

CANADA
PROVINCE OF QUÉBEC
District of Hull
550-73-000062-001

SUPERIOR COURT
(Criminal Division)

HER MAJESTY THE QUEEN

- and -

SGL CARBON
AKTIENGESELLSCHAFT

Accused

AGREED STATEMENT OF FACTS

I THE ACCUSED

1. SGL Carbon Aktiengesellschaft ("SGL AG") is a corporation incorporated under the laws of Germany with its principal place of business in Wiesbaden, Germany. SGL AG operates subsidiaries in many countries of the world including SGL Canada Inc. in Canada (collectively "SGL"). SGL is a producer of graphite and carbon products and is one of the world leaders in the production, manufacture, distribution, sale and supply of graphite electrodes throughout the world, including Canada.
2. SGL sells and supplies graphite electrodes in various diameters ranging from 75mm to 750mm (3" to 30") to steel producers, foundry operators and other users of electric arc furnaces and ladle furnaces in Canada and export markets.

II OTHER CORPORATIONS

3. UCAR Inc. ("UCAR Canada") is a corporation incorporated under the laws of Ontario with its principal place of business in Welland, Ontario, and is a subsidiary of UCAR International Inc. ("UCAR US"). UCAR US and its subsidiary companies (collectively "UCAR") is the largest manufacturer of graphite electrodes in the world, and is involved in the manufacture, production, distribution, sale and supply of graphite electrodes throughout the world, including Canada.
4. Other significant participants in the manufacture, production, distribution, sale and supply of graphite electrodes in the world market include: Showa Denko

Carbon Inc., Tokai Carbon Co. Ltd., Nippon Carbon Co. Ltd., SEC Corporation and Mitsubishi Corporation.

III. GRAPHITE ELECTRODES

5. Graphite electrodes are consumed primarily in the production of steel in electric arc furnaces, the steelmaking technology used by all "mini-mills", and for steel refining in ladle furnaces. A graphite electrode conducts electric current into a furnace, where an arc is formed between the electrode tip and the scrap metal and other materials in the furnace charge. The resultant high temperature created by the arc provides the necessary heat for the metallurgical reactions taking place in the furnace. A graphite electrode is shaped in the form of a cylindrical rod with sockets at each end, permitting electrodes to be threaded together into columns. New sections are added to the electrode column as it is consumed in the furnace.
6. Graphite electrodes of varying lengths are produced in diameters ranging from 75 mm to 750mm. Graphite electrodes are also produced in varying grades, including regular-power, high-power and ultra-high power grades according to the furnace use. Mini-mill steel production and refining applications in Canada require high-power graphite electrodes generally ranging in diameter from 300mm to 600mm. The foundry and abrasives industries commonly, although not exclusively, use small diameter (300mm and smaller) regular grade graphite electrodes. The largest electrodes (650 mm, 700 mm and 750 mm diameters) are used in the newest electric arc steel-making furnace technology, which is not presently in operation in Canada.

IV THE CANADIAN MARKET FOR GRAPHITE ELECTRODES

7. In Canada and worldwide, the production and supply of graphite electrodes is concentrated. SGL Canada and UCAR Canada have been the only two suppliers of any significance to the Canadian market. During the period between 1992 and 1997, SGL Canada and UCAR Canada supplied over 90 percent of the Canadian market for high-power graphite electrodes.
8. Between 1992 and 1997, the Canadian steel, foundries and abrasives industries are estimated to have consumed at least Cdn\$440 million of high-power graphite electrodes, or an annual average of Cdn\$88 million.

V THE AGREEMENT

9. In or about May 1992, representatives of SGL AG, UCAR, and other graphite electrode manufacturers, including certain of their most senior officers, met and entered into an anti-competitive conspiracy, combination, agreement or arrangement to restrict their graphite electrodes production capacity and to fix the prices they would charge for, and allocate the volumes they would sell of, graphite electrodes in world markets (the "Agreement"), which Agreement would have the effect or result of lessening competition substantially in the Canadian market and elsewhere.
10. SGL AG and the other participants to the Agreement agreed to divide world markets and to allocate among themselves the approximate volume of graphite electrodes to be sold by each conspirator, with some conspirators reducing or eliminating exports to competitors' home markets. In each market, one conspirator was designated to fix the price that other conspirators supplying that market would follow. Under the Agreement, UCAR was the designated price leader in North America.
11. At various times from May 1992 until at least June 1997, representatives of SGL AG and UCAR engaged in conversations and attended further meetings with representatives of other producers and suppliers of graphite electrodes, including some of those referred to in paragraph 4 above, in order to implement, confirm, adjust and maintain the Agreement. The said meetings included "working" discussions at which the participants would resolve specific price, marketing, supply or production issues. SGL AG and its co-conspirators monitored and enforced the Agreement through the exchange of sales and customer information.
12. Knowledge of the Agreement, meetings and discussions as aforesaid were kept confidential by the participants and limited to certain senior executives of their organizations, and further efforts to conceal the Agreement were employed.
13. For the purpose of implementing the Agreement in Canada, SGL AG gave to SGL Canada and SGL Canada did unknowingly implement directives, instructions or intimations of policy it received from SGL AG.
14. Throughout the period of the conspiracy, SGL Canada announced to its Canadian customers prices and implementation dates for its 350mm to 600mm diameter graphite electrodes, which were largely identical to those announced

by UCAR Canada, commencing in July 1992 with an announced price of Cdn\$2645 per metric tonne and continuing until at least June 1997 with an announced price of Cdn\$4710 per metric tonne.

VI OTHER CONSIDERATIONS

15. SGL AG has agreed, pursuant to the draft policy of the Commissioner of Competition (the "Commissioner") on immunity and the policy of the Attorney General of Canada regarding immunity, to cooperate and plead guilty to the offence of implementing foreign directives contrary to section 46 of the *Competition Act*, thereby saving considerable costs of further investigation and trial which would otherwise have been incurred by the Government of Canada.
16. Pursuant to his responsibilities for the administration and enforcement of the *Competition Act*, the Commissioner has conducted and continues to conduct an extensive inquiry into the graphite electrodes industry in Canada. SGL AG has promised to and will cooperate with the Commissioner in this inquiry.
17. Because of the complex nature of the industry, its international ramifications and jurisdictional considerations, this cooperation will assist in the investigation of other individuals and corporations for violations of the *Competition Act* in relation to the manufacture, production, distribution, sale and supply of graphite electrodes.
18. SGL Canada has entered into an agreement with virtually all of its Canadian customers which provides for satisfactory restitution in respect of the effect upon them of the Agreement. SGL Canada has already made the payments required by this arrangement.

VII CONCLUSION

19. SGL AG admits the foregoing pursuant to section 655 of the *Criminal Code*.
20. SGL AG acknowledges, on the basis of the admissions set out herein with respect to the Agreement, that all constituent elements of an indictable offence under section 46 (1) of the *Competition Act* have been established.

SGL Carbon Aktiengesellschaft

Her Majesty the Queen

By: Helmuth Hillmann

François-B. Côté

Its: Legal group coordination

François-B. Côté, Q.C.
for the Attorney General of Canada

Date: 16.6.2000

Date: July 18th, 2000

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Accused

Agreed Statement of Facts

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