

***Case No COMP/M.3161 -  
CVRD / CAEMI***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(2) NON-OPPOSITION  
Date: 18/07/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18/07/2003

SG (2003) D/230884

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(2) DECISION

*To the notifying party*

Dear Sirs,

**Subject: Case No COMP/M.3161 – CVRD / CAEMI  
Notification of 22.04.2003 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup>**

1. On 22.04.03, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Companhia Vale do Rio Doce (“CVRD”-Brazil) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Caemi Mineracao e Metalurgia S.A. (“Caemi”-Brazil), currently under joint control by CVRD and the Japanese company Mitsui & Co., Ltd, by way of purchase of shares.
2. This notification was declared incomplete on 06.06.2003. The undertakings concerned provided the further information required and the notification became complete, within the meaning of Article 10(1) of Council Regulation (EEC) No 4064/89, on 12.06.2003. Accordingly, the notification became effective on 13.06.2003.
3. The Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market.

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<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

## **I. THE PARTIES AND THE OPERATION**

4. CVRD is a Brazilian-based mining company active in the production and selling of iron ore, manganese ore, ferrous alloys, non-ferrous metals, kaolin, metallurgical bauxite and fertilizers. It also has related logistics operations (i.e. railway, port and shipping) in Brazil.
5. Like CVRD, Caemi is a Brazilian company present in the mining industry. It produces and sells iron ore, kaolin and refractory bauxite, and is also involved in associated logistics operations.
6. The planned operation consists of the acquisition by CVRD of the common and preference shares currently owned by Mitsui in Caemi. Since CVRD is already present in the shareholding of the target company, this transaction will give rise to a change from joint to sole control. The acquisition of joint control by CVRD and Mitsui took place in the framework of a previous operation cleared by the Commission in October 2001<sup>2</sup> (“the first transaction”), following a thorough second-phase investigation.
7. The notified operation takes place within the framework of a broader agreement by virtue of which Mitsui sells its shares in Caemi to CVRD and uses the proceeds to partially finance its acquisition of a 15% shareholding in Valepar, S.A, the controlling shareholder in CVRD.

## **II. CONCENTRATION**

8. The proposed operation is therefore a concentration within the meaning of Article 3(1) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>3</sup>. Each of CVRD and Caemi have a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

## **IV. COMPETITIVE ASSESSMENT**

10. Both parties are active in the extraction of kaolin, bauxite and iron ore. However the only affected markets are those for iron ore.

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<sup>2</sup> Case M. 2420 - Mitsui/CVRD/Caemi.

<sup>3</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p. 25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

**A. The relevant markets : seaborne iron ore markets for fines, pellets and lump**

11. In line with the approach adopted by the Commission when clearing the acquisition of joint control by CVRD and Mitsui of Caemi, the market analysis in the present case focuses on the production and sale of iron ore, the vast majority (over 99%) of which is used to produce steel.
12. With regard to the relevant market definition in the present case, the notifying party supports the product and geographic segmentations retained in the *Mitsui/CVRD/Caemi* case. In that decision the Commission identified three different iron ore product markets - fines, lump and pellets - on the basis of the differences in their production, their uses and their prices.
13. Fines consist of iron ore particles less than 6mm in diameter. They are the cheapest form of iron ore but cannot be used directly in the blast furnace. They have to be further processed to produce either sinter or pellets. The sintering process must be carried out close to the blast furnace as sinter is fragile. It is invariably carried out by the steel makers who run their sinter plants at capacity. They use lump or pellets to make up the rest of their requirements.
14. Lump is iron ore above 6mm in diameter and can be charged directly into the blast furnace. On the basis 100 is the price of fines , the price of lump would be 122. Lump can be theoretically transformed into fines but this would involve expenditure for additional crushing. However it makes no sense to incur additional costs to produce a lower value product.
15. Pellets are usually made the iron ore miner. They require extensive facilities and are much more expensive than either fines or lump (index 176). As a result pellets are used increase output or when lump, the supply of which is restricted is not available. Demand for pellets is more volatile than for fines and lump.
16. Moreover, there were strong indications that iron ore for “DR” (direct reduction) production formed separate product markets were found, the earlier decision did not reach a conclusion on this issue as the competitive situation was the same whichever definition was used.
17. As to the geographic scope of the iron ore markets for pellets, fines and lump, the Commission indicated that it comprised all seaborne customer areas, that is to say, all regions fully or partly dependent on seaborne supplies.
18. The results of the market investigation undertaken in relation to the first transaction showed that competitive (supply and demand) conditions were substantially uniform in those regions and significantly distinct from conditions existing in inland areas, in terms of i). type and costs of transportation; ii). price patterns; iii). customer choice (products and suppliers); iii). quality of products (proportion of iron content); and iv). product mix.
19. The Commission also indicated that no further distinction should be made between seaborne areas, particularly between Western Europe and East Asia. In effect the differences in supply and demand conditions were insufficient to justify the existence of narrower geographic markets because : i). most seaborne suppliers sold in most seaborne

areas, and most seaborne customers bought from the larger iron ore producers; ii). the fact that benchmark price levels and contractual conditions were effectively based on overall market conditions in the seaborne market, and were not significantly determined by local factors, was a decisive element for the Commission's conclusion on further geographic segmentation.

