartels. It could then derive unjustified profits from additional cartels without any risk of a fine for that behaviour. Imposing a fine for each separate infringement serves to deter such behaviour.
- (360) Nevertheless, the Commission notes that SGL is *both* undergoing serious financial constraints *and* has relatively recently been subject to two significant fines by the Commission for participation in cartel activities. In these particular circumstances, imposing the full amount of the fine for this infringement of SGL does not appear necessary to ensure effective deterrence. This conclusion takes particular account of the fact that the different cartel activities for which SGL has incurred fines occurred simultaneously. In this specific case, the amount of SGL's fine, as mentioned in section 14.2.6 above, should therefore be reduced by 33%.
- (361) It should be noted, in this respect, that Carbone Lorraine's case is quite different. A fine of EUR 6,97 million was imposed on Carbone Lorraine by the Commission for its participation in the isostatic specialty graphites cartel⁴⁰⁹. Whereas the total fine amount which the Commission has until now imposed on SGL for simultaneous cartel activities amounts to almost 10% of SGL's worldwide turnover in 2002⁴¹⁰, the comparable percentage for Carbone Lorraine is less than 1%⁴¹¹. Even at the time of the specialty graphites Decision, when SGL obtained a 33% reduction under "other factors", the fine amount that had already been imposed on SGL in the graphite electrodes case, EUR 80,2 million, exceeded 7% of SGL's global turnover in 2002.
- (362) Secondly, as already mentioned in section 14.2.7.1 above, [*]⁴¹². Although SGL's financial situation by the end of the year 2002, when it obtained a 33%

⁴⁰⁹ Carbone Lorraine has mentioned the fine it had to pay to the US authorities in the specialty graphites case, the civil damages it is liable to in the United States, and the legal fees it has incurred. While these circumstances are relevant in the context of the overall financial situation of Carbone Lorraine, and have thus been accounted for in the financial data analysed in section 14.2.7.1, they are not relevant in the present context of the Commission's own fining policy in the light of previous Commission fines for simultaneous infringements by the same undertaking in the EEA.

⁴¹⁰ See recital (35).

⁴¹¹ See recital (23).

⁴¹² Carbone Lorraine's achieved ratio of net debt on equity at the end of the first half of 2003 was [*] (according to the Argumentaire financier de Carbone Lorraine, 18 September 2003) or [*] (according to Carbone Lorraine's reply of 3 October 2003 to the Commission's Article 11 letter of 23 September 2003). The comparable achieved financial ratio by SGL at that point in time was [*]. Or, to compare total debt to equity, Carbone Lorraine's achieved figure at the end of the first half of 2003 was [*] and that of SGL [*].

Carbone Lorraine's achieved ratio of net debt to earnings before interest, taxes, depreciation and amortisation (EBITDA) at the end of the first half of 2003 (annualised for the full year) was [*], while SGL's achieved ratio was [*]. This definition, for both companies, is based on gross operational results excluding any exceptional items.

reduction in the specialty graphites Decision, was, on the whole, slightly better than by the middle of 2003, it was still considerably worse than the present situation of Carbone Lorraine⁴¹³.

- (363) Carbone Lorraine is therefore not entitled to any reduction of its fine on the ground of "other factors".

14.2.8. The amount of the fines imposed in this proceeding

- (364) In conclusion, the fines to be imposed pursuant to Article 15(2) of Regulation No 17 should be as follows:

- Conradty : EUR 1 060 000;
- Hoffmann : EUR 2 820 000;
- Carbone Lorraine: EUR 43 050 000;
- Morgan : EUR 0;

As for the ratio of total liabilities to total assets (the solvency ratio), this was [*] for Carbone Lorraine at the end of the first half of 2003 and [*] for SGL.

For all these financial ratios, [*]. The only financial ratio [*] is that of current assets to current liabilities (the current ratio), where SGL's ratio at the end of the first half of 2003 was [*] and that of Carbone Lorraine [*].

See Argumentaire financier de Carbone Lorraine, 18 September 2003 and Carbone Lorraine's reply of 3 October 2003 to the Commission's Article 11 letter of 23 September 2003. See also SGL's reply of 5 September 2003 to the Commission's Article 11 letter of 13 August 2003.

