

## Anglo American and Mitsubishi: a wrong step

On November 9<sup>th</sup>, 2011 Anglo American and Mitsubishi announced they had agreed to a transaction where 24.5% of Anglo American Sur, a mining operation in Chile with annual production to average 400.000 tons of copper in the next ten years, was to be transferred to Mitsubishi for US\$ 5.39 billion, valuing the company equity at US\$ 22 billion. It so happens that Codelco, the Chilean state owned copper company, had already announced on October 12<sup>th</sup>, 2011 its decision to exercise on January 2012, as contractually established, a call option over 49% of Anglo American Sur for US\$ 6.1 billion, consistent with a company value of US\$ 12.5 billion. Anglo American now alleges that Codelco could only buy at this lower company value a remaining 24.5% of Anglo American Sur. Codelco's full option would be worth US\$ 4.6 billion at US\$ 22 billion company value. Accepting this surprising sale transaction accompanied with a lower interest to exercise the call option would then cost Codelco US\$ 2.3 billion.

Anglo American's sale decision would be based on supposedly undefined or unclear articles of the option contract that would allow it to sell equity participation on its subsidiary even after being notified that Codelco was fully exercising its call option. Codelco will certainly retort that that supposed lack of definition works both ways, if such a condition exists. However, the core principle of the option in its origin and later modifications was to enable Codelco to reach a non controlling 49% interest, every three years and until January 2027, with variable exercise prices dependent on market conditions. Selling equity participation to third parties from the part of Anglo American – before it was Exxon's duty, the previous owner - was secondary to the prime objective.

On July 29<sup>th</sup>, 2011, in its "Half Year Financial Report", Anglo American specifically referred to this option right belonging to Codelco under "Derivative Financial Liabilities – Anglo American Sur". At the end of this section it expressly said "Notwithstanding this wide range, based on valuations determined using assumptions considered within a reasonable range, it has been concluded that the option has insufficient value, as determined by the applicable accounting standard, to warrant recognition on the balance sheet at 30 June 2011". Months later, a US\$ 4.6 billion contingency to Anglo American becomes a reality, equivalent to 9% of its market capitalization. No wonder then the birth of this hurriedly structured transaction and the numerous explanations necessary to be given to startled shareholders and securities authorities alike.

It only worsens the case for Anglo American a verbal offer they made to Chilean authorities during the first half of 2011. It apparently was a US\$ 1 billion offer to buy this option from Codelco, an offer not disputed to this day by either Codelco or Anglo American. That offer would not only be in a big disagreement with their own disclosed information of "insufficient value" delivered to the publicly traded securities market during the same period but would also constitute an embarrassing 22%<sup>1</sup> of only a some months later implicit proposal for the same asset made under even lower copper prices and a much more volatile financial scenario. In serious countries and reliable capital markets more is expected from its economic participants and failure to do so carry consequences for all parties involved.

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<sup>1</sup> US\$ 1.000 million offer over US\$ 4.600 million option value

But “it takes two to tango”. Mitsubishi is part of this transaction and as such could also be liable for damages from Codelco, if its present cooperative action ends questioning the full 49% call option. It is important not to forget that Mitsubishi, one year ago, went forward with a controversial transaction over CAP and CMP, steel and iron producing concerns based in Chile. Without competition from third parties, Mitsubishi got a de facto control of the companies, particularly the important CMP iron division, and barred it from participating in the one important Latin American iron country, Brazil, while controlling its production, commercial policies, transport and financing under an unchecked dual partner-service provider role. Do shareholders really understand this situation, as might be the case with Anglo American shareholders with respect to Codelco’s option?

In summary, here we have a valuable option already exercised but not allowed to get its full value, a mining company that did not clearly explain the option to its shareholders and the liability it implied to them and a trading and industrial company with a recent controversial transaction in Chile as counter party. Besides the above, there is no available knowledge yet to better ascertain possible commercial agreements between Anglo American and Mitsubishi in the multiple areas where they both participate that might affect the nature of the present transaction.

Codelco certainly has the upper hand in this case and the duty to make her rights respected. This is not about a forceful renationalization of copper as it might be shown by some but the responsible exercise of a profitable opportunity. It might have been legitimate for Anglo American to negotiate the option before its exercise but it lost its honest opportunity when it offered a price totally apart from the real values involved and later suddenly sold 24.5% of its subsidiary, under the knowledge of Codelco’s decision. Looking for help from Mitsubishi only ended up diminishing its stance. A legal battle concerning option rights, securities laws, global transactions and good faith agreements is about to start. Anglo American and Mitsubishi should end up paying dearly for putting at risk an asset worth at least US\$ 4.6 billion.

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