

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

DECISION

**Taken upon Notification of intended concentration between Rio Tinto, London and Alcan,
Montreal**

**Sarajevo
December 2007**



Number: 01-06-26-025-13-II/07
Sarajevo, 03 December 2007

Pursuant to Article 25, paragraph (1) item e), Article 42, paragraph (1), item d) and Article 43, paragraph (3), and in connection with Article 12, 14, 16, 17 and 18 of the Act on Competition («Official Gazette of BH», No. 48/05) and Article 193, paragraph (2), of the Law on Administrative procedure («Official Gazette of BH», No. 29/02 and 44/02) upon the Notification of intended concentration of undertaking Rio Tinto Plc, 6 St. James's Squar, London, SW1Y 4 LD, United Kingdom of Great Britain and Northern Ireland and undertaking Alcan Inc, 1188 Sherbrooke Street West, Montreal, Quebec H3A 3G, Canada, submitted by Preduzeću za konsalting i usluge (a company for consulting and services) Karanović & Nikolić, Gundulićeva 4, 78000 Banja Luka, Bosnia and Herzegovina, on 02 August 2007, recorded under the number: 01-06-26-025-II/07, the Council of Competition in its 55th (fifty-fifth) session, held on 03 December 2007 has adopted

DECISION

1. A concentration created in the market for exploitation and processing of bauxite and production and processing of aluminium semi products and products in Bosnia and Herzegovina by acquisition of control over all stocks in undertaking Alcan Inc, 1188 Sherbrook Street West, Montreal, Quebec H3A 3G, Canada by Rio Tinto Plc, 6 St. James's Square, London, SW1Y 4 LD, United Kingdom of Great Britain and Northern Ireland, that is Rio Tinto Canada Holding Inc, which is owned by Rio Tinto Plc, is declared compatible.
2. This Decision of concentration shall be recorded in the Register of concentrations.
3. This Decision is final and it shall be published in the «Official Gazette of BH», in official gazettes of Entities and Brcko District of Bosnia and Herzegovina.

Exposition

The Council of Competition received a Notification of intended concentration (hereinafter: the Notification) submitted by Rio Tinto Plc, 6 St. James's Square, London, SW1Y 4 LD, United Kingdom of Great Britain and Northern Ireland (hereinafter: the Applicant or Rio Tinto) by means of which Rio Tinto, that is Rio Tinto Canada Holding Inc (a company under the ownership of Rio Tinto) intended to acquire control over all issued and common stocks in Alcan Inc, 1188 Sherbrook Street West, Montreal, Quebec H3A 3G, Canada (hereinafter: Alcan). The Notification was submitted by undertaking Preduzeće za konzalting i usluge (a company for consulting and services) Karanović & Nikolić, Gundulićeva 4, 78000 Banja Luka, Bosnia and Herzegovina, on 02 August 2007 and it was recorded under the number: 01-06-26-025-II/07.

Having had insight into submitted Notification, the Council of Competition established that it was not complete, pursuant to Article 30 of the Act on competition (hereinafter: the Act). The Council therefore required (act NO: 01-06-26-025-1-II/07, on 06 August 2007, NO: 01-06-26-025-4-II/07 on

27 September 2007 and NO: 01-06-26-025-7-II/07, on 09. October 2007) the supplements to the Notification, pursuant to Article 31 of the Act.

According to requirements of the Council of Competition, the Applicant submitted supplements the following to the Notification act NO: 01-06-26-025-2-II/07, on 13 August 2007; act NO: 01-06-26-025-3-II/07, on 31 August 2007; act NO: 01-06-26-025-5-II/07, on 08 October 2007; act NO: 01-06-26-025-6-II/07, on 08 October 2007; act NO: 01-06-26-025-8-II/07, on 15 October 2007; act NO: 01-06-26-025-9-II/07, on 15 October 2007 and act NO: 01-06-26-025-10-II/07, on 18 October 2007.

Upon receipt of all required documents, the Council of Competition established that this Notification was complete and issued an Acknowledgement of receipt of complete and adequate Notification, NO: 01-01-26-025-11-II/07, on 07 November 2007, pursuant to Article 30, paragraph(3) of the Act..

In the concentration assessment procedure, the Council of Competition established the following facts:

The Applicant submitted the Notification within legally determined period –within 8 (eight) days from the date of signing of the agreement between the parties to the concentration (public stocks offering), pursuant to Article 16, paragraph (1) of the Act.

The Applicant submitted the Notification to the Council of Competition of Bosnia and Herzegovina, to Commission for Competition protection of Republic of Serbia, to authority for competition of European Commission, and to responsible body for competition protection in Australia, Brazil, Canada, China , Japan, Mexico, New Zealand, Russia, South Africa, North Korea, Switzerland, Taiwan, Turkey, United States of America.