⁴¹³ Carbone Lorraine's achieved ratio of net debt on equity at the end of the first half of 2003 was [*] (according to the Argumentaire financier de Carbone Lorraine, 18 September 2003) or [*] (according to Carbone Lorraine's reply of 3 October 2003 to the Commission's Article 11 letter of 23 September 2003). The comparable achieved financial ratio by SGL in 2002 was [*]. Or, to compare total debt to equity, Carbone Lorraine's achieved figure at the end of the first half of 2003 was [*] and that of SGL in 2002 [*].

Carbone Lorraine's achieved ratio of net debt to earnings before interest, taxes, depreciation and amortisation (EBITDA) at the end of the first half of 2003 (annualised for the full year) was [*], while SGL's achieved ratio in 2002 was [*]. This definition, for both companies, is based on gross operational results excluding any exceptional items.

As for the ratio of total liabilities to total assets (the solvency ratio), this was [*] for Carbone Lorraine at the end of the first half of 2003 and [*] for SGL in 2002.

As for the ratio of current assets to current liabilities (the current ratio), SGL's ratio in 2002 was [*] and that of Carbone Lorraine at the end of the first half of 2003 [*].

For all these financial ratios, therefore, SGL's financial situation in 2002 was considerably worse than that of Carbone Lorraine at the end of the first half of 2003.

See Argumentaire financier de Carbone Lorraine, 18 September 2003 and Carbone Lorraine's reply of 3 October 2003 to the Commission's Article 11 letter of 23 September 2003. See also SGL's reply of 5 September 2003 to the Commission's Article 11 letter of 13 August 2003.

- Schunk : EUR 30 870 000;
- SGL : EUR 23 640 000.

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings have infringed Article 81(1) of the Treaty and - from 1 January 1994 - Article 53(1) of the EEA Agreement by participating, for the periods indicated, in a complex of agreements and concerted practices in the sector of electrical and mechanical carbon and graphite products:

- (a) C. Conradty Nürnberg GmbH, from October 1988 to December 1999;
- (b) Hoffmann & Co. Elektrokohle AG, from September 1994 to October 1999;
- (c) Le Carbone Lorraine S.A., from October 1988 to June 1999;
- (d) Morgan Crucible Company plc, from October 1988 to December 1999;
- (e) Schunk GmbH and Schunk Kohlenstofftechnik GmbH, jointly and severally, from October 1988 to December 1999;
- (f) SGL Carbon AG, from October 1988 to December 1999.

Article 2

For the infringements referred to in Article 1, the following fines are imposed:

- (a) C. Conradty Nürnberg GmbH: EUR 1 060 000;
- (b) Hoffmann & Co. Elektrokohle AG: EUR 2 820 000;
- (c) Le Carbone Lorraine S.A.: EUR 43 050 000;
- (d) Morgan Crucible Company plc: EUR 0;
- (e) Schunk GmbH and Schunk Kohlenstofftechnik GmbH, jointly and severally: EUR 30 870 000;
- (f) SGL Carbon AG: EUR 23 640 000.

The fines shall be paid, within three months of the date of the notification of this Decision, to the following account:

Account N°

001-3953713-69 of the European Commission with:

FORTIS Bank, Rue Montagne du Parc 3, 1000 Bruxelles/Brussels

(Code SWIFT GEBABEBB – Code IBAN BE71 0013 9537 1369)

After the 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.

Article 3

The undertakings listed in Article 1 shall immediately bring to an end the infringements referred to in that Article, in so far as they have not already done so.

They shall refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or similar object or effect.

Article 4

This Decision is addressed to:

C. Conradty Nürnberg GmbH

Grünthal

D - 90552 Röthenbach

Hoffmann & Co. Elektrokohle AG

Au 62

A - 4823 Steeg

Le Carbone Lorraine S.A.

Immeuble La Fayette

2-3, place des Vosges

La Défense 5

TSA 38001

F-92919 Paris La Défense Cedex

The Morgan Crucible Company plc

Morgan House

Madeira Walk

Windsor

Berkshire

UK – SL4 1EP

Schunk Kohlenstofftechnik GmbH

Rodheimer Strasse 59-61

D-35452 Heuchelheim

Schunk GmbH

Parkstrasse 1

D-06502 Thale

SGL Carbon AG

Rheingastrasse 182

D- 65203 Wiesbaden.

