II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 23 April 1997

declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement

(Case No IV/M.754 — Anglo American Corporation/Lonrho)

(Only the English text is authentic)

(Text with EEA relevance)

(98/335/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings [1], as amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 8(2) thereof,

Having regard to the Commission Decision of 16 December 1996 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations [2],

Whereas:

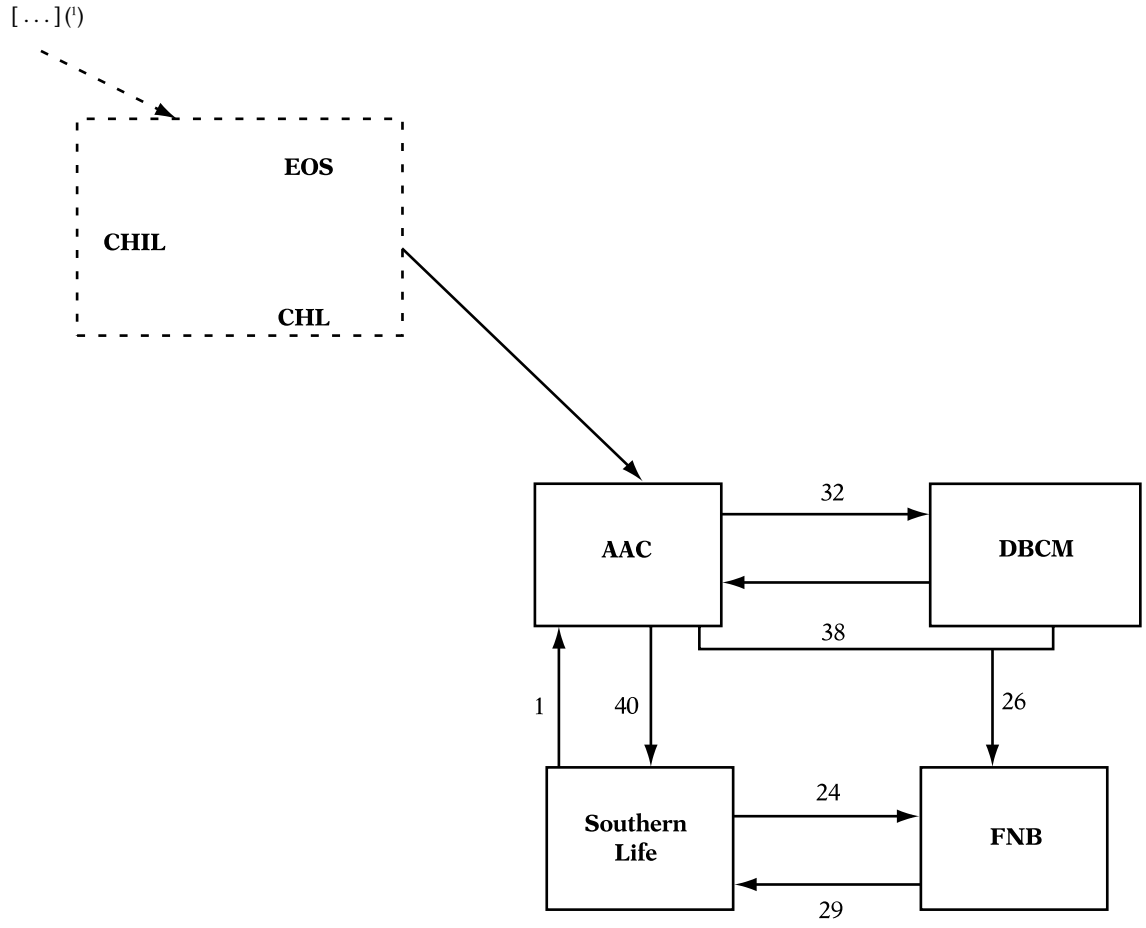
(1) On 14 November 1996 Anglo American Corporation of South Africa Limited ('AAC') notified the Commission of the acquisition of a 24,98 % shareholding in Lonrho plc ('Lonrho').

[1] OJ L 395, 30. 12. 1989, p. 1; corrected version OJ L 257, 21. 9. 1990, p. 13.
[2] OJ C 155, 20. 5. 1998, p. 27.

(2) After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 ('the Merger Regulation') as AAC, through the operation, acquired sole control of Lonrho within the meaning of Article 3(1)(b) of the Merger Regulation. The Commission decided to initiate proceedings in application of Article 6(1)(c) of the Merger Regulation on 16 December 1996.

(3) By means of a provisional decision dated 5 December 1996, the Commission ordered interim measures to effect the suspension of the concentration pursuant to Article 7(2) of the Merger Regulation. These interim measures were confirmed by the Commission by way a of a final decision, pursuant to Article 7(2), dated 7 February 1997.

I. THE PARTIES



A. *AAC and its group of companies*

A.1. **Anglo American Corporation of South Africa Limited and De Beers Consolidated Mines Limited**

(4) AAC is a diversified South African company involved in mining, finance, commerce and industry. AAC has its headquarters in Johannesburg and its shares are listed on several stock exchanges including those of Johannesburg, London, Frankfurt and Zurich. AAC was incorporated in 1917, on the initiative of Ernest Oppenheimer, whose family has been significantly involved in its day-to-day management ever since. The Oppenheimer family has similarly been involved with De Beers Consolidated Mines Limited ('DBCM') since the beginning of the 20th century. These two companies have been the basis for the creation of South Africa's largest mining finance house.

(1) In the published version of this Decision, some information has hereinafter been omitted or replaced by approximated figures, pursuant to Article 17(2) of Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets.

(5) There is a substantial cross-shareholding between AAC and DBCM. In fact, the main shareholder of AAC is DBCM holding 38,4 %. Conversely AAC is the main shareholder in DBCM with 32,5 %. The boards of directors of AAC and DBCM have a large degree of overlap, with seven out of DBCM's 15 directors also being on the AAC board and the same persons holding the posts of Chairman and Deputy Chairman in both companies. In its notification AAC indicated that the shareholdings of AAC and DBCM in Lonrho should be amalgamated for the purposes of the operation.

(6) Other larger shareholders in AAC are South African Mutual Life Assurance Society ('SA Mutual') (8,9 %) and Standard Bank Nominees (Tvl) (Pty) Limited (7,5%). In addition, The Southern Life Association Limited ('Southern') holds 1,6 % of AAC's shares. The other larger shareholders in DBCM are broadly identical to those of AAC. Thus, SA Mutual and Standard Bank Nominees both hold 9,4 % of DBCM's shares. Other companies holding in excess of 5 % of DBCM's shares are CMB Nominees (Pty) Limited (6,8 %) and Debswana Diamond Company (Pty) Limited (5,3 %), a company which is indirectly jointly controlled by AAC.

(7) AAC and DBCM hold investments in a vast number of direct and indirect subsidiaries, associated companies and other investments in mining, finance, commerce and industry in South Africa and world-wide. However, the following appraisal of the AAC group will be confined to assessing those relationships which are of importance when assessing AAC's acquisition of shares in Lonrho.

A.2. **Central Holdings Limited, Central Holdings International Limited and E. Oppenheimer & Son (Pty) Limited**

(8) The third largest shareholder in AAC is Central Holdings Limited ('CHL'), holding 8 % of the shares. CHL is wholly owned by Central Holdings International Limited ('CHIL'), a Liberian company [. . .]. CHIL serves as a vehicle for holding shares [. . .]. The Commission has sought to establish the complete nature of these holdings and has been informed that CHIL holds a wide variety of investments. However, no detailed information as to the exact extent of these holdings has been provided. CHIL's board consists of [. . .] members, [. . .] of whom are also on AAC's board.

(9) AAC has, in one submission to the Commission, acknowledged that '[[. . .] members of the boards of AAC and/or DBCM] are also on the board of CHL, E. Oppenheimer & Son (Pty) Limited ("EOS") [which is a subsidiary of CHIL] or other companies controlled by the Oppenheimer family', and that a number of the directors on the AAC and DBCM boards are paid by EOS, which, in some cases, recovers their remuneration from AAC and DBCM.

(10) AAC has subsequently stated that EOS and CHIL are not controlled by the Oppenheimer family and that 'nothing contained in [the referred submission] was intended to imply that they are so controlled'. In view of the shareholdings, directorships and historical presence of the Oppenheimer family, in both AAC and DBCM, the Commission has, in several questionnaires, addressed to CHIL and the Oppenheimer family sought to establish the complete nature of the Oppenheimer family's relationships with, and the question of whether the family has the possibility of exercising decisive influence over, CHIL, AAC and DBCM.

(11) As most of these questions have not been fully answered, the Commission can only conclude that a possibility remains that further links and holdings of relevance to this assessment may exist. However as AAC, following the receipt of the Commission's statement pursuant to Article 18 of the Merger Regulation, has conceded that, based on contractual arrangements, is able to procure that CHIL will vote its shares in Lonrho as instructed by AAC, the question as to the complete nature of the Oppenheimer family's holdings can be left open.

A.3. **The Southern Life Association Limited**

(12) Southern is a life assurance company listed on the Johannesburg stock exchange. AAC's annual report for 1996 defines Southern as an 'associate' of AAC (as is DBCM). Associates are defined as 'long-term investments in which the group holds between 20 % and 50 % of the equity capital and thereby has the ability to participate in their financial and operating policy decisions.'

(13) AAC has a 40,1 % direct interest in Southern. Moreover, the Chairman as well as one of two Deputy Chairmen and four out of 17 members of Southern's board are appointed by AAC. Moreover, according to the figures provided by Southern and AAC, AAC's shareholding constituted a clear majority of the total number of shares of the shareholders that attended Southern's AGMs in 1994, 1995 and 1996.

(14) Furthermore, AAC and DBCM have a 26,1 % shareholding and a number of directors (including the Deputy Chairman) on the board of First National Bank Holdings Limited, which has a 28,9 % direct shareholding in Southern (conversely Southern has a 24,4 % direct shareholding in First National Bank). As with Southern, First National

Bank is defined as an 'associate' of AAC. Only one other major shareholder of Southern has been identified being a 6 % holding by First National Nominees (most of which shares are held for the benefit of [. . .]) but which is also known to act as a nominee company for Southern. Therefore, more than 60 % of Southern's shares are directly or indirectly connected to AAC.

(15) Despite the above facts, AAC maintains that it is not in a position to procure that Southern will vote its shares in Lonrho as instructed by AAC. The Commission, however, cannot accept this argument. Instead it has to be concluded that AAC, by way of its shareholdings and board representations, is in a position to exercise decisive influence over Southern. The reasons for this conclusion will be further explained in Section II below.

B. *Lonrho*

(16) Lonrho is an UK company active in mining, agriculture, trading and property. Lonrho is based in London and is listed on the London and Johannesburg stock exchanges.

II. THE OPERATION

(17) The operation consists of the acquisition by AAC, and its related companies, of 24,13 % [1] of Lonrho's shares. The operation was carried out in several steps between March and November 1996, and was based on a number of agreements, as described below. However, as these steps were interrelated it is appropriate to consider them as one single operation for the purposes of this assessment.

A. *Agreements*

(18) As a first step AAC entered into an agreement on 13 March 1996 with Mr D. Bock, Lonrho's then chief executive, and Laerstate BV ('Laerstate'), a company controlled by Mr Bock. In this agreement AAC agreed to procure the purchase of 45 529 447 (5,81 %) Lonrho shares, and, as consideration for agreeing to this, AAC was granted a right of first refusal in relation to 143 478 260 (18,32 %) Lonrho shares held by Laerstate.

(19) As an intermediate step, also on 13 March 1996, the 45 529 447 shares were acquired from Laerstate by Swiss Bank Corporation, acting through its Warburg division, ('SBCW'). Furthermore, also on 13 March 1996, AAC and SBCW entered into an option agreement relating to all these shares. This latter agreement was, however, cancelled and replaced by an option agreement dated 15 March 1996, setting out call and put options in relation to 44 011 814 (5,62 %) of the Lonrho shares. Simultaneously, SBCW entered into a similar option agreement concerning the balance of the Lonrho shares acquired by it (1 517 633 (0,19 %)) with CHIL. Both options were exercised on 9 April 1996.

(20) On 12 April 1996 the right of first refusal granted to AAC on 13 March 1996 was replaced by two new agreements between AAC and Laerstate/Mr D. Bock; one option agreement relating to the 143 478 260 Lonrho shares, and one supplemental agreement, setting out in detail the conditions relating to the option. This option was subsequently exercised on 7 November 1996.

(21) A resolution of the directors of AAC, dated 13 March 1996, provides insight into the reasons why the first option agreement with SBCW was replaced by two others on 15 March 1996. According to the resolution there had been an agreement between AAC, CHIL and DBCM to share, amongst themselves, the Lonrho shares [. . .] whereby AAC would hold [. . .] of the shares, CHIL [. . .] and DBCM [. . .].

(22) Following receipt of the Commission's statement pursuant to Article 18 of the Merger Regulation, AAC has conceded that, based on this agreement, it is able to procure that DBCM and CHIL will vote their shares in Lonrho as instructed by AAC, and that, therefore their combined shareholding of 25,84 % (being all the shares acquired pursuant to the agreements and on the stock market) should be amalgamated to assess the question whether the operation results in a change in control over Lonrho.

B. *Previous holdings and other transactions*

(23) On 1 April 1996, AAC, in conjunction with DBCM, acquired 12 566 671 (1,60 %) shares, and CHIL 433 329 (0,06 %) shares, in Lonrho on the stock exchange. These purchases of a total of 13 000 000 shares were apportioned in the same way as those shares acquired pursuant to the option agreements.

