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*Case No IV/M.660 - RTZ / CRA*

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

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Article 6(1)(b) NON-OPPOSITION

Date: 07/12/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.12.1995

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)b DECISION

To the notifying parties

Dear Sirs,

Subject : **Case No IV/M.660 - RTZ/CRA**  
Notification of **6.11.95** pursuant to Article 4 of Council Regulation  
No 4064/89

1. The above mentioned notification concerns the binding agreements between RTZ Corporation PLC (RTZ) and CRA Limited (CRA), to combine their business in an unified structure.
2. 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**

3. RTZ is an international mining and metal producer based in the United Kingdom and operating worldwide. Its principal mining interests are in copper, gold, borates, titanium, steaming coal, talc, zircon and uranium. These interests are primarily located in North America, South America, Southern Africa and Europe.
4. CRA is a mining and metals producer based in Australia. Its principal mining and processing interests are in iron ore, coal, bauxite (including alumina and aluminium), diamonds, gold and salt. In addition to its major operations in

Australia, the group has interests in mines, smelters and fabrication plants principally in Indonesia, New Zealand and Italy.

## **II. THE OPERATION**

5. The Implementation Agreement between RTZ and CRA dated 3 November 1995 sets out the terms and conditions for the implementation of the operation in a dual listed company structure (DLC). DLCs are corporate entities whose shares are traded not as a single group but through two separate publicly quoted companies. The structure retains RTZ and CRA as separate publicly quoted legal entities, retaining their corporate identities. The structure does not involve any change in the legal or beneficial ownership of any assets of RTZ or CRA. Rather, the DLC operation is to be effected by the entering into of contractual arrangements designed to ensure that so far as possible, RTZ and CRA operate as a single economic enterprise. The relative values of the two companies are such that the combined public shareholder ownership will be approximately in the proportion of 76.5% RTZ shareholders and 23.5% CRA shareholders.
6. The notified concentration is exempted from the requirement of prior authorization by the Commission under Article 66 ECSC according to Article 4 of decision 25-67 ECSC of 22 June 1967 as amended by Commission Decision 3654/91/ECSC of 13 December 1991.

## **II. CONCENTRATION**

7. Until 1978, RTZ controlled CRA. In accordance with the terms of an agreement of naturalisation of CRA with the Australian government, RTZ's shareholding in CRA was gradually reduced from over 70% to its current level of 49% . As result of the agreement RTZ only has a minority presence on the CRA's board and no veto rights. It has only insignificant vote rights at shareholders meetings: on a show of hands, RTZ's vote counts as one vote. Attendance at such meetings during the last five years has been an average of 458 shareholders, and no poll has been demanded for the past five years. Thus, prior to the operation, RTZ was not able to control CRA. In 1992, the Australian government announced a relaxation in its policy towards foreign investments so that the 1978 agreement will be discharged. This enables RTZ and CRA to combine their business without detriment to any Australian operations.
8. The proposed structure of ownership and control after completion of the concentration will be based on:
  - (1) common boards of directors and unified management structure;
  - (2) identity of economic interest in the unified structure for all shareholders, through equalisation of dividends and capital distribution, as a result of which all shareholders will be

effectively in the same position as if they held shares in a single group which owned all the assets of both companies;

- (3) a joint electoral procedure for taking key decisions, the public shareholders of both RTZ and CRA effectively having equivalent voting rights per share

The mechanism through which the joint electoral procedure will be achieved will involve the issue by each company of a special share, to be held by a special purpose company. Each special share will hold voting rights to be exercised in accordance with the votes cast by shareholders of the other company. As a result, the resolutions of both companies will be the same and the shareholders will act as a single group. Provisions will also be made with the intention of ensuring that any takeover offer for one company will require a comparable offer for the other.

9. RTZ and CRA will constitute a single group for the purposes of presenting merged accounts. Cross-guarantees will be given by each company. There will be one head office, in London.
10. Thus, the operation constitutes a concentration according to Article 3(1)(a) of the Merger Regulation.

### **III. COMMUNITY DIMENSION**

11. The combined aggregated worldwide turnover of RTZ and CRA, exceeded 5,000 million ECU in the last financial year. The turnover of RTZ amounted to 2,949.1 million ECU in 1994. The turnover of CRA amounted 3,683 million ECU for the same period. Both RTZ and CRA have community-wide turnover in excess of 250 million ECU but do not achieve more than two-thirds of their aggregate community-wide turnover in one and the same Member State. The operation therefore has a Community dimension.

### **IV. COMPATIBILITY WITH THE COMMON MARKET**

#### Relevant product market

12. The parties activities comprise mining and metal producing activities in the following fields: copper, gold, iron ore, bauxite, alumina and aluminium, diamonds, salt, borates, titanium, coal, talc, zircon and uranium. The Commission, in a previous case (Case No. IV/M.470 - Gencor/Shell), has defined separate markets for these activities.

#### Relevant geographic market

13. Metals and minerals are actively traded as commodities on global basis (Case No. IV/M.470 - Gencor/Shell). Prices are tied to the prices quoted on the

London Metal Exchange. The relevant geographic market is, therefore, worldwide.

### Assessment

14. Overlap of operations outside the EU exists in the following business areas: gold (2.1% Worldwide production share), iron ore (5.4% of world production), steaming coal (1.7% of hard coal world production) and aluminium (2.5% of world production). RTZ is the second largest producer of mined copper (6.5% of worldwide mine output) in the world, next to Codelco of Chile (12%) and followed by Phelps Dodge (6.1%), BHP (5.6%) and Asarco (5.1%). However CRA only produces small quantities of copper concentrate (16.000 tonnes). Neither RTZ nor CRA is involved in trading minerals or metals on behalf of third parties.
15. Overlap of operations in the EU only exists on the following business areas: Steaming coal and primary aluminium. The parties' shares of total sales of steaming coal to customers in the EU in 1993 were 1.29% on total consumption and 2.88% on total imports to EEA for 1994. Based on European Aluminium Association statistics and Eurostat data for 1994, the parties' shares of total sales to customers were 1.76% of EU consumption and 3.68% of EU imports.
16. The parties' operations, interests and expertise are essentially complementary. RTZ's operations are focused on upstream mining in the western hemisphere, mainly in North and South America, Europe and Southern Africa; and CRA operations are focused on upstream mining in the eastern hemisphere, mainly in Australia, New Zealand and Indonesia. The parties' principal mining activities and expertise are also complementary. The new entity will compete in the mining and metal producing sector with other international mining groups with substantial resources such as Alcan, Alcoa, American Barrick, Anglo American, Billiton, Broken Hill Propriety, Cominco, CVRD, De Beers, Falconbridge, Freeport-McMoran, Minorco, etc.
17. In view of this, the operation does not raise serious doubts about its compatibility with the common market.

## **V CONCLUSION**

18. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.

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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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission