

***Case No COMP/M.4505 -
FREEPORT-MCMORAN
COPPER & GOLD /
PHELPS DODGE
CORPORATION***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 20/02/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.02.2007

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4505 - FREEPORT-MCMORAN COPPER & GOLD / PHELPS DODGE CORPORATION

Notification of 16/1/ 2007 pursuant to Article 4 of Council Regulation No 139/2004¹

1. On 16/01/2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Freeport-McMoRan Copper & Gold Inc. ("FCX") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Phelps Dodge Corporation ("PD") by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES

3. FCX is an international copper mining company based in New Orleans, Louisiana, United States. It operates copper mines and produces copper concentrate which is marketed worldwide. FCX is also active in copper smelting and refining.
4. PD is an international mining and metals company headquartered in Phoenix, Arizona, United States. It operates copper mines and is principally active in the production of copper, molybdenum, by-products of the copper refining process and electrical wires and cables.

¹ OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION

5. The operation involves the proposed acquisition by FCX of the entire issued share capital of PD, in exchange for a combination of cash and common shares in FCX.

III. CONCENTRATION

6. In light of the above, FCX will acquire sole control of PD. The present transaction constitutes, thus, a concentration within the meaning of Article 3(1)(b) of the Council Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion². (FCX EUR 3.3 billion, PD EUR 6.3 billion). Each of them has a Community-wide turnover in excess of EUR 250 million (FCX [...] EUR, PD [...] million EUR), 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.

V. COMPETITIVE ASSESSMENT

A. RELEVANT PRODUCT MARKETS

8. The parties' sales overlap on copper concentrate, copper cathode and several by-products of the copper production process. Moreover the proposed concentration gives rise to vertical relationships between (i) copper concentrate and copper blister/anode, (ii) copper blister/anode and copper cathode, (iii) copper cathode and copper rod.

(i) Copper and copper concentrate

9. There are two different types of copper: copper sulphide and copper oxide. The first one is typically processed at the mine to produce copper concentrate, containing 15-60% of copper depending on the mineralogy of the ore. Copper oxide is processed at the mine through a leaching and solution extraction and electro-winning process ("SX/EW") to produce copper cathode.
10. By far the biggest part of the copper leaves the mine either in the form of copper concentrate or as refined copper cathode. The Commission has considered in previous cases copper concentrate to constitute a separate market of a world-wide dimension³. The respondents to the Commission's market investigation largely confirmed the previous Commission's findings.

² 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, p25).

³ COMP/M. 2413 BHP/Billiton

(ii) Copper blister, copper anode and copper cathode

11. Copper concentrate is typically converted to copper cathode through an electrolytic refining process, involving the three following stages⁴: (i) production of copper matte, (ii) production of copper blister, (iii) production of copper anode.
12. Copper concentrate is transported to a smelter where the concentrate is melted and the copper is separated as a metallic sulphide, called matte, from the gangue material that contains iron and other materials. In the converter, copper matte is oxidised to produce 98% pure copper blister. This process also produces sulphur as a by-product, which is captured as sulphur dioxide and used to produce sulphuric acid for industrial purposes. The molten copper blister is then transported to an anode furnace, where it is further processed to produce 99.4% copper, which is cast into moulds to form copper anodes.
13. The final refined copper product from the electrolytic process is known as copper cathode, which contains greater than 99.95% copper. The parties mention that there exist two kinds of copper cathodes: high quality copper cathodes (copper content of at least 99.99%) and off-grade cathodes (copper content of less than 99.99%), the latter being cathodes of lower quality that have been rejected in the production process as failing to meet the required quality standards for high grade cathode. High quality copper cathodes are typically registered and traded on metal exchanges, the most important metal exchange being the London Metal Exchange (LME) which accounts for the majority of the volume of registered cathode.
14. As to copper matte, the parties do not submit a market definition since they do not sell this product.
15. As to copper blister and copper anode, the parties submit that they belong to the same product market since customers generally may choose between purchasing either of these products. Furthermore, the parties submit that the corresponding geographic market is world-wide. With respect to the product market definition, most of the respondents to the Commission's market investigation confirmed the parties' view. However, some of them mentioned that some refiners cannot cast anodes since they do not operate a corresponding casting wheel. With respect to the geographic market definition, the parties' view has been largely confirmed by the respondents to the Commission's market investigation.
16. As to copper cathode, in line with previous decisions of the Commission, the parties submit that it constitutes a separate product market which is global in scope. Since the Commission did not distinguish between high quality and off-grade cathodes in the past, the parties submit that these two products belong to the same product market. With respect to the product market definition, the respondents to the market investigation broadly underlined that off-grade copper cathode, given its higher level of impurities, cannot be used for all purposes. For instance, it cannot be used to produce wire rods. With respect to geographic market definition, the respondents to the Commission's market investigation largely confirmed that copper cathode is traded worldwide.