(24) Prior to the concentration described above AAC held, indirectly through Southern, 13 132 218 (1,68 %) [2] shares in Lonrho. As described above, AAC disputes that these shares should be amalgamated with those of AAC, DBCM and CHIL for the purposes of this assessment.

[1] The total number of shares issued by Lonrho being 783 183 106 (1 February 1997).

[2] On 7 February 1997, Southern held 12 713 718 shares — 1,62 %.

(25) However, the Commission cannot accept this view for several reasons. Firstly, as indicated above AAC's share holding in Southern (40,1%) constituted a clear majority of the total number of shares of the shareholders that attended Southern's AGMs in 1994, 1995 and 1996. Secondly, AAC itself has contractually undertaken in the option agreements between AAC and Laerstate/Mr D. Bock of 12 April 1996 that [...] ([1]). Finally, AAC has provided no comprehensive explanation how its views are compatible with its own definition of Southern in AAC's annual report as a company in which AAC has the ability to participate in its financial and operating policy decisions.

C. *Conclusion*

(26) Through the operation, and on the basis of the agreements described above AAC, in conjunction with CHIL and DBCM, acquired a total of 189 007 707 (24,13 %) Lonrho shares. Taking into account the shares previously held by Southern and those acquired on the stock exchange the total holding of Lonrho shares which AAC will be in a position to control amounted to 215 139 925 (27,47 %) shares after the operation. As noted above it is possible that either the Oppenheimer family, the [...] or CHIL own further shares in Lonrho: given the opacity of the answers to its questions the Commission is unable to conclude whether further shares should be added to this total or not.

(27) The Commission therefore concludes that the combined shareholdings in Lonrho of, at least, AAC, DBCM, Southern and CHIL (27,47 %) should be amalgamated when assessing whether AAC, on a *de facto* basis, has acquired solely, or jointly with DBCM and CHIL, the possibility to exercise decisive influence, and therefore control, over Lonrho.

III. THE CONCENTRATION

(28) In its notification AAC argued that its acquisition of shares in Lonrho did not constitute a concentration within the meaning of the Merger Regulation. The basis for this argument was twofold. First, AAC argued that it is not in a position to procure that Southern or CHIL vote the shares held by them in Lonrho in any particular manner. Subsequently AAC has conceded, and now accepts that it is able to procure that CHIL will vote its shares as instructed by AAC. Furthermore, as described above the Commission cannot accept AAC's arguments concerning Southern.

(29) AAC's second argument was largely based on its contention that it could not procure that CHIL or Southern would vote their Lonrho shares in any particular manner. On this basis AAC argued that the question as to whether its acquisition of shares in Lonrho constitutes a concentration within the meaning of the Merger Regulation should be based on the accumulation by AAC and DBCM of an aggregate 24,98 % in Lonrho (including all shares held by AAC and DBCM at the time of the notification). Although AAC has now conceded that the figure to be used should be 25,84 %, it maintains that this holding is insufficient to place AAC, and its related companies, in a position where they have the possibility of exerting decisive influence over Lonrho.

(30) As set out above, the Commission considers that the question of whether the operation results in a change in control over Lonrho should be assessed on the basis of a total holding of 27,47 %. As will be shown below, evidence from polls held at Lonrho shareholders' meetings during the period 1993-96 shows that a holding of 27,47 % would have been sufficient to command consistently more than 50 % of votes cast; consequently the operation amounts to a concentration within the meaning of Article 3 of the Merger Regulation.

A. *Sole control by a 'qualified minority' shareholder*

(31) The Commission's notice on the notion of a concentration ([2]), in paragraph 14, sets out the factors for determining whether sole control exists in the case of a 'qualified minority' shareholder. It is stated in the notice that control will arise for example where the minority shareholder has the ability to achieve a majority in a shareholders' meeting, given that the remaining shares are widely dispersed among a number of shareholders. The Commission has applied this policy in a number of decisions ([3]).

(32) Set out in Annex 1 is a summary of the voting at Lonrho shareholders' meetings during the period 1993-96 at which an issue has been decided on a poll of shareholders. As can be seen from Annex I, the 27,47 % shareholding would have amounted to

([1]) The combination of AAC's contractual ability, together with other factors, supports the final conclusion.

([2]) OJ C 385, 31. 12. 1994, p. 5.

([3]) IV/M.025 — Arjomari-Prioux SA/Wiggins Teape Appleton plc; IV/M.343 — Société Générale de Belgique/Générale de Banque; IV/M.613 — Jefferson Smurfit Group PLC/Munksjo AB; IV/M.731 — Kvaerner/Trafalgar.

a majority of the votes cast at all these meetings with the exception of the 1995 AGM. It is also seen from Annex I that, in the past three years, the number of shares voted at the general meetings of shareholders has represented less than 55 % of the share capital except at the meeting concerning the contentious issue of the appointment of Mr R. W. Rowland as President where the shares voted represented 63 % of the share capital.

(33) AAC has argued that the only reliable method to test the influence of a shareholder is by reference to resolutions on contentious matters. Therefore, according to AAC, the voting on the resolution to appoint Mr R. W. Rowland as President of Lonrho is the appropriate test of whether AAC will control Lonrho. Therefore, AAC in its view does not control Lonrho.

(34) The rejection of the resolution to appoint Mr R. W. Rowland President of Lonrho is exceptional and is not relevant for the assessment of control and, consequently, can not be taken as a guide for future voting patterns. The resolution was exceptional due to two facts. Firstly, the resolution did not concern a commercial issue, since Mr R. W. Rowland would not have been a director and the Presidency should more properly be described as an honorary post. Secondly, the board had first endorsed the resolution, but later decided, after having ousted Mr R. W. Rowland from the board, to recommend that shareholders vote against the resolution. In turn the resolution was voted down on the recommendation of the board by 29,5 % for the resolution and 3,4 % against. The biggest shareholder at the time was the then new Managing Director and Chief Executive Mr D. Bock, holding 18,6 % of Lonrho's shares. Mr D. Bock had a contractual obligation to vote his shares for the resolution but, following the dispute, Mr D. Bock and the Lonrho board unanimously agreed to recommend that shareholders vote against the resolution. In the view of the Commission this recommendation and the subsequent voting on this resolution, demonstrates the influence of the largest shareholder on the board of Lonrho.

(35) AAC has also argued that there is a trend towards more institutional shareholders in Lonrho and therefore the proportion of issued shares represented at general meetings will continue to increase. The implication is that in the future AAC's shareholding would not be expected to represent more than 50 % of the votes cast. In the view of the Commission the proportion of institutional shareholders may have increased in the last three years. However, contrary to AAC's argument there is no clear trend in the number of shares represented at the general meetings of Lonrho shareholders [1]. It cannot, therefore, be concluded that the number of shares represented at general meetings of shareholders in the near future will be substantially different from those in the near past.

(36) Furthermore, AAC has argued in its response to the Commission's statement pursuant to Article 18 ('the Response'), that convertible bonds due in 2004 and 2006 and potentially representing 57 590 096 shares (7,4 % of the current share capital) have been issued. These bonds have the potential to further dilute AAC's shareholding, since AAC does not hold any of these bonds. However, the conversion price is about 196 pence per share, whereas the current share price is only about 140 pence per share. The share price may or may not increase in the future, but in the short term it does not seem likely that there will be an incentive to convert these bonds to shares. In any case AAC would be able to adjust it own shareholding correspondingly by purchasing shares in the market.

(37) Finally, AAC has argued that the Lonrho board could resist any attempt by AAC to nominate a majority of the board by rallying the support of institutional investors, other shareholders and the financial press. However, in reality the board would be in a precarious position, if it were to challenge AAC, since it would have to rally the support of a large number of shareholders, on which it would have to rely for their continuous support. This cannot be taken for granted, since even the body of institutional shareholders can change quite dramatically within a short period of time. Between July 1996 and February 1997 the proportion of the shares held by the institutional shareholders, with more than 1 million shares, thus decreased marginally from 46,3 % to 44,9 %. More importantly, there was a dramatic change in the composition of institutional shareholders. United Kingdom institutional shareholders thus decreased from 30,6 % to 17,5 % whereas United States institutional shareholders increased from 5,4 % to 15,3 % of the

[1] In 1993, 43 % of the shares were represented. This was down to 37,4 % in 1994 and to 38,3 % in 1995. It increased to 62,9 % in the contentious 1995 meeting, but decreased to 48,9 % in the EGM on the Gencor/Lonrho platinum merger in 1995. At the 1996 AGM it was 51,5 % and at the 1996 EGM on disposal of the Metropole Hotels it was up to 54,9 %. There is no clear trend.

shares. The volatility of past institutional shareholdings would have to be taken into consideration by the board of Lonrho, whenever the board sought shareholder support. In these circumstances it is clear that the shareholder structure indicates that the board, *de facto*, would have to rely on the support of AAC. In other words AAC would be an element of stability in the shareholder structure, and thereby a guarantee for a certain strategy and direction of the company.

(38) In consequence of the above and consistent with previous Commission decisions, it can be concluded that AAC has acquired the possibility to exercise decisive influence, and therefore control, over Lonrho. This conclusion is reinforced by the following three factors:

— *the position of other large shareholders in Lonrho:* the next largest shareholder in Lonrho is SA Mutual with 3,0 % of the shares. As far as SA Mutual is concerned it has to be noted that this company has shareholdings of 8,9 % in AAC, 9,4 % in DBCM and 8,5 % in Anglo American Platinum Corporation Limited and its subsidiaries ('Amplats'). Therefore, it would not be expected to vote against the interests of AAC.

AAC argues in the Response (page 24, paragraph 71, that 'this assertion is wholly unsupported and without foundation' and that 'The board of directors of SA Mutual will vote in the interest of its members who are policyholders and the mutual society as a whole and not how AAC would want or expect it to.' The Commission considers that the point is not whether SA Mutual would vote as AAC wants, but whether SA Mutual would have a commercial interest in supporting AAC. This is indeed the case, since supporting the commercial policy of AAC in Lonrho will be of benefit to SA Mutual as a shareholder in AAC, DBCM and Amplats.

Therefore SA Mutual's shareholdings in AAC, DBCM and Amplats create a commonality of commercial interest between AAC and SA Mutual as far as their interests in Lonrho are concerned. Consequently, the shareholding of SA Mutual makes it even less likely that AAC would be outvoted at future shareholders' meetings,

— *industrial leadership:* AAC is the only industrial or mining company having a significant shareholding in Lonrho.

AAC has argued (Response, page 4, paragraph 71) that 'This is not a relevant factor. The only opportunity for AAC to exercise its influence is either through its shareholding or through its representation on the board.'

In the view of the Commission, AAC can, from a formal point of view, influence Lonrho either through its shareholding or through its board representation. As discussed above, the Commission considers the possibility to exercise decisive influence through a shareholding in itself sufficient to confer decisive influence.

However, the fact that AAC is the only industrial or mining company having a significant shareholding in Lonrho adds to the leverage of AAC in Lonrho because it increases the influence of AAC over the board. By nominating key persons like Mr T. C. A. Wadeson, the Technical Director of AAC, to the board of Lonrho, AAC will be in a strong position to influence the strategy and direction of Lonrho. This is in particular the case for the mining assets. None of the institutional shareholders would be in such a position. Rather it is to be expected that the institutional shareholders would be supportive of proposals from the board produced with the support of highly qualified AAC directors on the board of Lonrho. In other words, AAC will not even need to nominate the majority of the board of directors in order to have a strong influence on board decisions, simply because it is the only major industrial and mining company.

Furthermore AAC has argued that 'the board must act at all times in the best interest of the company and the shareholders as a whole as a matter of law irrespective of the pressure of significant minority shareholders, . . .' (Response, page 13, paragraph 33). However, the question is not whether the board will or will not fulfil its legal obligations, but rather whether the AAC presence on the board of Lonrho will result in an anti-competitive market outcome, from a competition policy view. In this respect it has to be noted that it can be expected that, in general, an anti-competitive outcome could even be beneficial to Lonrho shareholders (but harmful to consumers). Therefore, if AAC were to use its influence over the board, it would certainly not necessarily imply that the directors of the board would be in breach of their legal obligations,

— *directors' holdings:* Lonrho's directors, who hold a total of 0,12 % of the shares in the company, would not be expected to vote against AAC in its capacity of main shareholder. AAC has argued that 'This is plainly wrong. Each Lonrho director who owns shares in the company will vote his shares in his own personal interest but having regard to his position and responsibility as a director.' (Response, page 25, paragraph 71).

At the hearing in the case on 26 February 1997 it was said by Lonrho that the board of Lonrho reaches its decisions by consensus. In this situation Lonrho's directors can only be expected to vote their shares as recommended by the board. Moreover, in reaching a decision which could bring the board into conflict with AAC each director would have to consider his own position in particular vis-a-vis AAC. In these circumstances Lonrho's directors are not expected to vote against AAC in its capacity of main shareholder.

(39) In conclusion, the votes cast by AAC at the general meetings of the shareholders of Lonrho will secure AAC the possibility to exercise decisive influence over Lonrho. In addition, the three additional factors above will reinforce AAC's control over Lonrho.

