

Anglo American and released market information about Codelco's option: now they suddenly know?

On February 17<sup>th</sup>, 2012 Anglo American (AA) made public its Financial Statements for the year ended 31 December 2011. These were approved by the Board of Directors on February 16<sup>th</sup>, 2012 and signed on its behalf by Cynthia Carroll, Chief Executive, and René Médori, Finance Director, as it also happened with those two released in 2011 for the year ended 31 December 2010 and the six months ended 30 June 2011. During that year Cynthia Carroll had been particularly involved in negotiations between Anglo American and Codelco. These were about Codelco's profitable call option over 49% of Anglo American Sur which would be worth today, under its definitive exercise price, US\$ 5.180 billion<sup>1</sup>. Given AA present market capitalization around US\$ 51 billion, the corresponding loss to its shareholders – and gain to Codelco - when Codelco duly completes the exercise of its call option would be equivalent to 10% of its equity. This eventual loss was presented to AA shareholders during that same year 2011 stating that “it has been concluded that the option has insufficient value to warrant recognition on the balance sheet at 31 December 2010 – and again at 30 June 2011 -”. No contingency loss officially displayed, even though AA officers were receiving new information from ongoing negotiations with Codelco, at the same time of these statements, that was proving quite contrary.

Somehow the lack of transparency case and manifest inconsistency between facts and what was indeed informed to shareholders has had some effects in the newly released Financial Statements. To wit, in its Note 15, under Contingent Liabilities and when it refers to Codelco's call option, **AA now adds for the first time that “the valuation also excludes any commercial or strategic benefit to AA in extinguishing the option”**. But regrettably this phrase was not included in both Financial Statements released during 2011, and Mrs. Carroll should know that, given that she personally led negotiations with Codelco during that year - as she publicly stated in numerous interviews - to buy from them this call option and did not inform correctly about its possible consequences. Those negotiations led by her persona failed on even a US\$ 1 billion offer - to this date not disputed by either party - while at the same time AA insisted in both Financial Statements released during last year that Codelco's call option was worthless.

Furthermore, in this Note 15 AA also states that in the fourth quarter of 2011 it entered into discussions with Mitsubishi to sell 24.5% of AA Sur. Besides the timing issue of these negotiations, already later than July 29<sup>th</sup>, 2011 when the 49% call option exercise process was initiated and confusingly ample in the fourth quarter of 2011 timeline so as to blur October 28<sup>th</sup>, 2011 when Codelco had already informed all parties interested that its Board had decided to complete the exercise of its 49% call option, facts also not disclosed by AA to its own shareholders at the time they happened, there is a troubling new statement worth noticing: **AA says that entering into discussions with Mitsubishi “ highlighted new information about the value of AA Sur from a third party which was not previously available”**. What new information about the value of AA Sur could that be? AA Sur has not disclosed since then any relevant change about its own planned and bigger copper operations or mineral resources that might affect its economic value and about which they know best; copper prices at that time were moving down under a more volatile scenario particularly influenced by the Euro crisis, known also to all. What

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<sup>1</sup> AA disclosed a definitive US\$ 2.8 billion exercise price for 24.5% of AA Sur; for the 49% call option over AA Sur Codelco could then pay US\$ 5.6 billion for an equity participation worth US\$ 10.8 billion, based on last November 9<sup>th</sup>, 2011 Mitsubishi transaction that valued 100% of AA Sur at US\$ 22 billion, with a net gain of US\$ 5.18 billion.

new information then, not even particularly disclosed to shareholders until now, had been highlighted by Mitsubishi? The most probable explanation is that **there was in fact no new relevant information in the fourth quarter** to justify changes in AA Sur economic value, and consequently Codelco's call option economic value. The most probable rationale for this "new information about the value of AA Sur" statement lies in the search for a credible justification, with the benefit of hindsight and pressured from surprised shareholders, as to why the call option liability was previously valued at zero in AA Financial Statements. This might be a rather abstruse way to try to correct the misleading or false information that was disclosed before about this liability, conveniently delaying the date of "enlightenment" about AA Sur value to the fourth quarter of 2011, months after two central Financial Statements had been already released to shareholders without that "valuable" information. That way, the ones responsible for the obvious inconsistency between facts they knew and the disclosure they made of them might justify what they had previously done, affirmed and signed. But it is too tellingly obvious the acquitting purpose of it.

To make matters worse, AA now informs that it is taking legal action to render ineffective the potential future exercise of the option by Codelco. In other words, an incredible case where AA initially fails to offer a reasonable price for the call option consistent with its economic value, Codelco then decides to complete the exercise of the call option as its process had already started, AA next tries to partially disrupt it via bringing Mitsubishi into partnership and finally intends to render the option ineffective when Codelco defends its rights, all the while stating to its shareholders the option was worthless. Such an effort for an option whose value was insufficient to warrant recognition in the Financial Statements?

Last January a Chilean court required AA / Mitsubishi to disclose their Share Purchase Agreement documents over AA Sur, dated November 9<sup>th</sup>, 2011. What strikes the reader, besides the 110% liability protection given to Mitsubishi for its investment in AA Sur and the common legal defense led by AA, is the recurring declaration that there is no conflict with Codelco's call option while at the same time the essence of the documents lies in how they will both defend from Codelco. Too many explanations are symptomatic of something wrong; when these are now considered under an scenario of a 50 year option contract, of negotiations between the highest officers from both Codelco and AA, of offers and information released to shareholders different to what was really known and most possibly misleading, of a value at stake worth US\$ 5 billion, then all of these seemingly independent facts end making a case against AA and Mitsubishi stronger in civil and eventually criminal courts. This is not a one event and isolated dispute as they would like it to be; it is more of a pattern under a 50 year framework whose consistency strengthens Codelco's rights. An FSA inquiry over market abuse is clearly needed, for the evidence keeps mounting, particularly after these recent accommodating AA statements. AA, particularly its chief executive and possibly its Board, are primarily responsible for this mess and Mitsubishi is an informed and collaborating means to this deed. The case gets worse for them if it were shown that AA never intended to really comply with Codelco's 49% call option contract, which since its inception was meant to have a legal effect, that is, partnering with it in AA Sur. The more information gets public, the more plausible this non compliance intent gets real, and that certainly exceeds market abuse practices in the UK.