⁴ Copper concentrate can also be processed with a hydrometallurgical process which involves pressure leaching of the concentrate in a pressure leach vessel, which removes the copper from the concentrate and places it in solution. The solution can then be processed into copper cathodes in a process similar to the SX/EW process.

17. For the case at hand, the precise product and geographic market definition for copper blister/anode and copper cathode can be left open since the proposed concentration does not give rise to competition concerns under any alternative market definition.

(iii) By products of the copper production process

18. There are a number of products, which are produced by the parties as by-products of the copper production process. These include metals such as gold, silver, palladium and tellurium (contained in copper telluride) and gypsum as well as sulphuric acid and granulated slag. The parties' activities overlap only in the production of gold, silver, palladium, tellurium⁵ and sulphuric acid.

19. The Commission has in previous cases defined distinct product markets for gold⁶, silver⁷, palladium⁸ and sulphuric acid⁹. All these markets were considered to be world-wide in scope, except sulphuric acid which was considered to be at least regional¹⁰. As to tellurium, the parties, following the Commission's approach for the other metals mentioned above, consider that it constitutes a separate product market which would be global in scope.

20. However the exact definition of both the relevant product and geographic markets for all the above mentioned products can be left open for the purpose of this case, since the parties' activities in each of the segments are very limited and the transaction is not likely to have anticompetitive effects on any of them.

(iv) Copper rod

21. PD produces and sells copper rods which are made from copper cathode.

22. In line with a previous decision¹¹, the parties submit that copper rod constitutes a separate product market. They claim that the relevant geographic market is worldwide, whereas the Commission found that it was at least Community-wide.

23. For the case at hand the precise geographic market definition can be left open since PD does not sell copper rod in the EEA and the proposed concentration does not give rise to vertically affected markets.

B. COMPETITIVE ASSESSMENT.

⁵ Tellurium's main uses are as special alloys for equipment used by the chemical industry, as a chemical additive and for the colouring of glass.

⁶ COMP/M. 2413 BHP/Bulliton

⁷ Ibid.

⁸ COMP/M. 745 Anglo American /Lohnro

⁹ COMP/M. 1182 Akzo Nobel/Courtaulds.

¹⁰ In the case COMP/M. 1182 Akzo Nobel/Courtaulds, the Commission found that North-West Europe could constitute a geographic market for sulphuric acid.

¹¹ COMP/M.1882 Pirelli/BICC.

(i) Horizontal overlaps

24. The proposed transaction gives rise to overlaps in the markets for (i) copper concentrate, (ii) copper cathode, (iii) gold, (iv) silver, (v) palladium, (vi) tellurium and (vii) sulphuric acid.
25. However, the combined market share of the parties will be well below 15% on all of these markets, since their highest combined market share is [0-10%] on the market for copper concentrate in the EEA. Therefore the transaction does not give rise to any affected market at a horizontal level.
26. In the light of the above, the notified concentration does not raise competition concerns at a horizontal level.

(ii) Vertical relationships

27. The proposed concentration gives rise to vertical relationships between (i) copper concentrate and copper blister/anode, (ii) copper blister/anode and copper cathode, (iii) copper cathode and copper rod. Indeed both PD and FCX sell copper concentrate and copper cathode, whereas PD sells copper blister/anode and copper rod.
28. However the parties' combined market share is well below 15% on the markets for copper concentrate and copper cathode, whereas PD's market shares are below 25% on the markets for copper blister/anode and copper rod. Therefore the proposed concentration does not give rise to any vertically affected market.
29. In the light of the above the notified concentration does not give rise to any competition concerns with respect to vertical relationships between (i) copper concentrate and copper blister/anode, (ii) copper blister/anode and copper cathode, (iii) copper cathode and copper rod.

VI. CONCLUSION

30. 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 (EC) No 139/2004.

For the Commission
signed
Ján FIGEL'
Member of the Commission