This Decision shall be enforceable pursuant to Article 256 of the Treaty.

Done at Brussels,

For the Commission

*Mario MONTI
Member of the Commission*

Annex I

List of reported cartel meetings

Date	Location	Type of meeting	Source
27 March 1981	Spain	Local electrical carbon	MSLS EV3, 302 [4401]
2 December 1982	Spain	Local electrical carbon	MSLS EV3, 306 [4406]
13-14 October 1988	Salzburg, Austria, Hotel Goldener Hirsch	Technical Committee	MLS EV1, 347 [0449]
20-21 April 1989	Lausanne-Ouchy, Switzerland, Hotel Beau-Rivage Palace	Technical Committee	MLS EV1, 317 [0418]
30 October 1989	Stratford-upon-Avon, United Kingdom	Technical Committee	MLS EV1, 301 [0401]
1 November 1989	Stratford-upon-Avon, United Kingdom	Summit	MLS EV1, 301 [0401]
19 April 1990	Geneva, Switzerland, Hotel President	Technical Committee	MLS EV1, 287 [0386]
26-27 April 1990	Evian, France, Royal Hotel	Technical Committee	MLS EV1, 287 [0386]
27 April 1990	Evian, France, Royal Hotel	Summit	MLS EV1, 287 [0386], 294 [0393]
8-9 October 1990	Zürich, Switzerland, Dolder Grand Hotel	Technical Committee	MLS EV1, 218 [0316]
9 October 1990	Zürich, Switzerland, Dolder Grand Hotel	Summit	MLS EV1, 218 [0316]
8 March 1991	Beer Hungerford, United Kingdom	Local electrical carbon	CL annex 7, item 21 [5839]
25-26 March 1991	Paris, France, Hotel Meridien	Technical Committee	MLS EV1, 217 [0314] SGL table [10788]
22 May 1991		Local mechanical carbon	MLS EV4, 146 [1302]
29 May 1991	Köln, Germany, Schloss Auel	Club	MLS EV4, 7 [1091]
25-26 September 1991	Düsseldorf, Germany, Steigenberger Park Hotel	Summit	MLS EV4, 7 [1091] SGL table [10788]
4 December 1991	Milano, Italy	Club	MLS EV4, 7 [1091]
5-6 December 1991		Summit	SGL table [10788]

7 May 1992	Germany	Local electrical carbon	MLS EV2, 239 [0714]
17 July 1992		Club	MLS EV4, 7 [1091]
7 August 1992	Mosel, Luxembourg	Club	MLS EV4, 7 [1091]
September 1992	Amsterdam, the Netherlands, Dorint Hotel Schiphol	Technical Committee	MLS EV1, 207 [0303]
15 October 1992		Technical Committee	MLS EV1, 198 [0293]
14 January 1993	Paris, France	Local mechanical carbon	MLS EV4, 7 [1091] MSLS EV4, 3-5 [4425-4427]
21 January 1993	Höhr-Grenzhausen, Germany, Hotel Heinz	Local mechanical carbon	MLS EV4, 7 [1091] MSLS EV4, 6-10 [4429-4433]
14-16 April 1993	Nürnberg-Boxdorf, Germany, Landhotel Schindlerhof	Technical Committee	MLS EV1, 184 [0278] MLS EV4, 142 [1297] MLS EV7, 91 [2814] MSLS EV4, 11-13 [4435-4437]
6 May 1993	Boppard, Germany	Club	MLS EV4, 7 [1091] MSLS EV4, 14-15 [4439-4440]
14 May 1993	Boppard, Germany	Summit	MLS EV4, 7 [1091]
9 July 1993	Germany	Local electrical carbon	MLS EV2, 234 [708]
30 July 1993	Bad Kreutznach-Kauzenburg, Germany	Club	MLS EV4, 7 [1091] MSLS EV4, 16-17 [4442-4443]
9 September 1993	Luxembourg	Club	MLS EV4, 7 [1091]
14 October 1993		Technical Committee	MLS EV1, 167 [0260]
4-5 November 1993		Club	MLS EV4, 7 [1091]
2-3 December 1993	Stratford upon Avon, United Kingdom	Club	MLS EV4, 7 [1091]
13 December 1993	Paris	Club	MLS EV4, 7 [1091]
22 December 1993	Windsor, UK	Summit	MLS EV4, 7 [1091] MSLS EV4, 20-22 [4448-4450]
8 February 1994	Boppard, Germany	Local mechanical carbon	MLS EV4, 138 [1289] MSLS EV4, 23-24 [4452-4453] SGL table [10788]
22 February 1994		Technical Committee	MLS EV1, 157 [0249]
14 March 1994	Netherlands	Local electrical carbon	MLS EV2, 201 [667]
1 April 1994	Germany	Local electrical carbon	MLS EV2, 224 [697]