B. ***Decisive influence in the London context***

(40) AAC has argued in the Response that the Commission cannot rely on its policy in the notice on the notion of a concentration to alter the fundamental notion of a concentration as defined in Article 3(3) of the Merger Regulation. AAC therefore submits that the question of whether decisive influence exists must be examined in the proper factual economic and legal context (Response, page 12, paragraph 29). For this purpose AAC examines what the company calls 'the London context' by which is meant the legal framework within which UK listed companies are regulated. Specifically, AAC examines the notion of control under the UK Takeover Code, the position of the board of directors and the role of shareholders of a listed company and the influence of board recommendations on shareholders:

— *notion of control under the UK Takeover Code:* the UK Takeover Code provides that if a shareholder has acquired more than 30 % of the shares in a listed company, it is obliged to make a general bid for the company. This threshold has not been met in the current operation and therefore, according to AAC, a takeover has not taken place.

  This argument cannot be accepted since the 30 % threshold is not the relevant test for the purpose of assessing control under the Merger Regulation nor is it necessary for a shareholder to make a general bid for a company in order to acquire control within the meaning of the Merger Regulation. The 30 % threshold of the UK Takeover Code is therefore not considered further,

— *the board:* according to AAC, in the London context, it is the responsibility of the board of a listed company to determine the strategy, direction and management of the company,

— *the shareholders:* according to AAC, the shareholders only have a limited role in determining the strategy and setting the direction of a company. Generally shareholders only meet once a year and the purpose of the meeting is to deal with routine matters such as the receipt and approval of the annual report and accounts, election of directors, etc.

— *influence of board recommendations:* finally, according to AAC, in the London context shareholders are strongly influenced by a board recommendation with regard to any proposal, and it is highly unusual for a proposal which has the support of the board not to be approved by shareholders.

(41) The Commission recognises that the board of Lonrho has in the past played a crucial role in determining, the strategy and setting the direction of the company. The role of the shareholders has been confined to the general meetings of shareholders. In such meetings, board recommendations have always been followed by shareholders. As discussed above this was for example the case in the contentious resolution in 1995 to appoint Mr R. W. Rowland President of Lonrho. However, in recent years the largest shareholders, either Mr R. W. Rowland or Mr D. Bock, have been on the board of Lonrho themselves and in addition have been acting as chief executive. In other words, recommendations from the board of Lonrho were tantamount to recommendations from the main shareholder. It is, therefore, equally valid to say that in the past Lonrho shareholders have always followed the main shareholder.

C. ***Influence over Lonrho Platinum Division ('LPD')***

(42) AAC has argued that its stake in Lonrho vill confer on it 'little influence on LPD through either its board representation or level of shareholding [in Lonrho]'. AAC bases this argument mainly on the fact that, in its view, the LPD board operates independently of Lonrho. Moreover AAC has stressed that it has no plans in relation to LPD.

(43) While recognising that Lonrho's investment portfolio contains other assets of interest to AAC (e.g. gold and coal), the Commission finds it difficult to accept that AAC would have no interest in co-ordinating the business of LPD with its own platinum business. However, even on the assumption that AAC does not currently have any plans in relation to LPD, this would in any case not be relevant for this assessment. What is relevant is that Lonrho has a 73 % stake in LPD, and therefore control over it within the meaning of Article 3 of the Merger Regulation, and that the acquisition by AAC, DBCM and CHIL of 24,13 % of the share capital of Lonrho confers on AAC the structural possibility of exercising decisive influence over LPD.

D. *Conclusion*

(44) Therefore, it is clear that AAC would have the possibility to exercise decisive influence over Lonrho. Firstly, as discussed above, AAC is by far the largest shareholder with a holding of 27,47 % of the shares and is expected to cast more than 50 % of the votes at general meetings of the shareholders. Furthermore, it is not to be expected that SA Mutual would vote its 3,0 % shareholding against the interests of AAC which reinforces the position of AAC. Finally, the two additional factors mentioned above add to the leverage of AAC in Lonrho and therefore reinforce the possibility of AAC to exercise decisive influence over the board of Lonrho.

(45) In conclusion, the Commission recognises the legal framework within which control over a UK listed company is exercised. However, in the view of the Commission, its analysis as discussed above in the section 'Sole control by a "qualified minority" shareholder' fully reflects this legal framework. Consequently, the operation amounts to a concentration in the sense of Article 3 of the Merger Regulation.

IV. COMMUNITY DIMENSION

(46) AAC is essentially an investment holding company and derives the bulk of its income from these investments. Therefore it does not itself have a turnover nor does it retain records that would produce such data. Despite this fact AAC has identified certain companies in the notification (Anglo American Coal Corporation, Anglo American Industrial Corporation, Anglo American Properties and Elandsrand Gold Mining Company), over which it has control within the meaning of Article 3 of the Merger Regulation, and whose world-wide turnover exceeds ECU 5 billion and whose Community turnover is in excess of ECU 250 million.

(47) Lonrho's annual accounts, for the year ended 30 September 1995, disclose a worldwide turnover of ECU 2,6 billion and sales in the UK and Europe of ECU 1,4 billion.

(48) In view of the above figures, and as both AAC and Lonrho do not achieve more than two thirds of their sales in one and the same Member State, it has been concluded that the operation has a Community dimension.

V. RELEVANT MARKETS

A. *Relevant product markets*

A.1. **Platinum group metals**

(49) AAC has identified four areas of overlap between its operational activities and those of Lonrho being coal, gold, sugar and platinum group metals ('PGMs'). As for the aspects of the transaction concerning coal, the Commission is satisfied that the Merger Regulation does not apply and that this sector should be assessed, as far as is appropriate, in accordance with Article 66 of the ECSC Treaty. Similarly the Commission is satisfied that the overlaps in the production of gold and sugar do not give rise to affected markets, as defined in the Annex to the Commission Regulation (EC) No 3384/94 of 21 December 1994 on the notifications, time limits and hearings provided for in Council Regulation (EEC) No 4064/89 on the control of concentration between undertakings [1]. Consequently, they are not considered further below.

(50) AAC has identified the affected markets in this case as being the production of PGMs either from primary or reprocessed sources. The ore body containing PGMs is found principally in South Africa and Russia; reprocessed PGMs are recovered from spent autocatalysts and there is no technical or physical differences between the metals which are obtained from either of these sources. The Commission has already discussed the PGM markets in detail in its earlier decision in Case No IV/M.619 — Gencor/Lonrho [2].

(51) There are six different PGMs: platinum, palladium, rhodium, iridium, osmium and ruthenium. They are employed in a wide range of applications, including:

[1] OJ L 377, 31. 12. 1994, p. 1.
[2] OJ L 11, 14. 1. 1997, p. 30.

— jewellery,
— catalytic converters for automobiles,
— general industrial catalytic applications,
— electronic equipment and components,
— dental, and,
— investment.