## **B. Impact of the proposed transaction**

### **B.1. Competition concerns identified in the first case**

20. The second-phase investigation carried out in 2001 with regard to the *CVRD/Mitsui/Caemi* case identified serious competition concerns in i). the market for the supply of iron ore pellets to all seaborne customer areas; ii). the hypothetical market for the supply of DR pellets to all seaborne customer areas, and iii). the hypothetical market combining DR pellets and DR lump to all seaborne customer areas.
21. In order to remove those concerns, the parties agreed to the divestiture of Caemi's 50% stake in Québec Cartier Mining Company ("QCM"), a Canadian producer of fines and pellets which is jointly controlled by Caemi and Dofasco. This remedy eliminates all the overlaps in pellets, DR pellets and DR pellets and DR lump identified by the Commission and thus removes the competition concerns. Substantial progress has been made on the implementation of this remedy, although the commitment has not yet been discharged.

### **B.2. Current market investigation**

#### Relevant markets definition

22. The market investigation has confirmed that the division of iron ore into three distinct relevant product markets, fines, lump and pellets remains valid.
23. Over the last two years, demand from China has become a major source for growth in the iron ore industry. According to data submitted by customers and competitors in the course of the proceedings, the Chinese purchases have increased by over 20% in each of the last three years. This increased Chinese demand has resulted in:
- a). a tightening effect on overall supply and demand equilibrium for all types of iron ore;
  - b). an increase of potential suppliers and of global capacity in the industry which will re-balance supply and demand, most producers having confirmed plans for expansion in the medium term. In this context CVRD indicates that, according to internal estimates based on independently announced projects<sup>4</sup>, a global capacity expansion of

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<sup>4</sup> Brazil. MBR : TR - 31.07.2002.

Australia. BHP Billiton : Metal Bulletin - 23.04.2003; Tex Report - 25.04.2003; Tex Report - 26.11.2002; Metal Bulletin - 24.06.2002 / Hamersley : thewest.com.au - 03.05.2003; Metal Bulletin - 06.05.2003 / Robe River : Tex Report - 27.11.2002 / Portman : Metal Bulletin - 01.04.2003; Metal Bulletin - 02.04.2003; Australian Financial Review - 02.04.2003; Tex Report - 08.04.2003; Metal Bulletin - 14.01.2002; Hope Downs : TR - 28.11.2002 / Mount Gibson : Metal Bulletin - 04.04.2003; Tex Report - 08.04.2003; Tex Report - 06.12.2002.

about 25% (160 Mt) is foreseen for the period 2002-2005. Of this, around 43% (70 Mt) would come from Australian producers.

24. However, according to the large majority of the respondents, the expansion of Chinese demand has not resulted in the creation of two relevant geographic markets for iron ore. Most suppliers of iron ore still sell in both Pacific and Atlantic areas. In particular, the leading Pacific (primarily Australian) producers continue to sell substantial volumes of iron into Western Europe (Australian exports accounted for 22.89Mt in 2002)<sup>5</sup>, while a substantial number of Atlantic suppliers (primarily Brazilian) continue to make significant sales to Pacific customers (CVRD, main exporter, increased its sales into the Far East from 59.5 Mt in 2002 to 73.7 Mt in 2002)<sup>6</sup>. Furthermore, most major customers continue to purchase from Australian, Brazilian and other producers.

#### Market dynamics and price settling

25. The market investigation also confirms that contractual practice and pricing policy in the industry follow the patterns as identified in the *Mitsui/CVRD/Caemi* case. Supply contracts continue to be for 3-5 years, with prices being revised annually. The price settlement process is still based on a mechanism by which negotiations between the large iron ore and steel producers take place simultaneously in both major seaborne areas (Western Europe and in East Asia, more specifically Japan) at the beginning of each year. The objective of those price negotiations is to set a reference price (the so-called “benchmark prices”) for the various iron ore products, in each of the two customer areas.
26. Following the determination of reference prices (which are made public), individual negotiations between producers and customers commence, before final prices are agreed. As in the first transaction, the results of the market investigation show that the settlement of final prices typically involve the agreement of discounts. The most significant factor influencing these discounts is overall supply and demand, rebates tending to follow the business cycle. Price adjustments are also determined by elements such as purchasing volume, relationship with customer, value-in-use considerations, etc. Consequently, the levels of discounts may vary over time from customer to customer, from one type of iron ore to the other. Most rebates are highly confidential in nature and may represent a sizeable proportion of the benchmark price.