Total annual income of the parties to the concentration reported on a final balance sheet in the year preceding the concentration, on 31.December 2006, was:

Table 1.

	Rio Tinto		Alcan	
	KM	US\$	KM	US\$
World	(..)** ¹ million	(..)** million	(..)** million	(..)** million
Bosnia and Herzegovina	241.052,34	168.250,40	194.694,24	135.893,24

Table 1 shows that total annual income of the parties to the concentration was 100.000.000, 00 KM; Rio Tinto earned (...) ** million KM and Alcan (...) ** million KM. As the Applicant, pursuant to Article 14, paragraph (1), item a) of the Act, met condition of earned annual income (also, the condition that at least one of the parties -Preduzeće za geološka istraživanja i ekplataranje ruda Rio Sava Mining d.o.o. Lopare - a company for geological researchers and exploration of ore -Rio Sava Mining d.o.o. Lopare under the ownership of Rio Tinto, was registered in the territory of Bosnia and Herzegovina was met), it was obliged to notify the concentration.

Legal basis of the concentration

Rio Tinto, that is Rio Tinto Canada Holding Inc.⁸ (a company in ownership of Rio Tinto), and Alcan signed an Agreement on concentration (hereinafter: the Agreement). Pursuant to the agreed

¹ Note: (..)** - Data is deemed to be a business secret, pursuant to Article 38 of the Act on competition

terms of the Agreement, Rio Tinto should commence the offer to purchase all stocks in Alcan who agreed not to make any contra-offer for the transaction in question.

Managing Board of Rio Tinto and Alcan agreed, on 12 July 2007, that Rio Tinto should offer the cash payment of all legal capital in Alcan in amount of (...)** million KM ((..)**million US\$) valued (...) ** KM ((...) ** US\$) for one common stock.

Upon the completion of the transaction (within 120 days of the date of the offer) Rio Tinto should become the owner of all stocks (common and subscribed) issued by Alcan. If it happens that not less than 90, 0% of subscribed common stocks is accepted by the owner of stocks (Alcan) Rio Tinto intends to takeover the rest of common stocks from stockholders who have not accepted the offer .According to the offer terms, minimum 66 2/3% of recorded common stocks and more than 50, 0% of stocks having voting rights, held by individual stockholders, should be deposited.

Rio Tinto`s offer is delivered to Alcan on 24July 2007and stays open until 21 September 2007. On the basis of all facts mentioned above, the Council of Competition established that legal basis for the concentration was the Rio Tinto`s offer for acquisition of subscribed and common stocks in Alcan and that Notification obligation ran from 24 July 2007(the date when the offer was delivered to Alcan).

The legal form of the concentration is change of control , that is acquisition of direct control by Rio Tinto through purchase of majority stocks in Alcan, pursuant to Article 12, parahraph (1), item b)1) of the Act.

Parties to the concentration

The parties to the concentration concerned are Rio Tinto Plc, 6 St. James's Square, London, SW1Y 4LD, United Kingdom of Great Britain and Northern Ireland , that is Rio Tinto Canada Holding Inc. (a company under direct control of Rio Tinto) and Alcan Inc, 1188 Sherbrook Street West, Montreal, Quebec H3A 3G, Canada.

Rio Tinto

Rio Tinto Plc, 6 St. James's Square, London, SW1Y 4LD, United Kingdom of Great Britain and Northern Ireland is recorded in the Office for registration of undertakings of Cardiff under the number: 719885, on 13 March 1962.

International Group Rio Tinto Plc, 6 St. James's Square, London, SW1Y 4LD, United Kingdom of Great Britain and Northern Ireland acts in researchers, exploitation and processing of aluminum, copper, iron, exploitation of gold, industrial minerals (borates, titanium, dioxide, salt, talc), processing of energy(coal and uranium) and exploitation of diamonds, etc. It is active in the markets in Australia, New Zealand, Canada, South America (Paraguay, Argentine, Brazil, etc), Europe (Great Britain, Belgium, Germany, etc), Asia (Japan, Hong Kong, Indonesia, Malaysia, Thailand, Singapore, etc), United States of America, South Africa, etc.

The organizational structure of Rio Tinto Group is comprised of Rio Tinto (and its subgroups) and Rio Tinto Limited (and its subgroups).

Rio Tinto Limited, a limited liability company, Collins Street 120, Melbourne, Victoria, Australia is founded in accordance with the Australian law.