21 April 1994	Wiesbaden, Germany	Technical Committee	MLS EV1, 144 [0234] MSLS EV4, 25-28 [4455-4458]
29-30 April 1994	Berlin, Germany	Summit	SGL table [10789]
3 May 1994		Summit	MLS EV1, 143 [0232]
1 July 1994		Technical Committee	MLS EV1, 137 [0225]
7-8 July 1994	Boppard, Germany, Golfclub Jakobsberg	Local mechanical carbon	MLS EV4, 133 [1281] MSLS EV4, 29-31 [4460-4462] SGL table [10789]
20 September 1994		Technical Committee	MLS EV1, 154 [0245]
27-28 September 1994	Maidenhead, UK, Fredrick's Hotel	Local mechanical carbon	MLS EV4, 130 [1276] MSLS EV4, 32-36 [4464-4468] Schunk table [9402]
29-30 September 1994	Bad Kiesingen, Germany	Local	SGL table [10789]
4-5 October 1994	Maidenhead, UK	Summit	MLS EV4, 7 [1091] SGL table [10789]
16 November 1994	Ascoli Piceno, Italy	Local mechanical carbon	MLS EV4, 125 [1270] MSLS EV4, 37-42 [4470-4475]
28 November 1994	Frankfurt, Germany		Schunk table [9402]
21 December 1994	United Kingdom	Local electrical carbon	CL annex 7, item 22 [5843]
12 January 1995	United Kingdom	Local electrical carbon	CL annex 7, item 23 [5847]
20 January 1995	Lisbon, Portugal, Hotel Tivoli Lisboa	Local electrical carbon	MLS EV2, 29 [0488] Schunk11 annex 4 [9313] Schunk table [9402] SGL table [10789]
30 January 1995	Höhr-Grenzhausen, Germany	Technical Committee	Schunk table [9402]
2 February 1995	Boppard, Germany	Local mechanical carbon	MLS EV4, 121 [1263] SGL table [10789]
7 March 1995	Salzburg, Austria, Sheraton Salzburg		Schunk11 annex 4 [9314- 9315]
16 March 1995	Hochheim, Germany	Technical Committee/local?	Schunk table [9402]
28 March 1995	Pieschiera Borromeo, Milano, Italy, Hotel Clarine	Local	SGL submission of 21 March 2003 [11035]
4-5 April 1995	Paris, France	Technical Committee	MLS EV1, 124 [0211] MLS EV4, 120 [1262] MSLS EV4, 43-45 [4477-4479]