(52) Total worldwide sales of PGMs amounted to about ECU 2,4 billion in 1995. Platinum is the most important (64 % of sales) and most widely used of the PGMs (hence, the origin of the group's name). Palladium and rhodium are ranked as the second and third most important PGMs with 29 % and 6 % of sales, respectively. The remaining three PGMs (iridium, osmium and ruthenium) are of lesser commercial importance and together they account for less than 1 % of the total sales of PGMs. They are commonly used in alloys with platinum or palladium. In addition, they each have a small number of specialised applications, where their use is preferred because of their particular physical or chemical characteristics.

(53) The following table [1] in terms of volume (in thousands of troy ounces) shows the main uses in 1996 for the three most important PGMs.

	Platinum	Palladium	Rhodium
Autocatalyst	1 820 (37 %)	2 270 (36 %)	405 (87 %)
Industrial	1 065 (21 %)		61 (13 %)
Jewellery	1 840 (37 %)		
Investment	235 (5 %)		
Electrical		1 310 (21 %)	
Dental		2 120 (34 %)	
Other		545 (9 %)	
Total western demand	4 960 (100 %)	6 245 (100 %)	466 (100 %)

Note: In addition some 180 000 ounces of platinum were sold by the West to China.

(54) In Case IV/M.619 — Gencor/Lonrho the Commission concluded that platinum, palladium, rhodium, iridium, osmium and ruthenium each constituted a separate relevant product market. As explained below, this conclusion is maintained in the present case.

A.2. **Platinum**

(i) Main uses of platinum

(55) As shown in the table above the main applications of platinum are in autocatalysts (37 %), industry (21 %) and jewellery (37 %), while the residual amount is sold for investment purposes. The substitution of platinum with other metals is limited for all these purposes.

(56) *Autocatalysts*

based on platinum, palladium and/or rhodium have been developed to eliminate the three most dangerous gases emitted by motor vehicle engine exhausts, namely, carbon monoxide (CO), nitrous oxides (NOx) and unburned hydrocarbons (HC). The function of autocatalysts is to convert these noxious gases to less harmful components (carbon dioxide, nitrogen and water).

(57) Platinum is the most active of the thre metals in CO and HC conversion, it is the least affected by lead and sulphur in the fuel and works well at low temperatures. However, it does not reduce NOx efficiently (a task that rhodium performs well). Palladium has some ability to convert CO and HC, and to reduce NOx, but is easily contaminated and is slow to become operational. Therefore, platinum, palladium and rhodium perform differently in the catalytic conversion required by autocatalysts to remove the noxious constituents.

(58) Platinum, palladium and rhodium are used in varying ratios and combinations in autocatalysts. The main driver behind the choice of the metals and their loading ratios is not the cost of the PGMs, but the achievement of the necessary catalytic performance to meet specific legislative requirements. Such loadings also vary according to factors such as the engine size, the fuel used (petrol or diesel), efficiency levels sought, the vehicle mass and the manufacturers' design and technology. Autocatalysts comprising, for example, platinum/palladium/rhodium or platinum/rhodium or even palladium alone exist on the market and platinum, palladium and rhodium can, to a limited extent

[1] Johnson Matthey Platinum 1996 Interim Review.

only, substitute for each other in an autocatalyst. Owing to their complementary properties platinum, palladium and rhodium are most frequently used together in the formulation of an autocatalyst.

(59) In considering the substitution possibilities between PGMs in the composition of autocatalysts account has to be taken of the fact that changes are slow and often require lead times of several years. Moreover such changes are costly, requiring substantial R & D and testing to ascertain whether the new catalyst would meet ever-tightenirig environmental regulations. Clearly, therefore, switching costs for automobile manufacturers go well beyond the costs of the various PGMs involved. This further constrains the limited possibilities for substitution among PGMs in autocatalytic applications. Finally, it also has to be recalled that diesel engines, with current technology, have to be fitted with platinum converters.

(60) In the notification, AAC states that a recent trend has been the replacement of platinum with palladium in certain autocatalysts systems. According to AAC, this trend is driven by technical performance rather than price considerations as motor manufacturers have responded to ever more stringent emission standards (notification, page 17). The Commission's investigation has confirmed this view. This trend cannot be taken as evidence that platinum and palladium are substitutes and therefore part of the same relevant product market, since the replacement of platinum with palladium is a change in response to a technological development and not owing to a price change. In other words the trend is not taking place in response, for example, to a 10 % price increase in platinum, but because palladium has shown a superior performance for the particular autocatalysts in question.

(61) In conclusion, technological advances may affect the usage pattern of PGMs in autocatalysts. However, there is no substitution between PGMs in response to price changes. Furthermore, although the use of palladium has increased in proportion to platinum, the market demand for platinum will continue as platinum will remain the most essential element for use in autocatalysts.

(62) *Industrial applications*

Platinum is widely utilised in industrial applications, for example as a catalyst gauze for manufacturing nitric acid for fertilisers, and in the glass industry, which uses equipment made from platinum-rhodium alloys for the highly corrosive operating environments needed in the production of high quality LCD glass (used in the screens of computers and televisions). There are no substitution possibilities for platinum in such industrial applications.

(63) *Jewellery*

Platinum is the only PGM which is used for jewellery. It is also the most precious among all the precious metals and, in particular, platinum jewellery is more expensive than gold jewellery. This is due to its higher unit costs, its higher purity than gold in jewellery uses, and because it is harder to work than gold.

(64) The demand for platinum in jewellery is dominated by the Japanese market. More than 80 % of the world's demand for platinum for jewellery came from Japanese consumers in 1995. The unique characteristics of the Japanese jewellery market therefore have a crucial influence on the demand for platinum and, accordingly, on whether specifically gold can substitute platinum to any significant extent. As explained below, gold is not a substitute platinum in the Japanese jewellery market.

(65) The reasons for the high level of consumption of platinum jewellery in Japan are historical. Firstly, Japanese culture places a high value on purity: platinum satisfies this preference owing to its 99,95 % standard of purity and the fact that the metal has a 'whitish' appearance. Secondly, for many years (until 1973) the import of gold into Japan was tightly controlled and the tradition for platinum jewellery therefore developed. Finally, the strength of the yen in recent years, relative to the US dollar (in which platinum is always priced), has supported the Japanese demand for platinum as well as other precious metals like gold.

(66) The Commission has examined retail market data in order to assess the current market position of platinum versus gold in Japan. In 1995, 35,2 million pieces of jewellery made from platinum, gold or platinum/gold combinations were sold in Japan. In unit terms, platinum accounted for 23 % of the pieces sold (but for 57 % of the total value of sales) and gold for 71 % of the pieces sold (but 36 % of the value). The balance was accounted for by combination platinum/gold jewellery.

(67) Platinum is mainly used for the production of more expensive jewellery i.e. that including gem stones: measured in sales value, in 1995, platinum jewellery accounted for 63 % of sales of jewellery with a gem stone. Conversely, gold jewellery, including a stone, accounted for only 31 % of sales and platinum/gold in combination for the remainder.