Rio Tinto Canada Holding Inc Suite 1800, 770 Sherbrook Street West, Montreal, Quebec, Canada H3A 1G1 is a stock company (under the ownership of Rio Tinto), founded in accordance with the Canadian law particularly for the purpose of making and open an acquisition offer of stocks in Alcan.

Connected undertakings within Rio Tinto in Bosnia and Herzegovina

Rio Tinto, through its connected undertakings has ownership over Preduzeće za geološka istraživanja i ekplatisanje ruda (a company for geological researchers and exploration of ore) Rio Sava Mining d.o.o. Bijeljina, Mačvanska 57. (Hereinafter: Rio Sava Mining), is recorded in the court register of Municipal Court in Bijeljina under the number 1-5145, on 11May 2001. The headquarter of Rio Sava Mining is moved to Lopare, Braće Gligorević 2, by the decision (Fi-759/03) of the Municipal Court in Bijeljina, issued on 16 March 2004.

Initial capital of Rio Sava Mining amounts in total (...) **KM ((...)**US\$) is registered and paid in cash by Rio Tinto Minerals Development Limited (which has 70,0% of the ownership share), 6 St. James's Square, London, SW1Y 4LD, United Kingdom of Great Britain and Northern Ireland (hereinafter: Rio Tinto Minerals Development Limited), recorded under the registration number: 281218 on 02 November 1933 and Rio Tinto Nominees Limited (which has 30,0% of the ownership share) James's Square, London, SW1Y 4LD, United Kingdom of Great Britain and Northern Ireland, (hereinafter: Rio Tinto Nominees Limited), recorded under the registration number: 1181093 on 16 August 1974.

The main business activity of Rio Sava Mining is research and extraction on different ores, minerals, gas, salt, gravel, stone, plaster in the territory of Bosnia and Herzegovina, production and processing of ores, iron, light metals and non-ferrous metals, wholesale trade of metals, wood, materials for construction, chemicals, export-import services, engineering, research-development services and related activities.

The sale of Rio Tinto's products (it amounts 241.052, 34 KM), first of all, the high-purity iron, is not carried out by Rio Sava Mining but by the independent undertakings/ distribution network and importers.

Alcan

Alcan, a stock company, 1188 Sherbrook Street West, Montreal, Quebec H3A 3G, Canada, is founded and acts according with the Canadian law. It is a parent company of the Alcan Group.

According with the data given in the Notification, Alcan had on 26 February 2007 (...) ** stockholders, where Paulson & Co. Inc, Canada had (...) **% of the share (-the only stockholder with the share higher than (...) ** %).

The main activity of Alcan is bauxite ore exploitation and processing into special type of semi – finished products and final products, production of aluminum wrapping material, as well as researcher and development in the mentioned activities.

Alcan acts in the European market (Great Britain, France, Switzerland, Netherlands), North America, Africa (South Africa, Ghana, Cameroon, Egypt, Morocco, Central African Republics, Senegal, etc) etc.

Sale of Alcan's range, first of all, aluminum wrapping materials and final products, in Bosnia and Herzegovina (aggregate amount is 194.694,24 KM), is performed by the independent undertakings/distribution network and importers.

Alcan has no subsidiary registered in Bosnia and Herzegovina.

Analysis of the relevant market

Relevant market ,pursuant to Article 3 of the Act, and Articles 4, 5 and 6 of the Regulation on definition of the relevant market, is a market for particular products/services that are the subject to business activities in the particular geographic market.

Relevant products market for the concentration concerned includes bauxite ore exploitation and processing and production and processing of semi-finished and finished aluminum products.

The relevant geographic market of the concentration concerned is a whole territory of Bosnia and Herzegovina due to the fact that the parties to the concentration act in the territory of BIH.

Therefore, the relevant market of the concentration concerned is the bauxite ore exploitation and processing and production and processing of semi-finished and finished aluminum products in the whole territory of Bosnia and Herzegovina.

The Council of Competition has taken into consideration that Rio Tinto and Alcan act at the worldwide level and that there is overlap in their activities performed in aluminum industry (engaged in almost all aluminum supply chains -mining of bauxite ore, processing into aluminum oxide/hydrated alumina – the primary aluminum).

In the analysis of relevant markets of the parties to the concentration and their competitors, at worldwide level, the Council of Competition used the data given in the Notification, but the analysis of the market in Bosnia and Herzegovina was made on the basis of the data provided from the Agency for Statistics of Bosnia and Herzegovina.

Analysis of the relevant market at worldwide level

Market share of the parties to the concentration and competitors, at the worldwide level, in the bauxite ore exploitation and processing, on 31 December 2006 (Table 2.), was:

Table 2.

