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Case No COMP/M.3276 - ANGLO AMERICAN / KUMBA RESOURCES

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.12.2003

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: **Case No COMP/M.3276 – ANGLO AMERICAN / KUMBA RESOURCES**
Notification of 31.10.03 pursuant to Article 4 of Council Regulation No 4064/89[1] (Merger Regulation)

1. On 31.10.2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, by which the undertaking Anglo American plc (« Anglo American », United Kingdom) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Kumba Resources Limited (« Kumba », South Africa) by way of public bid announced on the same day.

2. After examination of the notification, 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 and with the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. Anglo American is a diversified mining and natural resources company. It has subsidiaries and investments in mining for gold, platinum group metals, diamonds (solely through its 45% interest in De Beers SA), coal, base and ferrous metals

1 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).

and industrial minerals and it also has manufacturing activities for paper and packaging products. Anglo American's operations are geographically diverse, with operations in Southern Africa, Europe, Russia, South and North America and Australia.

4. Kumba is a South African company. Iscor Limited ("Iscor") (South Africa's largest steel company) demerged its mining operations into Kumba, a newly created company, in November 2001. Kumba's main activity is the mining and processing of iron ore, coal, zinc and mineral sands in South Africa where its main operations are located.

5. In 2002 and 2003, Anglo American acquired several blocks of shares in Kumba, leading to a total shareholding of 24.99% and an option to acquire a further 10.02% of Kumba. Further to these acquisitions, on 31 October 2003 Anglo American announced a public offer to purchase all the remaining shares of Kumba.

II. CONCENTRATION AND COMMUNITY DIMENSION

6. As a result of the public offer, Anglo American will be in a position to acquire sole control of Kumba Resources. The operation thus constitutes a concentration within the meaning of Article 3(1)(b) of Council Regulation (EEC) No. 4064/89, as amended.

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2,5 billion (Anglo American 21,7 billion and Kumba 519 million), a combined aggregate turnover of more than EUR 100 million in nine Member States. Both companies have an aggregate community turnover of more than EUR 100 million (Anglo American EUR […] and Kumba EUR […]) and realise an aggregate turnover of more than EUR 25 million in three of the nine above-mentioned Member States, Austria, Germany and United Kingdom, 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 pursuant to article 1(3) of the Merger Regulation.

III. THE RELEVANT MARKETS

8. According to the parties, the concentration generates overlaps in the markets for Hard Coal, Chloride Titanium Dioxide Feedstocks, Nodular Pig Iron, Zinc and Zircon. However the merging parties' activities overlap to a significant extent and their combination reaches an appreciable level only for Zircon and Titanium Dioxide Feedstocks. For the other minerals the overlap is de minimis[2] without any possible harmful effect on competition. The remaining of the decision will deal only with Zircon and Titanium Dioxide Feedstocks.

[2] In the market for thermal hard coal in France the combined market share will be of [20-30]% but the overlap is less than [0-5]%.

a. Relevant product markets

9. Zircon is used predominantly in ceramic applications (around 50%) but also in foundry products (the facings on moulds or for containing molten metals), refractory products, zircon chemicals and in TV glass. A small amount is also converted into zirconium metal. The parties submitted that the various grades of Zircon (depending on the level and the type of impurities) constituted one and the same product market given that most customers (Zircon millers which represent almost 70% of the demand for this mineral) blend various grades of Zircon and could thus easily substitute one grade with another.

10. The market investigation has indicated that there are different grades for the Zircon, depending on the content in other minerals (primarily, Iron and TiO_2) and the size of the particles; these parameters seem to be relevant for the certain uses and are, to some extent, also reflected in price differences. However for the purpose of this decision, the question as to whether the different grades of Zircon should be considered as distinct markets can be left open, since, whatever the definition, the notified concentration would not lead to the creation or strengthening of a dominant position.

11. The minerals grouped as Titanium dioxide feedstocks (ilmenite, rutile, sulphate slag, chloride slag, leucoxene, synthetic rutile and chloride grade ilmenite) are primarily used (95%) in the production of titanium dioxide pigments, which are in turn used to produce paints, plastics, paper and to a lesser degree inks, ceramics and fibres. For the remaining 5-10%, Titanium dioxide feedstocks are used for the production of titanium metal, welding electrode fluxes and other minor applications.

12. The market investigation has not indicated, apart from their content of Titanium Dioxide, the existence of specific characteristics of each mineral to distinguish among them.

13. Titanium dioxide pigments are manufactured using through two processes: the chloride route (which accounts for approximately 60% of titanium dioxide consumption globally) and the sulphate route (which accounts for the remaining 40%). In addition to the chemical process being different, the two processes use different raw materials and produce different quantities and types of waste products which entail different costs. The parties thus submitted that the Sulphate route and the Chloride route Titanium Dioxide feedstocks constituted two distinct product markets.

