

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 15 June 2005

**in Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03
Tokai Carbon Co. Ltd v Commission of the European
Communities ⁽¹⁾**

(Competition — Cartels — Specialty graphite market — Price fixing — Liability — Calculation of fines — Cumulation of penalties — Duty to state reasons — Rights of the defence — Guidelines on the method of setting fines — Applicability — Gravity and duration of the infringement — Attenuating circumstances — Aggravating circumstances — Ability to pay — Cooperation during the administrative procedure — Methods of payment)

(2005/C 205/31)

(Languages of the case: German and English)

In Joined Cases T-71/03, T-74/03, T-87/03 and T-91/03, Tokai Carbon Co. Ltd, established in Tokyo (Japan), represented by G. van Gerven and T. Franchoo, lawyers, with an address for service in Luxembourg, Intech EDM BV, established in Lomm (Netherlands), represented by M. Karl and C. Steinle, lawyers, Intec EDM AG, established in Losone (Switzerland) M. Karl and C. Steinle, lawyers, SGL Carbon AG, established in Wiesbaden (Germany), represented by M. Klusmann and P. Niggemann, lawyers, against Commission of the European Communities (agents: W. Mölls, P. Hellström, F. Castillo de la Torre and S. Rating, acting as Agents, assisted, in Cases T-74/03 and T-87/03, by H. J. Freund, lawyer, with an address for service in Luxembourg), actions for annulment in full or in part of Commission Decision C(2002) 5083 final of 17 December 2002 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/E-2/37.667 — Specialty Graphite), the Court of First Instance (Second Chamber), composed of J. Pirrung, President, A.W.H. Meij and N.J. Forwood, Judges; J. Palacio González, Principal Administrator, Registrar, gave a judgment on 15 June 2005, in which it:

— dismisses the application;

— orders the applicant to pay the costs.

2. In Case T-74/03 Intech EDM BV v Commission:

— dismisses the application;

— orders the applicant to pay the costs.

3. In Case T-87/03 Intech EDM AG v Commission:

— sets the fine imposed on the applicant by Article 3 of Decision COMP/E-2/37.667 at EUR 420 000;

— amends Article 3(h) of Decision COMP/E-2/37.667 so that the joint and several liability of Intech EDM AG is limited to EUR 420 000;

— dismisses the remainder of the application;

— orders the applicant to bear two thirds of its own costs and to pay two thirds of the costs incurred by the Commission, and the Commission to bear one third of its own costs and to pay one third of the costs incurred by the applicant.

4. In Case T-91/03 SGL Carbon v Commission:

— sets the fine imposed on the applicant by Article 3 of Decision COMP/E-2/37.667 at EUR 9 641 970 in respect of the infringement committed in the isostatic graphite sector;

— dismisses the remainder of the application;

— orders the applicant to bear two thirds of its own costs and to pay two thirds of the costs incurred by the Commission, and the Commission to bear one third of its own costs and to pay one third of the costs incurred by the applicant.

⁽¹⁾ OJ C 112 of 10.5.2003