18 May 1995	Viersen, Germany	Local electrical carbon	MLS EV2, 214 [0686] Schunk table [9402]
26 May 1995	United Kingdom	Local electrical carbon	CL annex 7, item 24 [5852]
29-30 August 1995	Höhr-Grenzhausen, Germany, Hotel Heinz	Technical Committee	Schunk11 annex 4 [9298] Schunk table [9402]
22 September 1995	Luxembourg	Local mechanical carbon	MLS EV4, 7 [1091] Schunk table [9402]
27-28 September 1995	Bonn	Local mechanical carbon	MLS EV4, 7 [1091]
18-20 October 1995	Vienna, Austria, Hotel Wimberger	Technical Committee	MLS EV1, 118 [0204] MSLS EV4, 49-52 [4485-4488] Schunk11 annex 4 [9357] Schunk table [9402]
30 October 1995	Vienna, Austria	Summit	SGL table [10790]
7 November 1995	Milano, Italy	Local electrical carbon	MLS EV2, 156 [0617] Schunk table [9402]
9 November 1995	Tenerife, Spain, Hotel Semiramis	Local electrical carbon	MLS EV2, 22 [0480] Schunk11 annex 4 [9320] Schunk table [9403] SGL table [10790]
14 November 1995	Frankfurt, Germany, Airport	Summit?	Schunk table [9403]
12-14 December 1995	Berlin, Germany, Radisson SAS Hotel	Technical Committee/local?	Schunk11 annex 4 [9341] Schunk table [9403]
15 December 1995	Höhr-Grenzhausen, Germany, Hotel Heinz	Local electrical carbon	MLS EV2, 212 [0683] Schunk11 annex 4 [9322] Schunk table [9403]
19 December 1995	The Netherlands	Local electrical carbon	MLS EV2, 196 [0661]
20 December 1995	Lohmar, Germany, Schloss Auel	Technical Committee	MLS EV4, 109 [1243] MSLS EV4, 57-60 [4495-4498] Schunk11 annex 4 [9300] Schunk table [9403]
23 January 1996	Milan, Italy	Local mechanical carbon	MLS EV4, 104 [1234] MSLS EV4, 61-62 [4500-4501]
31 January 1996	Höhr-Grenzhausen, Germany	Local mechanical carbon	MLS EV4, 103 [1232] Schunk table [9403] SGL table [10790]
5 February 1996	London, United Kingdom	Summit?	Schunk table [9403]
14 February 1996	Bradford, UK, Marriot Hotel	Local mechanical carbon	MLS EV4, 101 [1229]
15-16 February 1996	Frankfurt, Germany, Sheraton Frankfurt	Summit?	Schunk11 annex 4 [9377] Schunk table [9403]

	Airport Hotel		
26 February 1996	Bad Breisig, Germany, Templerhof	Local mechanical carbon	MLS EV4, 99 [1226] MSLS EV4, 63-66 [4503-4506] SGL table [10790]
18-19 April 1996	Köln, Germany, Excelsior Hotel Ernst	Technical Committee	MLS EV1, 102 [0187] MLS EV4, 94 [1217], 97 [1222] MSLS EV4, 67-70 [4508-4511] Schunk table [9403] SGL table [10791]
29-30 April 1996	Köln and Frankfurt, Germany	Summit	MLS EV4, 7 [1091] Schunk table [9403] SGL table [10791]
16-17 July 1996	Höhr-Grenzhausen, Germany	?	Schunk table [9403]
18 July 1996	Düsseldorf, Germany, Haus Litzbrück	Local mechanical carbon	MLS EV4, 86 [1207] SGL table [10791]
26-27 September 1996	Hamburg, Germany, Maritim Hotel Reichshof	Technical Committee	MLS EV1, 90 [0174] MLS EV4, 85 [1205] MSLS EV4, 71-75 [4513-4517] Schunk table [9403] SGL table [10791]
30 September-1 October 1996	Hamburg, Germany	Summit	MLS EV4, 7 [1091] Schunk table [9403] SGL table [10791]
9-10 October 1996	Lyon, France	Steering Committee	MLS EV7, 88 [2811] Schunk table [9403]
22 October 1996	Höhr-Grenzhausen, Germany, Hotel Heinz	Local mechanical carbon	MLS EV4, 83 [1201] MSLS EV4, 76-78 [4519-4521] Schunk table [9403] SGL table [10792]
28-29 October 1996	Frankfurt, Germany	Technical Committee	Schunk table [9403]
28-29 October 1996	Zürich, Switzerland	Special meeting on collectors – pantographs	CL, page 10 [5520]
8 November 1996	Lanzarote, Spain, Meliá Hoteles	Local electrical carbon	MLS EV2, 19 [0476] MSLS EV4, 81-90 [4526-4535] Schunk11 annex 4 [9324] Schunk table [9403]
28 November 1996	Weilburg, Germany, Schlosshotel	Local mechanical carbon	MLS EV4, 76 [1188] MSLS EV4, 81-90 [4526-4535] Schunk table [9403] SGL table [10792]

