



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20. 07. 2000
C (2000) 2323

In the published version of this decision, some information relating to business secrets and other confidential information has been omitted. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE
ARTICLE 66 ECSC DECISION

COMMISSION OF THE EUROPEAN COMMUNITIES

Commission Decision

of 20. 07. 2000

**authorising Anglo American plc to acquire
Shell Coal Holdings Ltd.**

(Case COMP/ECSC.1331 – ANGLO AMERICAN/SHELL COAL)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 66(2) thereof,

Having regard to Decision No 24/54 of 6 May 1954 laying down in implementation of Article 66(1) of the Treaty a Regulation on what constitutes control of an undertaking,¹

Having regard to the EEA Agreement and in particular Article 27 and Protocol 25 thereof,

Having regard to the notification submitted by the parties by letter dated 19. June 2000 and to subsequent information ,

Whereas:

¹ OJ of the High Authority No 9, 11.5.1954, p. 345.

1. On the 19.06.2000, the Commission received a notification of a proposed concentration pursuant to Article 66 of the ECSC Treaty, whereby Anglo American plc (Anglo) acquires the entire share capital of Shell Coal Holdings Ltd (Shell Coal).
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of Article 66 of the ECSC Treaty.

I. THE PARTIES

3. Anglo is a company listed on the London Stock Exchange, which maintains secondary listings on the Johannesburg Stock Exchange and the Swiss Exchange. Its main activities are :

- Mining of gold, platinum group metals, diamonds and base metals
- Production of industrial minerals
- Production of ferrous metals
- Production of forest products

Anglo also has investments in other industries including financial services. Anglo produces coal only outside the EEA (South Africa and Colombia) but distributes that product within the EEA.

4. Shell Coal is a wholly owned subsidiary of the UK and Netherlands based Shell Group. It is active in the exploration, production and sale of hard coal. The majority of its assets are in Australia but it has an interest in Venezuela through a joint venture, Carbones de Guasare SA (CDG). It, therefore, does not produce coal within the EEA but distributes hard coal via a marketing operation based in London.

II. THE OPERATION

5. The transaction involves the transfer of Shell Coal's entire share capital to Anglo for a cash consideration.

III. CONCENTRATION

6. As a result of their involvement in the distribution of hard coal within the Community, Anglo and Shell Coal are undertakings within the meaning of Article 80 of the ECSC Treaty, read in conjunction with Annex I of this Treaty.
7. Anglo is also a steel distributor. It holds a 74% share in Highveld Steel and Vanadium, which has joint control of Columbus (an unincorporated joint venture). One of Columbus' subsidiaries is Cromweld Steels Ltd, a steel stockholder in the United Kingdom.
8. The acquisition of control of Shell Coal by Anglo will result in a concentration within the meaning of Article 66(1) of the ECSC Treaty.
9. The proposed operation requires prior authorisation because the total annual Community coal distribution (approximately 17 million tonnes) of the undertakings exceeds the thresholds set out in Article 1(1)(a) and Article 4 of High Authority Decision No 25-67 of 22 June 1967 laying down in implementation of Article 66(3) of the Treaty a

regulation concerning exemption from prior authorisation,² as amended by Commission Decision No 3654/91/ECSC of 13 December 1991.³

IV. ASSESSMENT UNDER ARTICLE 66(2)

10. The proposed merger may be authorised under Article 66(2) of the ECSC Treaty if it does not give the undertakings concerned the power:

- to determine prices, to control or restrict production or distribution or to hinder effective competition in a substantial part of the market for these products; or
- to evade the rules of competition instituted under the Treaty, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets.

A Relevant product market

11. Both Anglo and Shell Coal produce hard coal, which is exported to the EU and elsewhere. The relevant product market is, therefore, the sale of hard coal. The Commission distinguishes between imported coal and EU-produced coal. The latter is almost exclusively consumed in the country of production and does not even there meet the whole demand, has lower transport costs and lower stock requirements, is subsidised (except the UK-production) and subject to strong social and political pressures to use coal produced in the country concerned. On the other hand, imported coal is traded on equal terms on an at least EEA-wide bases. This view was supported by the market investigation. The competition effects were, therefore, analysed in relation to the sale of imported coal.

12. In the previous decisions, RAG/Saarbergwerke/Preussag Anthrazit case (IV/ECSC.1252) and Shell/Carbones del Zulia/Ruhrkohle (Case IV/ECSC.1306), the Commission left open the question of whether this market could be further subdivided into three smaller markets for :

- coal for electricity generation,
- coal for the steel industry, and
- coal for other industrial users

13. This market definition was largely confirmed by the market investigation, though some respondents suggested that there were only two segments: (a) coal for thermal use (for the electricity industry and other industrial users) and (b) coking coal (for the steel industry).

14. It is not necessary to decide whether and in which way the market should be sub-divided any further, as even on the narrowest definition the operation does not raise competition problems.

B Relevant geographic markets

² OJ No 154, 14.7.1967, p. 11.

³ OJ L 348, 17.12.1991, p. 12.

