

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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|--------------------------|-------------------------|
| UNITED STATES OF AMERICA |) |
| |) Criminal No. 99-595 |
| v. |) |
| |) Filed: 9/23/99 |
| ROBERT J. HART, |) |
| |) Judge: James T. Giles |
| Defendant. |) |

GOVERNMENT’S RULE 11 MEMORANDUM

The United States and Robert J. Hart have entered into a plea agreement, pursuant to which Robert J. Hart will waive indictment and plead guilty to the captioned Information. The one-count Information charges Robert J. Hart with a violation of the Sherman Act, 15 U.S.C. § 1. The purpose of this memorandum is to provide the Court with sufficient information for acceptance of the plea by setting forth the violated statute, a description of the criminal Information, the terms of the plea agreement, and a preliminary statement of facts which support the agreement.

I

STATUTE VIOLATED

A. 15 U.S.C. Section 1

Section One of Title 15, United States Code, provides:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine not exceeding \$10,000,000 if a corporation, or, if any other person, \$350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

B. The Information

The Information charges Robert J. Hart with participating in a conspiracy to suppress and

eliminate competition by fixing the price and allocating the volume of graphite electrodes sold in the United States and elsewhere in unreasonable restraint of trade and commerce from at least as early as July 1992 and continuing until at least June 1997.

C. Elements of the Offense

The elements of a Sherman Act offense, each of which the United States must prove beyond a reasonable doubt, are:

- (1) The conspiracy charged was formed, and it was in existence at or about the time alleged;
- (2) The defendant knowingly formed or participated in that conspiracy; and
- (3) The activity which was the object of the conspiracy was within the flow of, or substantially affected, interstate or foreign commerce.

D. Maximum Penalty

The maximum penalty Robert J. Hart may receive upon his conviction in this case is a fine in an amount equal to the largest of: (a) \$350,000; (b) twice the gross pecuniary gain derived from the crime; or (c) twice the gross pecuniary loss caused to the victims of the crime.

II

FACTUAL BASIS

This statement of facts is intended to be used as a factual basis for Robert J. Hart's guilty plea. It is not intended to be exhaustive in terms of all details surrounding the charged conspiracy.

A. Background

Graphite electrodes are large columns that generate intense heat. They are used primarily by "mini-mills" in the production of steel in electric arc furnaces (EAF), the steel-making technology used by all "mini-mills," and for refining steel in ladle furnaces. Graphite electrodes used in electric arc furnaces cost thousands of dollars, and because of the intense heat generated, they are consumed in the steel-making process. The instant conspiracy affected sales of graphite electrodes to steel mills in the United States and elsewhere.

B. The Conspiracy

During the period covered by the Information, Robert J. Hart was engaged in the business of selling graphite electrodes to customers in the United States and foreign countries, first in his capacity as Vice President and General Manager of Operations for North and South America of UCAR Carbon Company and UCAR International, Inc. (UCAR), and later as Senior Vice President and Chief Operating Officer of UCAR. As alleged in the Information, beginning at least as early as July 1992 and continuing until at least July 1997, Mr. Hart and certain competitors entered into and participated in a combination and conspiracy to suppress and eliminate competition by fixing the price and allocating the volume of graphite electrodes sold in the United States and elsewhere. The combination and conspiracy engaged in by the defendant and co-conspirators was in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

The conspiracy consisted of a continuing agreement, understanding, and concert of action among the conspirators, the substantial terms of which were:

- (1) to agree to fix and maintain prices of, and to coordinate price increases for, graphite electrodes sold in the United States and elsewhere;
- (2) to agree to follow the price increases of respective home market leaders in the United States and elsewhere; and
- (3) to agree to maintain the respective market shares of the conspirator companies in

various markets in the United States and elsewhere.

For the purpose of forming and carrying out the charged combination and conspiracy, Mr. Hart and co-conspirators, among other things:

- (1) participated in meetings, telephone conversations and other discussions in the United States, Europe, and the Far East concerning:
 - (a) the methods to be used to increase graphite electrode prices;
 - (b) the present and future prices of graphite electrodes in the United States and elsewhere;
 - (c) the present and expected graphite electrode prices and sales volume for specific customers or geographic regions;
 - (d) the elimination of discounts;
 - (e) the imposition of premiums on certain sizes of electrodes; and
 - (f) the restriction or elimination of the sale of 28¾” graphite electrodes in the United States;
- (2) followed the graphite electrode price increases announced by designated geographic market leaders;
- (3) raised and maintained the prices of graphite electrodes, including imposing price increases of over 60 percent on customers in the United States;
- (4) eliminated discounts;
- (5) limited the sale of 28¾” graphite electrodes in the United States; and
- (6) took action to maintain the respective market shares of the conspirator companies.

C. Interstate and Foreign Commerce

During the period of the conspiracy, UCAR and other co-conspirators sold a substantial quantity of graphite electrodes across state lines and into and out of the United States in a continuous and uninterrupted flow of interstate and foreign commerce.

III

PLEA AGREEMENT

The guilty plea in this case will be entered pursuant to a plea agreement between Robert J. Hart and the Antitrust Division. The plea agreement provides that Mr. Hart will enter his guilty plea pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure.

Also pursuant to the plea agreement, the United States and Mr. Hart agree to recommend jointly that the Court impose on Mr. Hart a sentence of: (1) imprisonment for a period of nine months and (2) a fine payable to the United States in the amount of \$1 million payable over a period of three years. The first fine payment in the amount of \$250,000 will be due within 15 days from the date of imposition of sentence and additional payments of \$250,000 will be due on the first, second, and third anniversaries of the date of sentencing. The United States and Mr. Hart will jointly request that the Court specially recommend that the sentence of imprisonment be served in a minimum security facility such as a federal prison camp, and that the Court waive the imposition of interest on unpaid portions of the fine pursuant to 18 U.S.C. § 3612(f)(3). The United States and Mr. Hart also will jointly request that the Court accept Mr. Hart’s guilty plea and immediately impose sentence on the day of arraignment. Should the Court reject the agreed upon disposition of the case, Mr. Hart will be free to withdraw his plea.¹

¹ The agreement does not permit Mr. Hart to withdraw his guilty plea should the Court reject the joint recommendation to impose sentence on the day of arraignment, to waive interest on the fine, or to recommend that the period of incarceration be served in a minimum security

Mr. Hart has agreed to cooperate fully with the United States in the conduct of the present investigation of the graphite electrode industry and any litigation or other proceedings to which the United States is a party resulting therefrom. Subject to Mr. Hart's full and continuing cooperation, the United States will make a motion to depart downward from the Sentencing Guidelines pursuant to U.S.S.G. § 5K1.1.² Also pursuant to the plea agreement, the United States agrees, subject to the continuing full cooperation of Mr. Hart, not to bring further criminal proceedings against Mr. Hart for any act or offense committed prior to the date of the plea agreement undertaken in connection with any antitrust conspiracy involving the sale or manufacture of graphite electrodes.

Dated: 9/23/99

Respectfully submitted,

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facility.

² The agreed upon sentence is below the minimum Guideline sentence.