5 December 1996	Maidenhead, United Kingdom, Fredrick's Hotel	Local mechanical meeting	MLS EV4, 7 [1091] Schunk11 annex 4 [9381] Schunk table [9403]
6 December 1996	Milano, Italy	Local mechanical carbon	MLS EV4, 7 [1091] MSLS EV4, 79-80 [4523-4524] Schunk table [9403]
9 December 1996	Friedrichsdorf, Germany, Queens Hotel Friedrichsdorf	Local electrical carbon	MLS EV2, 208 [0678] Schunk11 annex 4 [9345] Schunk table [9403]
10 December 1996	Germany	Special meeting on collectors – pantographs	MLS EV2, 210 [0680] CL, annex 11, item 45 [6438]
17 December 1996	Frankfurt, Germany, Airport	Steering Committee	Schunk table [9403]
15 January 1997	Bad Breisig, Germany	Technical Committee/local	Schunk table [9403]
25 February 1997	Luxembourg	Local mechanical carbon	MLS EV4, 50 [1152] Schunk table [9403]
28 February 1997	London, United Kingdom	Bilateral Schunk-Morgan	Schunk table [9403]
3 April 1997	Milan, Italy, Hotel Clarine	Local mechanical carbon	MLS EV4, 70 [1177] MSLS EV4, 98-102 [4545-4549] Schunk table [9403]
15 April 1997		Technical Committee	MLS EV1, 72 [0155]
22 April 1997	Frankfurt, Germany	Summit	Schunk table [9403]
24 April 1997	Amsterdam, the Netherlands, Barbizon Palace	Technical Committee	MLS EV4, 7 [1091] MLS EV7, 66 [2789], 68 [2791]
25 April 1997	Amsterdam, the Netherlands	Summit	MLS appendix 4 [0068] MLS EV4, 70 [1177] MLS EV7, 10 [2732] Schunk table [9404] SGL table [10792]
4-5 June 1997	Höhr-Grenzhausen, Germany, Hotel Heinz	Technical Committee/local?	Schunk11 annex 4 [9308] Schunk table [9404]
12-13 August 1997	Weilburg, Germany, Schlosshotel Weilburg	Local mechanical carbon	MLS EV4, 53 [1157] Schunk11 annex 4 [9310] Schunk table [9404]
10-11 September 1997	London, United Kingdom	Steering Committee	Schunk table [9404]
12 September 1997	Weilburg, Germany, Schlosshotel	Local	SGL table [10792]
9-10 October 1997	Vienna, Austria, Rogner Hotel Biedermeier im Sünnhof	Technical Committee	MLS EV1, 61 [0143] MLS EV4, 66 [1171] MSLS EV4, 106-111 [4555-4560] Schunk11 annex 4 [9295]

			Schunk table [9404] SGL table [10793]
22-23 October 1997	Vienna, Austria, Rogner Hotel Biedermeier im Sünnhof	Steering Committee	MLS EV7, 71-73 [2794-2796] Schunk 11 annex 4 [9294, 9384] Schunk table [9404] SGL table [10793]
5 November 1997	France	Local electrical carbon	MLS EV2, 159 [0621]
7 November 1997	Madrid, Spain	Local electrical carbon	MLS EV2, 5 [0461] Schunk table [9404]
19 November 1997	Birmingham, United Kingdom	Local electrical carbon	CL annex 7, item 25 [5858]
11 December 1997	Vianen, the Netherlands, Hotel Vianen	Local electrical carbon	MLS EV2, 192 [0656]
15 January 1998	Frankfurt, Germany, Sheraton Hotel	Local mechanical carbon	MLS EV4, 42 [1142] MSLS EV4, 112-114 [4562-4564]
30 January 1998	Hadamar, Germany, Hotel Nassau-Oranien	Local electrical carbon	MLS EV2, 204 [0673] Schunk11 annex 4 [9330] Schunk table [9404] SGL table [10793]
2 March 1998	United Kingdom	Local mechanical carbon	MLS EV4, 7 [1091]
23 March 1998	Giessen, Germany	Local mechanical carbon	MLS EV4, 7 [1091]
2-3 April 1998	Bandol, France, Hotel Ile Rousse	Technical Committee	MLS EV1, 49 [0130] MLS EV4, 34 [1131] MSLS EV4, 115-118 [4566-4569], 131-132 [4585-4586] Schunk table [9404] SGL table [10794]
19-21 April 1998	Amsterdam, Hotel Grand Krasnapolsky	Technical Committee/Summit?	MLS EV7, 22 [2744] Schunk11 annex 4 [9386] Schunk table [9404] SGL table [10794]
14 May 1998	Frankfurt, Germany, Sheraton Frankfurt Airport Hotel, Steigenberger Airport Hotel?	Local mechanical carbon	MLS EV 4, 30 [1125] MSLS EV4, 119-122 [4571-4574] Schunk table [9404]
18-19 or 22 June 1998	Zürich, Switzerland, Hotel Mövenpick, Zürich Airport	Technical Committee	Schunk 11, annex 4 [9350] Schunk table [9404] MLS EV1, 37 [0117] SGL table [10794]