(68) Platinum is the overwhelming first choice for rings in Japan. In 1995, 98 % of all engagement rings, 74 % of all wedding rings and 66 % of other rings were made of platinum. Thus, only 2 % of engagement rings were made of either gold or a platinum/gold combination; similarly 19 % of wedding rings were of platinum/gold and only 5 % of gold alone. The superior popularity of platinum over gold and platinum/gold combinations for rings has remained fairly steady in recent years owing to the unique characteristics influencing jewellery buying patterns in Japan. In contrast, platinum is used less for other types of jewellery. Measured in sales value, platinum accounted for 47 % of pendants, 37 % of necklaces, and 25 % of earrings sold in Japan in 1995.

(69) Therefore, gold and platinum do not appear to be substitutes for jewellery purposes, since their usage patterns in terms of jewellery uses, are quite different.

(70) The substantial difference in the price levels of gold and platinum jewellery on the Japanese market could also be an indicator that gold and platinum in jewellery are not to any large extent substitutes for jewellery purposes. More importantly, a price elasticity estimate of Japanese demand for platinum in jewellery confirmed that platinum is not subject to strong competition from other metals.

(71) This estimate of the price elasticity of Japanese demand for platinum in jewellery required an econometric estimate. In a study, covering the period 1975-95, commissioned by the Commission, on the factors influencing the price of platinum (see below (ii)), the price elasticity for Japanese demand for platinum in jewellery was estimated to be −0,6, i.e. inelastic (numerically smaller than 1) ([1]).

(72) Price inelasticity implies low substitutability. In view of the above data, it can be concluded that demand for platinum in jewellery is therefore not subject to strong competition from other precious metals on the Japanese market. As seen from the above discussion this is entirely consistent with the market position of platinum versus gold on the Japanese jewellery market.

(73) *Investment demand*

Platinum is sold to individuals and companies (principally in Japan) to hold, for example in the form of platinum bars, and such investment demand can be speculative. However, platinum does not have a position similar to gold which historically has been used as a means of payment. Therefore, investment demand for platinum reflects the underlying uses of platinum for autocatalysts, industrial purposes and jewellery, since it is these uses which give platinum its value. In addition there is no evidence to indicate that accumulated stocks of such bars and coins re-enter the market for platinum. This is demonstrated in the Johnson Matthey 'Platinum 1995 Interim Review' and 'Platinum 1996 Interim Review' that shows a reversal in investment demand in only one year (1986) and then for only one type of bar.

(74) *Conclusion*

There are in reality no substitutes for platinum for its main applications being autocatalysts, industrial processes and in jewellery. This conclusion is confirmed by an analysis of the factors which influence the price of platinum.

(ii) Factors influencing the platinum price

(75) The Commission considers that it is the fundamental underlying supply and demand requirements for platinum in jewellery, autocatalysts and industrial purposes which have a critical impact on the price of platinum. It is principally these fundamentals, and not other factors like speculation, that drive the price of the metal over time.

(76) *Observations from 'Metals Analysis Outlook'*

In order to establish the fundamental supply and demand factors on prices, the Commission tracked the most important factors affecting prices in the period 1990-95 by looking at extracts from the journal 'Metals Analysis Outlook', which forecasts the development of the market, quarter by quarter. According to these documents it was found that the most important factors are:

— forecasts in the South African production, expansion or suspension of shafts,

— the level of recycled platinum,

— the level of Almaz's sales for the Russian State, forecast from nickel production and levels of stockpiles,

— the off-take for autocatalyst and car demand,

— jewellery demand in Japan, economic conditions in that country and the yen/dollar exchange rate, and,

— pipeline stocks (stock in process).

(77) The factors enumerated above show that the price of platinum is driven by fundamental supply and demand factors for platinum.

(78) *Commission study on factors affecting platinum price movements*

The purpose of the Commission's study was to determine, if possible, the most important factors driving platinum prices. The main conclusions of the study are that:

([1]) This means that if the price, for example, increases by 10 % then quantity demanded will decrease by less than 10 %. The total sales revenue therefore increases in this situation, despite a decrease in quantity sold.

(a) the platinum price is statistically correlated with the gold price on a short-term basis, if not necessarily a long term basis (the relationship is shown in paragraph 80 below to be spurious), but platinum prices are also driven by the fundamentals of supply and demand within the platinum industry;

(b) it is not possible to determine any significant relationship between platinum prices and the major macro-economic indicators, nor between gold prices and the major macro-economic indicators (inflation, interest rates, exchange rates and economic growth);

(c) the platinum futures market is primarily a forward market and does not normally have a high level of speculator activity. In the long-term, fundamentals will therefore prevail as the decisive price determining factor;

(d) demand for platinum is price inelastic (see section (iii) below);

(e) whilst the platinum market is smaller and more volatile than gold, there is no evidence of excessive speculator activity. Unlike gold there are at most limited stocks of platinum to satisfy periodic spikes in investment demand.

(79) In conclusion therefore the platinum market is not a highly speculative market and fundamental supply-demand factors are important for the platinum price.

(80) *Price correlations between platinum, gold, silver, rhodium and palladium, are spurious*

Although the prices of precious metals like gold and platinum are highly correlated, a high correlation does not in itself imply a causal relationship. Indeed economic price series data are often non-stationary (i.e. trended) and therefore automatically correlated. The Commission has therefore undertaken a more elaborate analysis of the correlation between the prices of platinum, gold, silver, rhodium and palladium.

(81) The Commission undertook a co-integration analysis of the data set of the prices of platinum, rhodium and palladium, as well as gold and silver prices. Co-integration analysis is an econometric method which can test whether there is a systematic equilibrium (or long-run) relationship between two or more time-series of data. The results of the analysis show that the data do not suggest any equilibrium (or long-run) relationship between the respective price levels of platinum, rhodium, palladium, gold and silver, nor of any subset of these metals. This econometric analysis of metal prices indicates that platinum, rhodium, palladium, gold and silver prices tend to vary, over the long run, independently of each other, thus confirming the view that platinum, rhodium, palladium, silver and gold are separate relevant product markets.

(82) *Conclusion*

An analysis of factors influencing the price of platinum indicates that the platinum price over time is driven by the fundamental supply and demand factors for platinum, such as the demand for uses in autocatalysts, industrial processes and jewellery. The platinum price may be influenced by short-term speculative movements in precious metals like gold, but the platinum price is not driven by the prices of other precious metals seen over a longer period of time.

