II

(Acts whose publication is not obligatory)

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

(Case No C.38.359 — Electrical and mechanical carbon and graphite products) [1]

(notified under document number C(2003) 4457)

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

(Text with EEA relevance)

(2004/420/EC)

On 3 December 2003, the Commission adopted a decision relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement. In accordance with the provisions of Article 21 of Regulation 17 [2]*, the Commission herewith publishes the names of the parties and the main content of the decision, having regard to the legitimate interest of undertakings in the protection of their business interests. A non-confidential version of the full text of the decision can be found in the authentic languages of the case and in the Commission's working languages at DG COMP's website at http://europa.eu.int/comm/competition/index_en.html.*

I. SUMMARY OF THE INFRINGEMENT

Addressees and nature of the infringement

1. This Decision is addressed to 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), and SGL Carbon AG (hereinafter SGL).

2. The addressees 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:

   — 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;

[1] Final report of the Hearing Officer (OJ C 102 of 28.4.2004).
[2] OJ 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).

— 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

— operated a highly refined machinery to monitor and enforce their agreements.

Duration of the infringement

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.

The market for electrical and mechanical carbon and graphite products

4. Electrical carbon products are primarily used to transfer electricity to and in electrical motors. The most important products in this group are carbon brushes and electrical current collectors. Applications 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.

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.

Carbon and graphite products are also sold in blocks, which require further processing.

5. The Commission has found that the geographic scope of this business is EEA-wide rather than global. Because customers need to be supplied very quickly, long transport routes are uneconomical. 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 concerned, this market having a total estimated value in that year of EUR 291 million, including the value of captive use.

Functioning of the cartel

6. More than 140 reported cartel meetings took place during the period October 1988 to December 1999. The functioning of the cartel was essentially unchanged throughout this period:

— The senior executives for carbon and graphite products in the member companies met in periodic European Summit meetings. Summit meetings were held twice per year.

— Technical Committee meetings at European level were in principle also held twice a year, in spring and autumn, preceding the Summit meetings. 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 surcharges for different alleged purposes.

— Local meetings were held on an ad hoc basis in Italy, France, the United Kingdom, the Benelux, Germany, and Spain (covering also the Portuguese market). These meetings discussed price increases in the country concerned, as well as the accounts of single local customers.

— 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 co-ordinate specific bids made to large customers. Such contacts occurred on a weekly and sometimes daily basis, by phone, fax, or, occasionally, meetings.

II. **FINES**

Basic amount

7. The Commission considers that the undertakings concerned have committed a very serious infringement. 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.

Differential treatment

8. 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. Carbone Lorraine and Morgan were the largest sellers of electrical and mechanical carbon and graphite products in the EEA in 1998, the last full year of operation of the cartel, with market shares of more than 20 %. They have therefore been placed in a first category. Schunk and SGL, with market shares between 10 % and 20 %, have been placed in a second category. Finally, Hoffmann and Conradty, with market shares below 10 %, have been placed in a third category.

Duration

9. The undertakings concerned participated in the infringement during at least the following periods:

— Carbone Lorraine: from October 1988 to June 1999, a period of 10 years and 8 months, resulting in a percentage increase in the basic amount of 105 %;

— Morgan: from October 1988 to December 1999, a period of 11 years and 2 months, resulting in a percentage increase in the basic amount of 110 %;

— Schunk: from October 1988 to December 1999, a period of 11 years and 2 months, resulting in a percentage increase in the basic amount of 110 %;

— SGL: from October 1988 to December 1999, a period of 11 years and 2 months, resulting in a percentage increase in the basic amount of 110 %;

— Hoffmann: from September 1994 to October 1999, a period of 5 years and 1 month, resulting in a percentage increase in the basic amount of 50 %;

— Conradty: from October 1988 to December 1999, a period of 11 years and 2 months, resulting in a percentage increase in the basic amount of 110 %.

Aggravating circumstances

10. The Commission considers that there are no aggravating circumstances in this case.

Attenuating circumstances

11. The Commission considers that there are no attenuating circumstances in this case.

Application of the 10 % turnover limit

12. The 10 % worldwide turnover limit mentioned in Article 15(2) of Regulation 17 applies to Hoffmann and Conradty.

Application of the 1996 leniency notice

Non-imposition or a very substantial reduction in its amount (Section B: 75-100 % reduction)

13. Morgan is granted immunity from fines for having been the first undertaking to report the cartel to the Commission.

Significant reduction of a fine (Section D: reduction from 10 % to 50 %)

14. Carbone Lorraine is granted a 40 % reduction for its cooperation in the Commission's investigation. Among the companies qualifying for a significant fine reduction, Carbone Lorraine was the first company to cooperate with the Commission and provided the most useful contribution. Like the other companies that cooperated with the Commission, it also did not substantially contest the facts on which the Commission based its allegations.

15. Schunk is granted a 30 % reduction for its cooperation in the Commission's investigation. The evidence it provided arrived later and its cooperation was more limited than that of Carbone Lorraine.

16. Hoffmann, now part of the Schunk Group, cooperated in the same manner as Schunk. It is also granted a 30 % reduction.

17. SGL, which was the last company to cooperate, is granted a 20 % reduction.

18. Conradty did not cooperate with the Commission.

Ability to pay

Carbone Lorraine

19. The arguments of Carbone Lorraine regarding inability to pay are rejected.

SGL

20. The arguments of SGL regarding inability to pay are rejected.

Other factors

21. Carbone Lorraine argued that it was undergoing serious financial constraints and had already received a significant fine for simultaneous cartel activity. Both of these arguments are found incorrect.

22. SGL, however, is granted a 33 % reduction of its fine for the reason that SGL is both undergoing serious financial constraints and has relatively recently been imposed two significant fines by the Commission for participation in simultaneous cartel activities.

Decision

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.

2. The undertakings listed shall immediately bring the infringements to an end, in so far as they have not already done so. They shall refrain from repeating any act or conduct as the infringement found in this case and from any act or conduct having the same or similar object or effect.