

Competition EC takes closer look at BHP–Rio tie-up

BHP's Rio bid faces 90-day EU probe

LONDON & SINGAPORE
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The European Commission has extended its probe of BHP Billiton's proposed takeover of Rio Tinto, citing "serious" concerns about the impact of the deal on European buyers of iron ore, coal, uranium, aluminium and mineral sands.

Market participants in the steel industry welcomed the in-depth investigation of the \$163 billion takeover, which should be completed by November 11.

"We are extremely worried about [the takeover]," a source at one of Europe's biggest steelmakers said.

Steelmakers fear that a tie-up between Rio Tinto and BHP Billiton will concentrate the market even further, and put a lot more price negotiating power in the hands of the Australians.

According to the United Nations Conference on Trade and Development (Unctad), Vale owns 36.1% of the global seaborne iron ore market, which totalled 745 million tonnes in 2007.

Rio and BHP have shares of respectively 19% and 14.2%, which would give a combined entity a stake of 33.2%.

The big three hold a combined 69.3% share. The European steelmaking lobby Eurofer estimates the share of the big three at nearly 75%.

"The possibility is that if the two tie up to become one company, there will be more pressure for increases in iron ore prices. If you look at this year's negotiations – Rio got increases as high as 96.5%. If you put the two together, those increases are likely to have been more than 100%," one iron ore trader said.

The commission's first-phase investigation concluded there is a "serious risk" that the merger would have a negative impact on price negotiations in iron ore and

other markets, or that the merged company could reduce or slow down planned investments in new production.

"The commodities produced by BHP Billiton and Rio Tinto are basic inputs for major industrial sectors and are therefore crucial for Europe's competitiveness," said commissioner Neelie Kroes.

Surging commodity prices have already had a serious impact on consumers in Europe and elsewhere, she added, and the takeover could result in higher prices and reduced choice for these companies' customers, an initial EC investigation concluded.

"In this very sensitive context any change making the situation worse could be extremely harmful. Therefore the commission will pay particular attention to ensure that this takeover does not adversely affect competition in Europe," Kroes said.

However, US anti-trust authorities have already indicated that they would not object to the merger, and others say a precedent was created with the approval of the CVRD/ Inco merger (now Vale) in 2006, which created the second biggest mining company in the world at the time.

"It was already not wise to authorise the Vale merger, and we can't base decisions on that. If you follow that argument, you can merge the whole market to one company," Eurofer director Axel Eggert said.

BHP has said that while the big three companies dominate the seaborne trade, BHP and Rio have a much smaller share of overall world production.

Unctad estimates Vale's market share in 2007 of total world production at 18.8%, with Rio and BHP having 8.8% and 7.3% respectively. Should BHP and Rio merge, their combined total market share of 16.1% is still smaller than that of Vale.

Letter: In defence of cartels

The industrial era brought great wealth – more wealth than Adam Smith could ever have imagined when he wrote *The Wealth of Nations* – while industrial leaders quickly became demand monopolists in the labour market and were able to reinforce their position by the accumulation of capital.

This great change also gave birth to new political ideas and organisations, the formation of workers' unions and cartels of un-sophisticated manufacturers and craftsmen, which found their industrial equivalent in producers' associations.



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Arguably one of the most famous theorists of this era, Karl Marx, promoted the ideal of common production and the equal distribution of goods among all. The adoption of his ideas in the 20th century was to cause

hundreds of millions of people to suffer hunger, suppression and often death. But Marx was not the only one to introduce revolutionary ideas in this era.

In 1889 Texas's Republican Senator John Sherman created the Sherman Anti-trust Act, directly

aimed at monopolists such as John Rockefeller, who tried to rule the oil market by binding all competitors within his 'trust' and extending malevolence to those who declined.

The Sherman Act forbids the manipulation of market structures, as well as the regulation of prices by cartels, and forms the basis of much of the anti-trust legislation in place today. While nowadays criticism of anti-trust laws is not fashionable, particularly in the EU, former US chairman of the board of governors of the Federal Reserve Alan Greenspan recently dubbed this legislation as a "stifling innovation harming society".

While Greenspan remains somewhat isolated in his stand, his idea that anti-trust legislation can in fact be a destructive and limiting force has a great deal to be said for them for a variety of reasons:

- No single company is strong enough to oppose governmental legislation of this nature;
- No single company can afford to oppose governmental legislation with legal instruments, particularly when the use of these instruments multiplies the risk and level of fines that may be imposed;
- No association can use its rights against governmental legislation since most are themselves born from cartels and face the danger of also being subject to intervention;
- Anti-trust bureaucracies cannot be effectively opposed because they are based on leading economic theories, such as Neoclassic theory, Microeconomics and Neoliberalism; and
- Public opinion cannot be opposed, and public opinion often supports those officials who promise lower prices and higher profit for customers, without considering that lower prices often translate to lower income and employment for those same consumers.

John Sherman was undoubtedly an honourable man, but could not have known how this legislation would evolve and I am sure would not have given his name to an act so destructive to business and business people's legal rights had he foreseen the consequences.