

**APPENDIX "B"**

**Court File No.: T-1611-07**

**FEDERAL COURT OF CANADA  
TRIAL DIVISION**

**BETWEEN**

**HER MAJESTY THE QUEEN**

**and**

**IBIDEN CO. LTD.**

**Accused**

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**STATEMENT OF ADMISSIONS BY AN ACCUSED  
PURSUANT TO SECTION 655 OF THE CRIMINAL CODE**

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**I THE ACCUSED**

1. Ibiden Co. Ltd. ("Ibiden") is a corporation incorporated under the laws of Japan with its principal place of business in Ogaki, Gifu, Japan. Ibiden's principal business is focused on the manufacture and sale of products for the electrical industry. Ibiden manufactures, for example, printed circuit boards. A separate portion of its business is devoted to the production of specialty graphite products, including isostatic graphite. Ibiden sells its specialty graphite products in many parts of the world, although Ibiden does not have a major share in any of those markets. Ibiden does not have a Canadian subsidiary.
2. Between approximately July 1994 and June 1997 (the "relevant period"), Ibiden was engaged in the manufacture and sale of isostatic graphite products for three

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generic end users: participants in and users of electrical discharge machinery, manufacturers of semi conductor chips and other mechanical applications. Isostatic graphite is supplied by Ibiden in full block or semi machined block form ex factory.

## **II OTHER CORPORATIONS**

3. Significant participants in the manufacture, production, distribution, sale and supply of isostatic graphite in the world market during the relevant period include: SGL Carbon Aktiengesellschaft, Tokai Carbon Co., Ltd., Toyo Tanso Co. Ltd., Nippon Steel Chemical Company and Carbone of America Industries, Corp. All of the foregoing, including Ibiden, shall be referred to collectively as the "Producers" in relation to the manufacture and sale of isostatic graphite products.

## **III. ISOSTATIC GRAPHITE**

3. Isostatic graphite is a fine grain, high-strength material that is produced by compressing carbon under equal pressure from all directions to eliminate any grain orientation, then baking and graphitizing it. Manufacturers produce multiple grades of material with different qualities such as density, grain size, and discharge rate. The production process is lengthy, technical and specialized. Isostatic graphite blocks have different and advantageous properties over extruded graphite.
5. Manufacturers of isostatic graphite sell their products in three principal forms: non-machined, semi-machined, or machined into finished products. The affected product in this matter is non-machined and semi-machined isostatic graphite which is sold primarily to distributors or end users for use in electric discharge machining and the continuous casting of molten metal, although some is sold to independent machine shops and for other uses. There are hundreds of end user/customers for various isostatic graphite products.

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### **SALES OF ISOSTATIC GRAPHITE**

6. Information gathered by the Commissioner, which he asserts to be correct and which Ibiden does not contest, indicates that, for the purpose of sales of isostatic graphite in North America, the parties to the Agreement described below dealt with Canada and the United States as one market. Total sales of isostatic graphite into Canada in the period 1993-1997 were in the range of (Cdn) \$7 to 10 million per annum.

### **IV THE CANADIAN MARKET FOR ISOSTATIC GRAPHITE**

7. Most of the Producers supply isostatic graphite blocks in Canada, either directly or indirectly through distributors, and several have approximately equal shares of sales. Ibiden's share is lower than most of the other Producers.
8. During the relevant period, Ibiden sold approximately \$300,000 (US) of isostatic graphite block into Canada. Most of these sales were made by an independent, unaffiliated, trading company that took possession of the graphite products in Japan. Ibiden does not sell isostatic or specialty graphite directly in Canada through any subsidiary or affiliated sales office.

### **V THE AGREEMENT**

9. In or about July 1993, and from time to time thereafter at over fifteen meetings held throughout the world, representatives of Ibiden and the Producers, including certain of their most senior officers, met and entered into an anti-competitive agreement to set specific volumes of non-machined and semi-machined isostatic graphite that each company would supply in Canada and elsewhere using a uniform system of product grading and nomenclature and to fix the prices they would charge for non-machined and semi-machined isostatic graphite (the "Agreement").
10. In addition, there were numerous local meetings convened in North America and Europe to work out local issues in conformity with the "harmony" agreed to amongst the Producers as part of the Agreement. At various times during the period of the Agreement, representatives of Ibiden engaged in conversations and attended further meetings with representatives of other producers and suppliers of

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isostatic graphite blocks 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. The parties to the Agreement monitored and enforced the Agreement through the exchange of sales and customer information.

11. Ibiden did not attend a meeting in the U.S. until 1994. There were at least two prior meetings in the U.S., in December 1993 and March 1994, but Ibiden was not represented at those meetings. Ibiden's participation in the U.S. meetings began due to insistence by its U.S. competitors that Ibiden send a representative. This insistence was communicated to Ibiden by one of those competitors. Implementation of the Agreement in the U.S. had already been discussed and decided prior to Ibiden's first attendance at a meeting in the U.S. Ibiden did not exercise a leadership role in formulating, monitoring or policing the Agreement in the U.S. and/or Canada.
12. Ibiden did not sell isostatic graphite blocks directly to purchasers in Canada and thus did not control the final price at which its product was sold to Canadian purchasers. Generally, Ibiden negotiated the price for these products with an independent, unaffiliated trading company that took possession of the products in Japan. Because of the manner in which Ibiden's products were sold in Canada, Ibiden is not aware of the actual effect of the Agreement on the price at which Ibiden's products were sold to Canadian purchasers.
13. Knowledge of the Agreement, meetings and discussions as aforesaid was kept confidential by the participants and limited to certain senior executives of their respective organizations.

#### **VI OTHER CONSIDERATIONS**

14. Ibiden has agreed, pursuant to the "Immunity Program under the Competition Act" of the Commissioner of Competition (the "Commissioner") and the policy of the Attorney General of Canada regarding immunity, to cooperate and plead guilty to aiding and abetting an offence contrary to section 45 of the *Competition Act*,

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thereby saving the considerable cost of further investigation and proceedings which would otherwise have been incurred by the Government of Canada.

15. Ibidem is voluntarily attorning to the jurisdiction of Canada solely for the purpose of entering a plea to the offence set out in paragraph 14 above.
16. Pursuant to his responsibilities for the administration and enforcement of the *Competition Act*, the Commissioner has conducted an extensive inquiry into the isostatic graphite industry in Canada. Ibidem has provided significant cooperation to the Commissioner in connection with this inquiry.
17. Because of the complex nature of the industry, its international ramifications and jurisdictional considerations, Ibidem's cooperation has significantly assisted the Commissioner's investigation of other individuals and corporations for violations of the *Competition Act* in relation to the manufacture, production, distribution, sale and supply of isostatic graphite products in Canada.

## **VII CONCLUSION**

18. Ibidem admits the foregoing pursuant to section 655 of the *Criminal Code* for the purposes of this proceeding and no other purpose.
19. Ibidem 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 45 of the *Competition Act* and Ibidem's role as a party to that offence, by aiding and abetting the commission of the offence, pursuant to section 21 of the *Criminal Code* have been established.

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D.D. Graham Reynolds, Q.C.  
Duane E. Schippers  
for the Attorney General of Canada  
Department of Justice  
Place du Portage, Phase I  
50 Victoria Street, 22<sup>nd</sup> Floor  
Gatineau, Quebec K1A 0C9  
Telephone: (819) 997-3325  
Facsimile: (819) 953-9267

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