15. Further in the RAG/Saarbergwerke/Preussag Anthrazit case, the Commission concluded that the conditions on the German coal market were, as a result of the operation of the German coal subsidy regime, different to those elsewhere in the Community. This subsidy regime enables German mines to sell coal to the electricity generating and steel industries at world prices. The Commission also considered that the subsidised coal supplied to the electricity generating and steel industries from German mines could be excluded from the competitive analysis, because this coal had certain practical advantages for German consumers, including proximity to the source and lower stock requirement and was not more expensive. In addition, there are strong social and political pressures to use German coal in Germany. The competition effects in the RAG/Saarbergwerke/Preussag Anthrazit case were, therefore, analysed in relation with the German market for unsubsidised coal. Nothing in the present case indicates that the appraisal should be different.
16. The argument that countries in which the indigenous producers receive state aid constitute separate relevant geographic markets can also be extended to Spain and France, and potentially to the United Kingdom (at present the United Kingdom does not grant aid to its coal industry but it intends to in the future). However, in the remaining countries of the European Union conditions of competition are the same. All potential purchasers have access to world suppliers and there are no political or social pressures which would encourage them to use indigenous coal, nor are there any indigenous suppliers who would have the advantage of proximity. The remainder of the European Union, that is excluding Germany, Spain, France and the United Kingdom, is, therefore, a single relevant geographic market. As only Germany, Spain, France and the United Kingdom have indigenous coal production, coal consumed in the remaining countries is imported.

C Assessment

17. The combined market share of the parties for coal imported into the European Union would be about [5-15]%. Their share of all coal sold in the European Union as a whole would be about [0-10]%.
 18. In the eleven countries of the European Union where all coal is imported the parties' combined shares in each of the three segments are as follows
- Electricity industry, [10-20]% (Shell Coal [0-10]%, Anglo [5-15]%)
 - Steel industry, [0-10]% (Shell Coal [0-10]%, Anglo [0-10]%)
 - Other industry, [15-25]% (Shell Coal [5-15]%, Anglo [5-15]%)
19. In Germany, Spain and the United Kingdom the proposed operation will have no effect on the market for supply to the steel industry because there will be no aggregation of market shares. Anglo does not supply coking coal, which makes up the bulk of the steel industry's purchases. Anglo's limited sales, less than [0-10]% of consumption, to the steel industry in France were for direct injection into blast furnaces. Shell Coal supplied about [10-20]% of the French steel industry's needs.
20. It has proved difficult to obtain reliable figures for the breakdown between indigenous (subsidised) and imported coal supplied for the electricity generation and for other industrial uses in Germany, Spain, France and the United Kingdom. However, these consumers use steam coal and not coking coal. Small tonnages of steam coal are also used in the steel industry for direct injection into blast furnaces. Nevertheless, the sales of imported steam coal are a reasonable approximation for non- coking coal, that is the

combined sales to the electricity generators and to other industrial users. On this basis the parties' combined market shares for imported hard coal would be as follows:

- Germany [15-25]% (Shell Coal [0-10]%, Anglo [10-20]%)
- Spain [20-30]% (Shell Coal [0-10]%, Anglo [20-30]%)
- France [5-15]% (no overlap, as only Anglo is active.)
- United Kingdom [15-25]% (Shell Coal [10-20]%, Anglo [0-10]%)

21. On the market for imported coal for electricity generation in Germany, Spain and the United Kingdom, it does not appear on the basis of estimations made by the parties that the parties' combined market share would exceed [20-30]%.
22. On the market for imported coal for other industrial uses in the above mentioned countries market shares will remain considerably below 25%. The only exception is the market for sales in the United Kingdom, where the parties' combined market share is about [40-50]%. However, there are two main reasons why this market share would not give the parties the possibility of evading the ECSC competition rules. First, the market for imported coal is very well developed in the UK (total imports were nearly 20 million tonnes, so that customers will easily be able to find alternative sources of coal to the parties. Secondly, the main United Kingdom producer, RJB Mining has costs that are reasonably close to world market prices. The parties' ability to raise prices in this particular segment would, therefore, be restrained both by other importers and by the indigenous producer.
23. In case the market should also comprise domestic coal, the market shares of the parties would be even lower. In any case the parties will face competition from other coal importers including companies operating on a larger scale than the parties. These include Rio Tinto, Ruhrkohle (via its subsidiaries in USA, Australia and Venezuela), RWE (via its US-based subsidiary Consol) and Billiton. Weglokoks, the Polish exporter, is also a major player on the European market.
24. Customers are generally large and sophisticated. Electricity generators and cement companies purchase the bulk of the non-coking coal sold in the European Union. These companies are aware of international suppliers and are capable of making alternative arrangements if their current suppliers do not supply the coal they want at prices they consider to be reasonable. In fact most of them operate tender systems for their requirements and customer loyalty is not a feature of these markets.

V. ANCILLARY RESTRAINTS

25. The parties have asked that the provisions of Section 6 of the Share Purchase Agreement (which provides that Shell may not make substantial changes to the acquired business between the signing of the agreement and the completion of the transaction) and Section 11 of the Agreement (which provides that the parties must keep the information exchanged in the course of the negotiations confidential) be considered as ancillary restrictions. The Commission considers that, in this case, these arrangements form part of the operation itself.

VI. CONCLUSION

26. In the light of the above considerations, the Commission has reached the conclusion that, whichever product market definitions are used, the proposed merger would not give the undertakings concerned the power

- to determine prices, to control or restrict production or distribution or to hinder effective competition in a substantial part of the market for these products; or
- to evade the rules of competition instituted under the Treaty, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets to hinder effective competition or to evade the rules of competition instituted under the ECSC Treaty, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets.

27. Since the requirements of Article 66(2) of the ECSC Treaty are thus met, the proposed merger may be authorised,

HAS ADOPTED THIS DECISION:

Article 1

The acquisition of Shell Coal Ltd by Anglo American plc is hereby authorised under Article 66(2) of the ECSC Treaty.

Article 2

This Decision is addressed to:

The notifying party

Done at Brussels, 20.07.2000

For the Commission