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Canada. *IOC* : Tex Report - 04.02.2003; Metal Bulletin - 20.11.2000.

South Africa. *Kumba Resources* : AllAfrica.com - 03.01.2003; Metal Bulletin - 16.09.2002.

India. *Hy-Grade Pellets* : Metal Bulletin -24.04.2003 / *Goan exporters* : Metal Bulletin -17.04.2003 / *Tisco* : Metal Bulletin - 10.04.2003 / *NMDC, KIOCL and Sail*: Metal Bulletin - 04.04.2003 / *MPT* : goanews.com - 03.04.2003 / *KIOCL* : Metal Bulletin - 02.04.2003 / *Sail and NMDC* : Metal Bulletin - 01.04.2003 / *Tisco* : Tex Report - 01.04.2003 / *MMTC, NMDC, KIOCL, MSPL, Tisco and Sesa Goa* : Noticias RDI - 14.03.2003 / *Sail* : Financial Express - 28.03.2003 / *KIOCL* : Noticias RDI - 23.03.2003 / *Sesa Goa* : Metal Bulletin -15.04.2002.

<sup>5</sup> Data provided by Australian producers in the course of the market investigation.

<sup>6</sup> Data provided by CVRD in the course of the market investigation.

27. The negotiations above continue to be based on the competitive situation at the global seaborne level, and the benchmark prices therefore reflect the overall balance of supply and demand in the seaborne sector. Furthermore, reference prices in East Asia and Western Europe are closely related. The following table shows the price changes agreed both in Asia and Europe for the period 2000-2003.

Changes in benchmark prices for both Asian and European areas

	2000	2001	2002	2003
<b>Fines</b>	+ 4.3%	+ 4.3%	- 2.4%	+ 9.0%
<b>Lump</b>	+ 5.8%	+ 3.2%	- 5.0%	+ 8.9%
<b>Pellets</b>	+ 6.0%	+ 1.0%	- 4.7%	+ 9.7%

Data provided by third parties in the course of the market investigation

CVRD's position on the affected markets

28. As to overlapping activities, it must be noted that the parties' combined position in the production and distribution of the various types of iron ore exceeds 15%. The table below shows combined volume shares of CVRD (including all jointly or solely controlled subsidiaries) and Caemi for the seaborne (world-wide) iron ore markets, for the years 2000 (before the first operation), 2001 and 2002. The data for the years 2001/2002 have been provided by CVRD. The market shares for the year 2000 are those retained by the Commission in its previous decision.

Market shares for CVRD+Caemi %

	Fines	Lump	Pellets
<b>2000</b>	[35-45]%	[15-25]%	[50-60]%
<b>2001</b>	[30-40]%	[10-20]%	[50-60]%
<b>2002</b>	[35-45]%	[15-25]%	[55-65]%

29. CVRD's market shares for 2000 include iron ore sourced from independent Brazilian mines and blended into iron ore supplied to EU steel mills. In general terms, purchases of surplus production to seaborne suppliers, such as CVRD, are a long-standing and well-established feature of the Brazilian industry. Since supplies from independent mines are usually more expensive than iron ore mined in a seaborne supplier's own facility, surplus purchases only take place when needed to meet demand that could not otherwise be satisfied.
30. In this context, CVRD has a number of non-exclusive agreements with independent mining companies in Brazil (such as Casa de Pedra, controlled by steelmaker CSN), the extent of purchases having varied according to changes in domestic and seaborne demand. Recent supplies have typically been used to satisfy increased demand from Chinese and other non-EU steel companies. In the year 2000, CVRD purchased around 8.7 Mt from independent suppliers, whilst purchases in 2001 and 2002 were, approximately, 10.5 Mt and 5.7 Mt, respectively. The amounts of iron ore outsourced by CVRD in 2002 only represent around 3.3% of its 2002 seaborne sales for fines, lump and pellets (169.2 Mt), having decreased with regard to those retained by the Commission when assessing the previous transaction.

