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***Case No IV/M.470 -
Gencor / Shell***

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/08/1994

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.08.1994

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Subject: Case No. IV/M.470 - Gencor/Shell
Your notification of 26.7.1994 pursuant to Article 4 of Council Regulation
No. 4064/89

1. The proposed operation concerns the purchase by Gencor Limited of the mining, metals processing and metals trading activities of Royal Dutch/Shell (Shell). Gencor is jointly controlled by the South African National Life Insurance Company (Sanlam) and the Rembrandt Group Limited (Rembrandt) within the meaning of Article 3.3 of the Merger Regulation.
2. After examination of the notification the Commission has concluded that the operation falls within the scope of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I THE PARTIES

3. Gencor is a metals and minerals resource group based in South Africa. Sanlam is a South African life insurance company. Rembrandt is a South African conglomerate with interests in trading, mining, industry and financial services. Shell is a company with interest in oil and gas production, chemicals, mining, metals, and minerals.

II THE OPERATION

4. The operation involves the purchase by [...] Gencor of most of the mining and minerals interests of Shell. The companies included in the operation are part of the so-called Billiton group of companies within Shell. The Billiton group of companies consists of a number of mining, refinery, and minerals trading companies in 15 countries.
5. Billiton does not exist as one distinct company or group of companies within Shell. Instead, the individual companies are subsidiaries of various Shell companies around the world. The current operation is therefore coordinated in a framework agreement stipulating the conditions on which Gencor buys the individual Billiton assets from Shell. This framework agreement covers the purchases of individual companies by Gencor.

Gencor is using a number of newly created companies registered in the country where the assets are located as well as newly created holding companies in the British Virgin Islands, the Dutch Antilles and the Netherlands to hold the acquired assets (collectively known as Kudu). In addition, Gencor will transfer its share interests in the Brazilian gold mine Sao Bento and in the South African minerals sands mine Richards Bay Minerals to Kudu. All the Billiton assets will be transferred to Kudu with the exception of the Pering zinc mine, South Africa, which will be transferred directly to Gencor.

6. The major Billiton Acquisition Assets are listed in the following table.

| Country | Asset being acquired | % interest |
|----------------|---|-------------------|
| Australia | Worsley bauxite mine and alumina refinery | 30 |
| Guinea | Boké bauxite mine | 3.06 (6% of 51%) |
| Ireland | Aughinish alumina refinery | 35 |
| Brazil | MRN bauxite mine | 14.8 |
| Brazil | Alumar alumina refinery | 36 |
| Brazil | Alumar aluminium smelter | 46.35 |
| Brazil | Valesul aluminium smelter | 41.5 |

¹ Deleted - business secrets

| | | |
|--------------|----------------------------------|-------|
| Surinam | BMS bauxite mine | 76 |
| Surinam | BMS alumina refinery | 45 |
| Colombia | Cerro Matoso nickel mine | 52.31 |
| Ghana | Bogosu gold mine | 81.23 |
| Indonesia | Prima Lirang | 90 |
| Canada | Selbaie copper and zinc mine | 100 |
| South Africa | Pering zinc and lead mine | 100 |
| Various | Marketing and trading activities | 100 |
| Netherlands | Commercial and technical | 100 |

In Brazil and Surinam, Gencor will acquire 100% of pre-existing companies who hold the shares in the joint venture. In Australia, Guinea and Ireland the stake itself is being sold from Shell to Gencor.

- The operation involves the acquisition through Gencor of a number of existing Billiton companies. By looking through newly created companies and other vehicle companies, Gencor will acquire BMS NV [...] (Surinam assets), Billiton Bogosu Gold Ltd [...] (Ghana), BMSA [...] (Brazil), BMCI [...] (Canada), Billiton Indonesia BV [...], CMSA [...] (Colombia), Billiton Ghana Exploration BV [...] and the 100% shareholdings in the various existing metals trading and commercial and technical companies: BMT, Billiton Metall GmbH, BMI, Braconnot SA, Billiton - Enthoven Metals Ltd, Billiton Metals (UK) Ltd and all of the metals trading business of Shell Japan.
- In addition, Gencor will acquire a 6% shareholding in Halco Mining, which operates the bauxite mine at Boké in Guinea, a 30% stake in the Worsley bauxite mine and alumina refining production joint venture in Australia and a 35% stake in the Aughinish alumina refining production joint venture. These operations are included in the overall assessment of the operation. Gencor will also acquire certain minor exploration rights in Chile.

Community dimension

- The operation has Community dimension. The worldwide turnover of all undertakings concerned amounts, in their respective last financial year, to more than 5,000 million ECU. The Community wide turnover of two of the undertakings exceeds 250 million ECU. The undertakings concerned do not achieve more than two thirds of their aggregate Community wide turnover within one and the same Member State.

² Deleted - business secrets

IV COMPETITIVE ASSESSMENT

Relevant product markets

10. The relevant product markets affected by the operation are: bauxite, alumina, aluminium, gold, silver, nickel, copper, lead, zinc (all of which are actively traded as commodities) and titanium dioxide, and the minerals trading activities themselves.

