

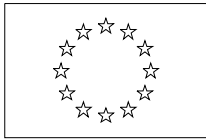
***Case No COMP/M.2062 -
RIO TINTO / NORTH***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 01/08/2000

*Also available in the CELEX database
Document No 300M2062*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **01/08/2000**

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sirs,

Subject: Case No COMP/M.2062 – Rio Tinto / North

Notification of 30.6.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 30.06.2000, Rio Tinto notified to the Commission a concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹.
2. The above mentioned notification concerns the public bid by Rio Tinto Investments Two Pty Limited, a company controlled by the Rio Tinto group (Rio Tinto plc, London, UK and Rio Tinto Limited, Melbourne, Australia) (“Rio Tinto”) for all the outstanding shares of North Limited (Melbourne, Australia) (“North”).
3. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

4. The Rio Tinto group is a dual listed companies structure, composed of Rio Tinto plc and Rio Tinto Ltd. The formation of Rio Tinto was approved by the Commission in

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).

application of Art. 6.1(b) of Council Regulation No 4064/89². Rio Tinto has its international headquarters in London, United-Kingdom and mining operations throughout the world. It is active in the production and trade of metals and minerals, including uranium, zinc, copper, gold and iron ore.

5. North is a mining company with headquarters in Melbourne, Australia. It is principally active in the production and trade of iron ore. It also has operations in other metals and minerals including uranium, zinc, copper and gold, and in forestry.

II. THE OPERATION

6. The Rio Tinto group has offered to acquire all outstanding shares of North through its wholly owned subsidiary Rio Tinto Investments Two Pty Limited. This public bid was announced on 23 June 2000 and the offer statement was lodged with the Australian Securities and Investments Commission on 28 June 2000.
7. The offer of Rio Tinto is subject to a number of conditions, including clearance by the European Commission in application of EU merger control rules and acquisition by Rio Tinto of more than 50% of North shares by the end of the offer period.

III. CONCENTRATION

8. The operation will result in Rio Tinto acquiring sole control of North.

IV. COMMUNITY DIMENSION

9. The aggregate world-wide turnover of Rio Tinto for the fiscal year 1999 was approximately EUR 8,692 million. The aggregate world-wide turnover of North for the fiscal year 1999 was in excess of EUR 900 million. Therefore, the undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2500 million.
10. In 1999, Rio Tinto had an aggregate turnover of EUR 250 million in Belgium, EUR 345 million in Germany and EUR 429 million in the United Kingdom. In 1999, North had an aggregate turnover comprised between EUR 26 million and EUR 50 million in Belgium, between EUR 50 million and EUR 100 million in Germany and between EUR 50 million and EUR 100 million in the United Kingdom. The parties thus have a combined aggregate turnover of more than EUR 100 million in each of at least three Member States.
11. The aggregate turnover of each of the parties is more than EUR 25 million in each of the three Member States referred to in point 10.
12. The aggregate Community-wide turnover of each of the parties is more than EUR 100 million (for Rio Tinto : approximately EUR 1,809 million; for North: in the range of EUR 200-300 million).
13. The undertakings concerned do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified

² Decision of 7.12.1995, case IV/M.660 - RTZ/CRA

operation therefore has a Community dimension, in application of Art. 1§3 of Council Regulation No 4064/89.

14. Neither of the undertakings concerned is a distributor or a producer of steel or coal products within the meaning of Art. 80 ECSC. Therefore, the provisions of Art. 66 of the ECSC Treaty do not apply to this concentration.

V. COMPETITIVE ASSESSMENT

Relevant product markets

15. The parties activities overlap in the following fields: copper, gold, uranium, zinc and iron ore.
16. The Commission, in previous cases (Cases No. IV/M.470 - Gencor/Shell and IV/M.660 – CRA/RTZ), has defined separate markets for copper, gold, uranium and zinc. For the purpose of this decision, the Commission can keep such market definitions.
17. As regards iron ore, the notifying party submits that there is a single relevant product market which includes all supplies of iron ore, without distinction between the three different types of ore (fines, pellets or lump).
18. In response to the Commission's enquiries, a number of the interested parties have submitted that fines, pellets and lump iron ore should be considered as three different product markets. In the opinion of these parties, there is limited interchangeability between the different types of iron ore since switching between them can significantly affect the efficiency of steel mills. Furthermore, it appears that there are substantial price differences between the different sorts of iron ore. It also appears that there is only limited substitutability from a supply-side perspective: because of geological factors, not all mines can produce lumps; moreover, production of pellets requires a pelletizing plant, which is a significant capital investment.
19. Some third parties have also suggested that the relevant product markets should only include "seaborne" quantities, that is tonnage exported by ship. Indeed, these parties consider that only seaborne iron ore is normally available for European steel mills and that the remainder of world-wide production (for instance Chinese or Russian production) is usually not available for intercontinental trade and therefore constitutes a distinct market.
20. However, for the purpose of the present decision, it is not necessary to establish whether or not fines, pellets and lump iron ore belong to separate markets, since this would not affect the conclusion. It is not necessary either to establish whether the iron ore market includes all supplies, or only seaborne quantities, since even on the basis of narrower markets, the notified operation will not lead to the creation or strengthening of a dominant position.

Relevant geographic markets

21. Metals and minerals are actively traded as commodities on global basis. The relevant geographic markets are, therefore, world-wide (Cases No. IV/M.470 - Gencor/Shell and IV/M.660 – CRA/RTZ).
22. In particular, as regards iron ore, imports represent more than 90% of European consumption. Furthermore, prices in Japan and in Europe, the two main importing areas, are closely related to each other. Moreover, major producers in Australia and Latin America offer their products in Europe as well as in Asia. On the basis of the above, the Commission confirms that the geographic market for iron-ore is world-wide.

Assessment

a) Copper, gold, uranium, zinc

23. The concentration would result in world-wide combined market shares of approximately 8% for copper, 4.4% for gold, 12% in uranium and 3.6% in zinc. The considered concentration would not create any competition concern on any of these markets.

b) Iron ore

24. According to Rio Tinto, the commercial rationale of the proposed concentration involves the combination of its operations in iron ore with those of North.
25. There are currently more than 75 producers of iron ore world-wide, none of which has a share of world-wide supplies over 15%.
26. The world-wide iron ore market share resulting from the concentration would be around 9% (on the basis of estimated world-wide supplies). Such a combined market share clearly would not create any competition concern.
27. Even if one assumed that fines, pelletized ore and lumps were three distinct product markets and that the relevant markets should only include seaborne supplies, the proposed concentration would not lead to the creation or strengthening of a dominant position, for the following reasons:
28. As regards pellets, there is no horizontal overlap between Rio Tinto and North. Therefore, the concentration will not lead to a strengthening of North's position in pellets.
29. As regards fines and lump ore, the market shares of the merged entity, as estimated on the basis of seaborne quantities, would be in the range of 25% to 30% for each of the two products. This would still leave scope for a significant degree of competition by other iron ore producers (in particular CVRD, with market shares of approximately 20-30% and of 10-15% for seaborne fine ore and seaborne lump ore respectively, and BHP, with market shares of approximately 15-20% and of 15-25% for seaborne fine ore and seaborne lump ore respectively). Furthermore, in the present context of excess-capacity for iron ore production, the merged entity would not be able to raise profitably prices for its fines or lump supplies. Therefore the concentration would not lead to the creation or strengthening of a dominant position.
30. In view of the above analysis, the operation does not raise serious doubts about its compatibility with the common market.

VI. CONCLUSION

31. 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,