NO	Name of producer	Realized production	Production capacity	Realized sale
1.	Alcoa- USA	19,3%	20,1%	16,3%
2.	UC Rusal - Russia	8,6%	9,3%	7,2%
3.	BHP Billiton-Great Britain	7,3%	7,6%	3,1%
4.	Rio Tinto – Great Britain	7,0%	7,3%	8,2%
5.	Alcan -Canada	5,6%	6,3%	6,1%
6.	Others	52,2%	49,4%	59,1%
Total		100,0%	100,0%	100,0%
Total (Rio Tinto+Alcan)		12,6%	13,6%	14,3%

Market share of the parties to the concentration and competitors, at the worldwide level, in the production of aluminum oxide, on 31 December 2006 (Table3.), was:

Table 3.

NO	Name of producer	Realized production	Production capacity	Realized sale
1.	Alcoa -USA	20,3%	20,2%	21,4%
2.	UC Rusal -Russia	15,4%	15,0%	0,1%
3.	Chalco - China	13,0%	12,4%	15,0%
4.	Rio Tinto – Great Britain	3,9%	4,1%	4,0%
5.	Alcan - Canada	7,7%	7,7%	0,0%
6.	Others	39,7%	40,6%	59,5%
Total		100,0%	100,0%	100,0%
Total (Rio Tinto+Alcan)		11,6%	11,8%	4,0%

Market share of the parties to the concentration and competitors, at the worldwide level, in the production of primary aluminum, on 31 December 2006 (Table 4.), was:

Table 4.

NO	Name of producer	Realized production	Production capacity	Realized sale
1.	Alcoa -USA	11,9%	11,3%	7,1%
2.	UC Rusal (together SUAL and Glencore) -Russia	11,6%	10,5%	13,2%
3.	Rio Tinto – Great Britain	7,0%	7,3%	8,2%
4.	Alcan -Canada	5,6%	6,3%	6,1%
5.	Others	63,9%	64,6%	65,4%
Total		100,0%	100,0%	100,0%
Total (Rio Tinto+Alcan)		12,6%	13,6%	14,3%

Market share of the parties to the concentration (Table 1., 2., 3. and 4.) shows that relevant markets are fragmented, with competition existing in each of individual markets in question, and belong to medium-concentrated markets. At worldwide level (where this concentration belongs to), the sustained vertical integration/joining continues at each level of supply chain- from the bauxite ore mining to aluminum production.

Analysis of the relevant market in Bosnia and Herzegovina

In Bosnia and Herzegovina, some undertakings act in the market for bauxite ore exploitation (in Jajce, Posušje, Široki Brijeg, Čitluk, Vlasenica, Milići, Srebrenica, BosanskaKrupa), some act in the market for aluminum oxide production (Fabrika glinice Birač, d.d. Zvornik –owned by Ukio Banko Investment Group, Kaunas, Republic of Lithuania), and some act in the market for primary aluminum production (Aluminij d.d. Mostar).

According to the data which was provided by the Agency for Statistics of Bosnia and Herzegovina (for the year 2006) a total production of bauxite ore was 1.031.618 tons, 447.260.000 kg of aluminum oxide and 120.000 tons of primary aluminum. The share of value of aggregate production of the relevant products in Bosnia and Herzegovina is insignificant at the worldwide production/sale of the relevant products.

The data provided in the Notification shows that parties to the concentration have no direct business cooperation with undertakings which act in the relevant market of Bosnia and Herzegovina.

Appraisal of the concentration

The Council of Competition assessed that implementation of the concentration concerned would not change the market share in the relevant market in Bosnia and Herzegovina.

In assessment and analysis of effects that concentration can cause on structure of the relevant market, on actual and potential competitors and supply /demand trends in the relevant market, the Council of Competition ascertained that this concentration would not prevent, restrict or distort market competition in the relevant market.

Therefore, the Council of Competition decided that implementation of the concentration would not have negative influence on the market of Bosnia and Herzegovina and decided as it is stated in enacted terms of this Decision.

Administration tariffs

On this Decision the Applicant, pursuant to the Article 2, paragraph (1), tariff number 107, item d) 1) of the Regulation on administration taxes relating to the practices before the Council of Competition (“Official Gazette of BIH”, No. 30/06), is obliged to pay administration tariff of 2.500,00 KM for the benefit of the budget of Institutions of Bosnia and Herzegovina.

LEGAL REMEDY

This Decision is final and no appeal is allowed against it. Unsatisfied party shall be entitled to bring an administrative dispute before the Court of Bosnia and Herzegovina within thirty days (30 days) from the date of acceptance of this Decision, i.e. from the date of its publication.

President

Sanja Božić