Relevant geographic market

11. Basically metals are traded on a global basis under long term contracts with prices tied to the prices quoted on the London Metal Exchange. Therefore, the relevant geographic market is a world market.

Vertical integration

12. The trading companies within the Billiton Group of companies are responsible for sales of the major part of Billiton's share of the output from the production joint ventures. Furthermore, over half of the sales of the Billiton trading companies comes from minerals sourced from the mines and refineries of the Billiton group of companies. The Billiton assets are therefore in reality highly vertically integrated.

Minerals trading

13. Gencor will acquire the Billiton trading companies Billiton Marketing and Trading BV ("BMT"), the Netherlands, Braconnot SA, France, Billiton Metal GmbH, Germany, Billiton Metals UK Ltd., the UK, Billiton Enthoven Metals Ltd. ("BEM"), and the metals trading division of Shell Japan Limited. BEM is a ring-dealing member of the London Metal Exchange (LME). It is active in all traded metals and provides brokerage services in precious metals and COMEX copper as well. Together these companies form the BMT network of trading companies.
14. The BMT network is a significant trader in bauxite, alumina, aluminium, nickel, zinc, tin, and copper. However, it does not have market shares of more than 7% in any of these metals. Gencor does not have any trading operations, and a horizontal concentration therefore does not take place in minerals trading.

Bauxite, alumina, and aluminium

15. Primary aluminium is produced by refining bauxite ore to alumina (aluminium oxide) and then converting alumina to aluminium metal in a smelter through a process known as electrolysis. This process requires enormous amounts of electricity and smelters are therefore normally placed in areas with low electricity cost. Primary aluminium of 99.7% purity is traded on the LME. Production of secondary aluminium involves the remelting of scrap aluminium normally to produce alloys. The price of secondary aluminium is highly dependent on the price of primary aluminium.

16. The sector of aluminium production is highly vertically integrated. The major producers of aluminium like Alcan Aluminium Ltd. (Canada), Alcoa (Aluminium Company of America), Comalco, Pechiney (France), and Reynolds are all involved in both bauxite mining, alumina refining, and aluminium smelting, as is Biliton. Some of these companies are even involved in downstream activities such as production of packaging and other engineered products.
17. The high degree of vertical integration has the effect that non-integrated producers have to buy their raw materials from companies being their competitors at a further downstream stage of production. The high degree of vertical integration in the aluminium sector has meant that the "free" market for bauxite, alumina, and aluminium is relatively small. In alumina for example the free market is only about 20% of the total alumina production.
18. Biliton is a vertically integrated producer of aluminium. However, the company appears to be primarily active in the "free" alumina market, estimated to amount to 12 million tonnes of which Biliton supplies [...] million tonnes.
19. Gencor is not active in the bauxite and alumina markets. Gencor has a controlling interest in Alusaf Limited, South Africa's only producer of primary aluminium. Alusaf has currently a smelter capacity of 173,000 tonnes, but is building an additional smelter with a capacity of 466,000 tonnes. In the future it is foreseen that Biliton will deliver a large part of the alumina need of Alusaf.
20. The operation will increase the degree of vertical integration of Biliton. However, the operation does not give rise to serious doubts as to its compatibility with the common market, since the parties' combined market share amounts to less than 5% of the Western world aluminium market.

Gold

21. Gencor is a major producer of gold and mined 4.3% of Western world production in 1992. [...] Rembrandt, has a 17% interest in Gold Fields of South Africa (GFSa). Mines owned by GFSa produced about 7% of world gold production in 1992.
22. The Biliton assets include interest in gold mines in Ghana and Indonesia as well as a zinc and copper mine in Canada from which a small amount of gold is produced as a by-product. The total production from these mines represents about [...] of total world production. The operation does not give rise to serious doubts due to the limited addition of market shares.

³ Business secrets - less than 3 million tonnes

⁴ Deleted - business secrets

⁵ Business secrets - less than 1%

Nickel

23. Refined nickel can be divided in two classes: class I and class II nickel. Only class I nickel (pure nickel) is traded on the LME. Gencor has a 46% interest in Impala Platinum, which produces class I nickel. The majority of this nickel is sold into the Netherlands for resale. However, Gencor is also a buyer of nickel through its one third participation in the Columbus stainless steel joint venture.
24. The Billiton assets include one mine in Columbia producing class I nickel (ferro-nickel). Most of this type of nickel is sold to the stainless steel industry. An expansion of the Columbus stainless steel joint venture is planned, and part of the extra nickel required is expected to come from Billiton. However, Billiton will not become the sole supplier to the joint venture.
25. The horizontal issues in this sector are minor, since the addition in market shares are minor (less than [...] ⁶ of Western world production). Furthermore, no vertical issues will arise, since there will be no foreclosure of the supply for nickel to the Columbus joint venture.

Silver, copper, zinc and lead

26. The combined market shares of the parties in these areas are below [...], ⁷ and do not give rise to any concerns.

V CONCLUSION

27. Based on the above findings, it appears that the proposed concentration does not raise serious doubts as to its compatibility with the common market.

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For the reasons outlined above, the Commission has decided not to oppose the concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)b of Council Regulation 4064/89.

For the Commission

⁶ Business secrets - less than 10%

⁷ Business secrets - less than 10%