29-30 June 1998	Luxembourg, Luxembourg	Bilateral Schunk-Morgan	Schunk table [9404]
30 June 1998	Giessen, Germany	Local mechanical carbon	MLS EV4, 7 [1091]
18-19 July 1998	London, United Kingdom	Bilateral Schunk-Morgan	Schunk table [9404]
12 August 1998	Frankfurt, Germany	Steering Committee	Schunk table [9404]
19-20 August 1998	Bad Neuenahr, Germany	Bilateral Schunk-Morgan	Schunk table [9404]
6-7 October 1998	London, United Kingdom	Bilateral Schunk-Morgan	Schunk table [9404]
12-13 October 1998	Berlin, Germany, The Westin Grand Hotel Berlin	Technical Committee	MLS EV1, 34 [0113] MLS EV4, 28 [1121] MLS EV7, 55 [2778] MSLS EV4, 123-130 [4576-4583] Schunk11 annex 4 [9332] Schunk table [9404] SGL table [10794]
19-20 October 1998	Berlin, Germany	Summit	MLS appendix 4 [0068] SGL table [10794]
26-27 October 1998	Boppard, Germany, Jakobsberg	Summit	Schunk table [9404]
8 November 1998	Frankfurt, germany	Bilateral Schunk-Morgan	Schunk table [9404]
12-13 November 1998	Madrid, Spain, Hotel NH Eurobuilding	Local electrical carbon	MLS EV2, 4 [0459] MSLS EV4, 133-134 [4588-4589] Schunk table [9404] SGL table [10795]
3-4 December 1998	London, United Kingdom	Bilateral Schunk-Morgan	Schunk table [9404]
15 December 1998	Frankfurt, Germany	Local electrical carbon	MLS EV2, 203 [0671] Schunk table [9404]
28-29 January 1999	London, United Kingdom	Bilateral Schunk-Morgan	Schunk table [9404]
1-2 February 1999	Antwerpen, Belgium	Local electrical carbon	MLS EV2, 185 [0648], 187 [0650] Schunk table [9404] SGL table [10796]
15-17 February 1999	Stratford upon Avon, United Kingdom	Bilateral Schunk-Morgan	Schunk table [9404]
9 April 1999	Stratford upon Avon, United Kingdom, The Arden Hotel	Technical Committee	MLS EV1, 31 [0109] MSLS EV4, 139-140 [4596-4597] SGL table [10796]
13-18 May 1999	Rome, Italy, Roscioli Hotel	Steering Committee	Schunk11 annex 4 [9392] Schunk table [9404] SGL table [10796]

18-19 July 1999	London, United Kingdom	Bilateral Schunk-Morgan	Schunk table [9405]
19-20 August 1999	Bad Neuenahr, Germany	Bilateral Schunk-Morgan	Schunk table [9405]
27 August 1999	London, United Kingdom	?	Schunk table [9405]
4 October 1999	Luxembourg, Luxembourg	Technical Committee	MLS EV1, 29 [0107] Schunk table [9405]
14-15 October 1999	München, Germany	Steering Committee?	Schunk table [9405]
13 December 1999	Neuwied, Koblenz, Germany	Technical Committee	MLS EV1, 21 [0098] Schunk table [9405]
14 December 1999	München, Germany	Local electrical carbon	MLS EV2, 202 [0669]