31. CVRD's agreement with CSN involves a right of first refusal on purchase of iron ore from Casa de Pedra surplus to CSN's own needs. In response to increase in global demand for seaborne iron ore, CVRD has exercised such a right for the first time this year and purchased around [...] Mt of iron ore, which only represents approximately [0-5]% of CVRD's total 2002 global seaborne sales and less than [0-5]% of total global seaborne sales.
32. In view of the market shares and considerations above, it can be concluded that CVRD's competitive position has remained substantially stable over the last 18 months, compared to the market shares (year 2000) retained by the Commission when examining the first transaction. Indeed, CVRD's share for fines has decreased by [0-5]%, whilst the company's position on the market for lump remains the same and its share for pellets has not experienced a significant increase, some [0-5]%. It should be noted that a disproportionate part of this increase derived from additional sales by QCM.
33. No new vertical issues have been identified with regard to the present operation. CVRD continues to have limited activities in the production and sale of steel and Caemi is not active in steel production.

#### Caemi's commercial strategy in the future

34. According to CVRD, it and Mitsui have always shared common interests in the joint venture expanding capacity, increasing market shares and maximising sales and profits. [...]. In this context, it seems reasonable to expect that, following the present transaction, the target's conduct in the affected markets will not substantially change.
35. Furthermore, the existing links between the notifying party and the target must be taken into consideration when assessing the competitive impact of the operation at stake. Indeed, CVRD would have sole control over the running of a company over which it is already exerting a decisive influence in terms of market strategy, as a result of the previous transaction above. It must be also underlined that, in contrast to CVRD, which has traditionally had a considerable expertise in the producing and selling of iron ore, Mitsui is a trader that has not been independently active to a significant extent in the said activities. The Japanese company has confirmed to the Commission that, given CVRD's significant expertise in the iron ore industry (which it lacks), Mitsui was not involved in Caemi's day-to-day management or decision-making process.
36. Consistent with the Commission's approach in the past<sup>7</sup>, these considerations confirm CVRD's predominant role in the running of Caemi during the joint venture's life span. Moreover, Mitsui is not withdrawing from Caemi or the iron ore industry but is becoming a reference shareholder in Valepar, S.A, the controlling shareholder in CVRD, and consequently retaining its presence.
37. Furthermore, in line with the Commission's approach in previous cases<sup>8</sup>, the affected markets in the *Mitsui/CVRD/Caemi* case were analysed as if CVRD had been acquiring

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<sup>7</sup> Case IV/M. 259 - British Airways/TAT.

<sup>8</sup> Cases COMP/JV.42 - Asahi Glass/Mitsubishi/F2 Chemicals; case IV/JV.1 - Telia/Telenor/Schibsted and case COMP/M.1915 - The Post Office/TPG/SPPL.



the whole of Caemi, being also assumed that these two companies would operate as a single entity. In fact, 100% of the respective market shares were taken into account when assessing the scope of the overlaps.

### **B.3. Conclusion**

38. In the light of all of the considerations above it can be concluded that the notified operation, a change from joint to sole control, has no significant impact on the affected markets. It does not alter the pre-existing competitive situation resulting from the previous transaction, no additional competition concerns having been identified by the Commission.

## **V. REMEDIES**

39. In this context, since the remedy attached to the original decision in the *Mitsui/CVRD/Caemi* case has not yet been fully implemented, CVRD has offered to assume full responsibility for complying with the commitments submitted jointly by CVRD and Mitsui in the case above, subject to the same rights and conditions, as amended from time to time. Mitsui would be released from any further obligations in that regard as this company will no longer have control over Caemi.

40. This is consistent with the Commission's practice in previous cases<sup>9</sup> and appears to be the solution which the Commission's market investigation has identified as the most appropriate one, due to the following considerations :

- The Commission's market investigation has shown that there have been no significant changes to the markets for iron ore or to the relative position of the various players on this market.
- No new competition concerns arise from the operation. In fact the withdrawal of Mitsui results in a slight reduction in the combined market share, since Mitsui controls a mine in India.
- The remedy accepted in the *Mitsui/CVRD/Caemi* case remains valid since, by eliminating the overlaps in pellets, DR pellets and DR pellets and DR lump, it removes the competition concerns that were identified by the Commission with regard to the first transaction and still exist at the present moment.
- In the light of the preceding consideration, there is no reason to believe that CVRD is less likely or able to implement the undertaking than CVRD and Mitsui together. [...].

## **VI. CONCLUSION**

41. For the above reasons, and subject to full compliance with the undertakings referred to in section V, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This

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<sup>9</sup> See cases COMP/M.2761 – BP/Veba Oel, and COMP/JV.56 – Hutchinson/ECT.

decision is adopted in application of Article 6(2) of Council Regulation (EEC) No 4064/89.

For the Commission

Signed by Mario MONTI  
Member of the Commission