14. However for the purpose of this decision, the extent to which the various minerals of the Titanium dioxide feedstocks are substitutes and question as to whether the two above-mentioned routes should be considered as distinct markets can be left open, since, whatever the definition, the notified concentration would not lead to the creation or strengthening of a dominant position.

b. Relevant geographic market

15. Anglo American operates the Namakwa Sands mine in South Africa and Kumba one in South Africa (through its subsidiary Ticor South Africa) and one in

Australia (through its subsidiary Tiwest). Most competitors' mines are also located in South Africa and Australia. Some Titanium Dioxide feedstocks are also extracted from rock mines in Quebec (Canada) and in Norway.

16. The demand for these minerals is mainly concentrated in North-America, Europe and Asia. The parties submitted that the market for each of these two products is worldwide in scope, given that all the main regions of consumption source significant volumes from both Australia and South-Africa, the prices in these various consumption regions underwent similar fluctuations and the mix of supply between Australia and South Africa for a given consumption area varied over time.

17. However, whether the geographic markets for these minerals are worldwide in scope or limited to narrower regions such as the EEA does not impact on the outcome of the present decision and can therefore be left open.

IV. COMPETITIVE ASSESSMENT

a. Titanium Dioxide feedstocks

18. Based on the information provided by the merging parties and sourced form independent consultants, Anglo American will hold market shares of [10-20]% in Chloride route Titanium Dioxide feedstocks (Anglo: [0-10]%; Kumba: [0-10]%) worldwide. Two other players hold significantly higher worldwide market shares: [30-40]% for Rio Tinto/RBM[3] and [20-30]% for Iluka[4]. In the EEA the parties' market shares are around [20-30]% with Rio Tinto/RBM holding [40-50]% and Iluka [20-30]% of the market.

19. Whatever the other possible market definitions considered, the merged entity always faces at least one competitor holding much higher market shares. For instance, if the different minerals used as feedstocks were considered as distinct markets, the merged entity's European market shares would respectively be at a level of [10-20]% for Chloride slag (Rio Tinto: [80-90]%), [10-20]% for Rutile (Iluka: [40-50]%), [0-5]% for sulphate slag (Rio Tinto: [70-80]%), [0-5]% for sulphate ilmenite (Cable sands: [10-20]%). On the worldwide level, the merged entity's market shares for each mineral are similar or lower.

20. The market investigation has not revealed any competitive concern regarding the supply of Titanium Dioxide feedstocks. The customers have indicated that this merger would reinforce the position of Anglo American as a more effective competitor in the market. It should also be noted that there have been several new entrants or capacity expansions into the Titanium Dioxide Feedstock industry

3 Rio Tinto's activities in this market comprise both the wholly owned subsidiary Qit-Fer et Titane (QIT), operating in Canada, and the controlled company Richard Bay Minerals (RBM), operating in South Africa. The former produces only titanium feedstock, while the latter also zircon.

4 Iluka Resources Limited is a mineral sands mining and processing company with operation in Australia and United Stated. All these sited produce titanium and zircon feedstocks.

during the past five years and others are expected in the coming years. There is therefore a limited risk of a reduction in the choice of customers.

21. On the demand side, few important purchasers account for a large amount of consumption of Titanium Dioxide feedstocks. Each one buys these minerals from multiple suppliers. This enables them to monitor on a constant basis their competitive behaviour on a market where there is little transparency over the behaviour of competitors. Therefore, it is possible to exclude that this acquisition could lead to a collective dominance position in the supply of Titanium Dioxide Feedstock.

b. Zircon

22. In Zircon, the merged entity would enjoy a combined market share of [20-30]% worldwide (Anglo: [0-10]%; Kumba: [10-20]%), and [30-40]% in the EEA (Anglo: [20-30]%, Kumba: [10-20]%) in line with the two other major players: RBM/Rio Tinto ([20-30]% worldwide, [20-30]% in the EEA) and Iluka ([30-40]% worldwide, [30-40]% in the EEA). The largest remaining player has only [0-10]% worldwide (Dupont) and [0-10]% in the EEA (Cable Sands). The market investigation has not revealed any possible competitive concern resulting from this merger, in the form of single dominance or collective dominance.

23. In particular, all respondents to the market investigation have confirmed that the various grades of Zircon were widely available and could be sourced from a number of producers and that the transaction would not affect this fact.

24. Besides, as regards the risk of collective dominance, the market for Zircon seems not to be very transparent: No international index is used to form the prices for Zircon. These are set up through bilateral negotiations with each customer and cannot easily be known by the other competitors. In addition, the various mines incur costs of different natures and produce zircon of different qualities.

25. Besides, the reserves of Zircon are significant and new mines have been discovered by various companies; therefore, an increase in the production level is expected in the next years and may significantly modify the structure of competition. It has indeed to be borne in mind that the current production results from the exploitation of one to three mines only for each producer (only one in the case of Anglo-American). Therefore, the launching of a new mine can allow a so-far minor player to compete with the current three main players. Consequently, the creation of a collective dominant position as a consequence of the proposed operation can be excluded.

VII. CONCLUSION

26. For the above reasons, 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 decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission

Mario MONTI
Member of the Commission