

Mergers: Commission opens in-depth investigation into BHP Billiton's proposed acquisition of Rio Tinto

The European Commission has opened a detailed investigation under the EU Merger Regulation into the proposed acquisition of Rio Tinto by BHP Billiton. Both companies are British-Australian dual-listed companies that mine and market a range of commodities such as iron ore, coal, uranium, aluminium, mineral sands, copper and diamonds, as well as various other base metals and industrial minerals. The Commission's initial market investigation has indicated that the proposed takeover raises serious doubts as to its compatibility with the Single Market. Concerns arise in particular as regards the markets for iron ore, coal, uranium and aluminium and mineral sands, because the proposed takeover could result in higher prices and reduced choice for these companies' customers. However, a decision to open an in-depth inquiry does not prejudge the final result of the investigation. The Commission now has 90 working days, until 11 November 2008, to take a final decision on whether the concentration would significantly impede effective competition within the European Economic Area (EEA) or a substantial part of it.

Competition Commissioner Neelie Kroes said, "The commodities produced by BHP Billiton and Rio Tinto are basic inputs for major industrial sectors and are therefore crucial for Europe's competitiveness. The recent surge in commodity prices has had a serious impact on the industries buying these commodities, their customers, and ultimately all the consumers in Europe and elsewhere in the world. 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."

The main commodities at stake are iron ore, coal, uranium, aluminium and mineral sands.

Iron ore and metallurgical coal are the main inputs used in the production of steel, and the levels of market concentration following this merger would be very high. BHP Billiton and Rio Tinto have substantial interests in a number of iron ore mines and coal operations, mainly in Australia.

The Commission's preliminary investigation found that after the takeover the new entity would in itself hold a significant share in the supply of iron ore and together with its next competitor would control a very large part of iron ore supplies. As regards metallurgical coal, the proposed transaction would reinforce the leading position of BHP Billiton, with smaller competitors far behind.

By increasing the new entity's market power in iron ore and metallurgical coal, there is a serious risk that the planned takeover could have a negative impact on the outcome of price negotiations with steel customers. Furthermore there is a serious risk that the merged entity might have the incentive to reduce the scale of its investment projects or slow down such investment, and so reduce supplies available on the market and increase prices.

Uranium is purchased by power companies for the production of electricity in nuclear plants. Concerns were raised during the Commission's preliminary investigation that the proposed merger, by combining two significant suppliers of uranium, would reduce the choice of alternative suppliers.

Concerns were also raised in relation to aluminium, which is used in many applications such as packaging and aeronautics, and in relation to mineral sands, which contain titanium oxide which is used in paint.

More information on the case will be available at:

http://ec.europa.eu/comm/competition/mergers/cases/index/m99.html#m_4985