Note 1: General sources of information regarding these meetings are MLS, appendix 4 [0068], MLS, EV 1, page 1 [0076], MLS, EV 4, pages 6 and 7 [1090-1091], submission of Schunk of 12 February 2003 [9401-9405] (referred to in annex 1 as "Schunk table") and submission of SGL of 17 March 2003, annex 1 (referred to in annex 1 as "SGL table") . In addition to the meetings listed in the table above, other contacts between cartel members are listed in MLS, appendix 4, page A-32 [0070].

Note 2: Morgan has provided identification of the handwriting found in documents contained in its Leniency Statement and Supplementary Leniency Statement by letter of July 17, 2002 [4785-4789].

Annex II

List of relevant ECGA meetings

Date	Location	Type of meeting	Source
1 March 1995	Brussels, Belgium	General Foundation Meeting	ECGA answer to question 1 [4831]
12 April 1995	Paris, France		MLS EV 5 [2171]
5-6 October, 1995	Rome, Italy	General Assembly, Board of Directors	MLS EV 5 [2027-2036]
19-20 October 1995	Vienna, Austria	Graphite Specialties Committee	ECGA answer to question 9 [4966] CL11, item 5 [6798-6799]
6 December 1995	Brussels, Belgium	Meeting of Committees' Chairmen	MLS EV5 [1991]
21 February 1996	Paris, France	Board of Directors	MLS EV 5 [1977-1981]
19 April 1996	Köln, Germany	Graphite Specialties Committee	MLS EV 5 [2256] ECGA answer to question 9 [5213-5216] CL11 item 5 [6807]
10 May 1996	Amsterdam, the Netherlands	Board of Directors, General Assembly	MLS EV 5 [2248-2250]
26 September 1996	Hamburg, Germany	Specialty Graphite Committee	MLS EV 5 [1868] ECGA answer to question 9 [5173-5176]
9-10 October 1996	Lyon, France	Annual meeting	MLS EV 5 [1823-1824]
24-25 April 1997	Amsterdam, the Netherlands	Special Graphite Committee	MLS EV 5 [1729] ECGA answer to question 9 [5172]
16 May 1997	Oslo, Norway	Board of Directors, General assembly	MLS EV 5 [1763-1765]
10 September 1997	Marlow Bucks, United Kingdom	Steering Committee Graphite Specialties	MLS EV 5 [1620-1622]
9 October 1997	Vienna, Austria	Graphite Specialties – Electrical and Mechanical Committee	MSLS EV2, 132-134 [3596-3598], 373 [3886] MLS EV5 [1653] ECGA answer to question 9 [5140]
23-24 October 1997	Vienna, Austria, Hotel Biedermeier	Board of Directors, General Assembly	MLS EV5 [1588] MSLS EV2, 364-365 [3873-3874] ECGA answer to question 10 [5239]
2 April 1998	Bandol, France	Graphite Specialties Committee	MSLS EV3, 212 [4290] ECGA answer to

			question 9 [5024]
20 April 1998	Amsterdam, the Netherlands	General Assembly	MSLS EV2, 73 [3524]
12 October 1998	Berlin, Germany	Graphite Specialties Committee, Electrical and Mechanical Committee	MSLS EV2, 72 [3523], 76 [3528] ECGA answer to question 9 [4967]
27 October 1998	Boppard, Germany, Golfhotel Jakobsberg	General Assembly	MSLS EV1, 54-55 [3193-3195]
13 January 1999	Dresden, Germany, Hotel The Westin Bellevue	Electrical and Mechanical Committee of Graphite Specialties	MSLS EV3, 205 [4283]
8 April 1999	Stratford upon Avon, United Kingdom, Arden Thistle Hotel	Specialty Graphite, Electrical and Mechanical Committee	MSLS EV 1, 49-50 [3186-3187]
17-18 May 1999	Rome, Italy, Hotel Royal Santina	General Assembly	MSLS EV 1, 32-33 [3163-3164]
15 October 1999	München, Germany	General Assembly	MSLS EV1, 30 [3160]