

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

UNITED STATES OF AMERICA	) Criminal No. 99-233
	)
v.	) Judge Clarence C. Newcomer
	)
TOKAI CARBON CO., LTD.	) FILED: 4/29/99
	)
Defendant.	)

GOVERNMENT’S RULE 11 MEMORANDUM

The United States and Tokai Carbon Co., Ltd. (Tokai Carbon) have entered into a plea agreement, pursuant to which Tokai Carbon will waive indictment and plead guilty to the captioned Information. The one-count Information charges Tokai Carbon 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 Tokai Carbon 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 Tokai Carbon may receive upon its conviction in this case is a fine in an amount equal to the largest of: (a) \$10 million; (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 Tokai Carbon'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

At all times relevant hereto, Tokai Carbon Co., Ltd., a Japanese corporation headquartered in Tokyo, Japan, manufactured graphite electrodes in Japan, and sold graphite electrodes in the United States and elsewhere. As alleged in the Information, beginning at least as early as July 1992 and continuing until at least July 1997, Tokai Carbon and certain competitor companies 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 and to coordinate price increases for the sale of graphite electrodes in the United States and elsewhere; and

- (2) to agree to allocate among the corporate conspirators the volume of sales of graphite electrodes in the United States and elsewhere.

For the purpose of forming and carrying out the charged combination and conspiracy, Tokai Carbon and co-conspirators did those things that they combined and conspired to do, including, among other things:

- (1) participating in meetings and conversations in the Far East, Europe, and the United States to discuss the prices and volume of graphite electrodes sold in the United States and elsewhere;
- (2) agreeing, during those meetings and conversations, to charge prices at certain levels and otherwise to increase and maintain prices of graphite electrodes sold in the United States and elsewhere;
- (3) agreeing, during those meetings and conversations, to eliminate discounts from the fixed price of graphite electrodes offered to customers in the United States and elsewhere;
- (4) agreeing, during those meetings and conversations, to allocate among the corporate conspirators the approximate volume of graphite electrodes to be sold by each corporate conspirator in the United States and elsewhere;
- (5) agreeing, during those meetings and conversations, to divide the world market among themselves, and to designate on a region-by-region basis, including the United States, the conspirator who would fix the price that others would follow in that region;
- (6) agreeing, during those meetings and conversations, to restrict graphite electrode producing capacity among the corporate conspirators;

- (7) agreeing, during those meetings and conversations, to restrict non-conspirator companies' access to certain graphite electrode manufacturing technology;
- (8) discussing, during those meetings and conversations, methods to conceal the agreement, including the use of code names by the corporate conspirators;
- (9) exchanging sales and customer information for the purpose of monitoring and enforcing adherence to the above-described agreement; and
- (10) issuing price announcements and price quotations in accordance with the agreements reached.

C. Interstate and Foreign Commerce

At all times during the conspiracy, Tokai Carbon, headquartered in Tokyo, Japan, or other conspirators from other locations, sold a substantial quantity of graphite electrodes in a continuous and uninterrupted flow of interstate and foreign commerce to customers located in states or countries other than the states or countries in which graphite electrodes were produced.

III

PLEA AGREEMENT

The guilty plea in this case will be entered pursuant to a plea agreement between Tokai Carbon and the Antitrust Division.

The plea agreement provides that Tokai Carbon will enter a plea of guilty in the Eastern District of Pennsylvania pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, to a one-count criminal Information charging the company with participating in a conspiracy to restrict competition by fixing the price and allocating the volume of graphite electrodes sold in the United States

and elsewhere from at least as early as July 1992 and continuing until at least June 1997 in violation of the Sherman Act, 15 U.S.C. § 1.

Also pursuant to the plea agreement, the United States and Tokai Carbon agree to jointly recommend that the Court impose a sentence requiring Tokai Carbon to pay a fine to the United States in the amount of \$6 million as an appropriate disposition of the case. The first payment in the amount of \$1.5 million will be due within 15 days from the date of imposition of sentence. Thereafter, the defendant shall make three payments, each on the yearly anniversary of the date of sentencing, according to the following schedule: \$1.5 million plus accrued interest on the first anniversary of the date of sentencing; \$1.5 million plus accrued interest on the second anniversary of the date of sentencing; and \$1.5 million plus accrued interest on the third anniversary of the date of sentencing. The United States and Tokai Carbon will also jointly request that the Court accept Tokai Carbon's guilty plea and immediately impose sentence on the day of arraignment.<sup>1</sup> Should the Court reject the agreed-upon disposition of the case, Tokai Carbon will be free to withdraw its plea.

Tokai Carbon has agreed to fully cooperate 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. Such cooperation includes, but is not limited to, the production of relevant documents under the control of Tokai Carbon. Tokai Carbon must also use its best efforts to secure, in connection with the present investigation and any litigation resulting therefrom, the full and truthful cooperation of current directors, officers and employees of Tokai Carbon, with

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<sup>1</sup> The United States is informed that Tokai Carbon will waive the presentence report.

relevant information who are identified by the United States. Such cooperation includes testifying truthfully in trial and grand jury proceedings.

Also pursuant to the plea agreement, the United States agrees, subject to the continuing full cooperation of Tokai Carbon, not to bring further criminal proceedings against Tokai Carbon 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. Subject to their continuing cooperation, current and certain former directors, officers, and employees of Tokai Carbon and its subsidiaries will receive the same non-prosecution protection.

Dated:

Respectfully submitted,

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