(iii) Demand for platinum is price-inelastic

(83) The portion of platinum demand accounted for by industrial processes and autocatalysts is price-inelastic, probably with a price elasticity close to zero, since there is basically no appreciable substitution for platinum for these purposes if the price was to increase by a small but significant amount. The price elasticity for jewellery demand on the Japanese market was found, in the abovementioned study, to be price-inelastic with an elasticity of − 0,6. Since autocatalysts and industrial processes accounted for about 55 % of the market, and the Japanese jewellery market for about 30 % in 1995, this means that the price-elasticity of 85 % of the global platinum market is highly inelastic. The remaining 15% of demand is for jewellery outside Japan (5 %) and investment (10 %). The jewellery market outside Japan is likely to have a limited price elasticity of demand, since platinum jewellery is a special, 'up-market' product. Further-

more, the effect of investment demand, on overall price elasticity is limited. All in all, it can therefore be concluded that the price elasticity for the total market is inelastic (numerically smaller than 1).

(84) A price elasticity numerically smaller than 1 implies that the cross-price substitution elasticities to other metals are even smaller, i.e. the competitive impact of other metals is not very high. Therefore, price inelasticity of demand indicates that platinum is a separate relevant product market.

(85) The demand for platinum is obviously only price-inelastic in the current price range. This means that, for example, a 10 % shift in the price level would be possible without any significant substitution starting to take place. However, the Commission recognises that substantial substitution of platinum by other metals could not be excluded, subject to certain lead times, if there were to be, for example, a 100 % or even greater increase in price. Such a phenomenon was witnessed in the case of rhodium, when the price for rhodium increased from USD 300 to USD 7 000 per ounce at the beginning of the 1990s. With a price increase of more than 2 000 %, buyers of rhodium started development work with the aim of finding substitutes. The result was that many uses of rhodium disappeared. However, extreme price increases like this are not the appropriate test for the purposes of defining relevant product markets.

(iv) Conclusion

(86) In the notification AAC has stated that a recent trend has been the substitution of platinum by palladium in certain autocatalyst systems, that platinum is substitutable by other precious metals in jewellery applications, and that for investment purposes it competes with all other forms of investment. The Commission recognises these elements. However, based on the above analysis the Commission concludes that overall these elements are not strong enough to consider, for example, platinum, gold and palladium to be part of the same relevant product market. Rather, the Commission maintains its conclusion from Case IV/M.619 — Gencor/Lonrho that platinum is a separate relevant product market, which is a different relevant product market from those of gold and palladium.

A.3. **Palladium**

(87) Palladium is mainly used for industrial purposes. Only 4 % (200 000 oz) of yearly palladium demand is for use in jewellery as an alloy with platinum or as a non-allergenic whitening agent for gold. Specifically, palladium is not a substitute for platinum in jewellery.

(88) Palladium is widely used in autocatalysts and industrial catalysts in the petroleum refining and chemical industries, for example being employed to reduce losses of platinum and rhodium during the conversion of ammonia to nitric acid. Palladium is also an important strategic raw material in electronic components, in particular in palladium-containing components known as multi-layer ceramic capacitors (MLCC). These components are widely used in electronics and telecommunications equipment. For example, a single mobile phone contains around one hundred MLCC.

(89) Palladium is found in the same ore body as platinum and is produced, albeit with a different refining process, by the same companies as platinum.

(90) As discussed above under platinum, the palladium price varies independently of the prices of the other PGMs as well as gold and silver prices (section V.A.2(ii)). Therefore, the Commission has come to the conclusion that palladium constitutes a separate relevant product market.

A.4. **Rhodium**

(91) Rhodium is mainly used for automotive purposes. Rhodium is found in the same ore body as platinum and is produced, albeit with a different refining process, by the same companies as platinum. As discussed above under platinum, the rhodium price varies independently of the prices of the other PGMs as well as gold and silver prices (section V.A.2(ii)). There are no substitutes (section V.A.2(i)). For this reason, the price elasticity is close to zero in the current price range. Therefore, the Commission has come to the conclusion that rhodium constitutes a separate relevant product market.

A.5. **Ruthenium, iridium and osmium**

(92) The remaining three PGMs (iridium, osmium, and ruthenium) are of lesser commercial importance and are commonly used in alloys with platinum or palladium.

(93) There are no substitutes for these metals, and based on public data on prices, their prices appear to develop independently of other metals. Therefore, they each appear to be separate relevant product markets.

B. ***Relevant geographic market***

(94) PGMs are fungible materials, are easily transported, are refined to the same purity standards throughout the world and are readily traded without tariff barriers. In Case IV/M.619 — Gencor/Lonrho, the markets for PGMs were found to be global. This conclusion is maintained in the present case.

B.1. **Platinum and palladium**

(95) Platinum and palladium are sold on a worldwide basis either under long-term contracts or on the metal markets. Prices of platinum and palladium bought under long-term contracts are linked to a market price index and are generally fixed on a monthly basis on the average of the daily 'fixes' of the exchanges during the month prior to the month of delivery. Prices are expressed in US dollars per troy ounce gross.

(96) The principal metal exchanges for platinum and palladium are the London Platinum and Palladium Market (LPPM), the New York Mercantile Exchange (NYMEX) and the Tokyo Commodity Exchange for Industry (TOCOM). There are well-defined specification requirements for both platinum and palladium determining the form, weight, purity and markings to which each metal must conform in order to be traded on the metal exchanges. Producers have to be recognised as 'Good delivery' producers or manufacturers before their material is accepted for trading on the market. There are a number of producers who have been recognised under this agreement.

(97) The LPPM market is the only spot market of the three, while NYMEX and TOCOM are both futures markets of which NYMEX is the most important. However, these metal exchanges function as part of the same integrated world market for platinum and palladium. Traders regularly act in all three market places simultaneously, for example by trading on the LPPM spot market for physical delivery and hedging positions on the futures market in New York.

(98) The metal exchanges are in reality interlinked. There is, therefore, a worldwide geographic market with a world market price expressed in US dollars per troy ounce for both platinum and palladium. According to the notification AAC agrees that the markets for platinum and palladium are truly global. AAC has provided data on its deliveries into Europe, but recognise that owing to the fungible nature of PGMs it cannot be assumed that metal delivered to Europe is actually used or consumed there. Conversely metal delivered elsewhere may be used in Europe.

B.2. **Rhodium, iridium, osmium and ruthenium**

(99) The markets for rhodium, iridium, osmium, ruthenium are less well developed. However, these metals are traded on a global basis at publicly quoted prices expressed in US dollars per troy ounce. Therefore, owing to the worldwide trading and market price determination of rhodium, iridium, osmium and ruthenium the relevant geographic markets for these metals are worldwide. According to the notification AAC agrees that the rhodium market is a truly global market, whereas their data on iridium, osmium and ruthenium are insufficient to answer this question.

VI. COMPATIBILITY WITH THE COMMON MARKET AND THE EEA AGREEMENT

(100) It is the Commission's conclusion that the operation will create dominant positions in the platinum and rhodium markets. As regards palladium, it appears that the Russian producer is dominant and that the current operation does not affect this position. Furthermore neither a creation nor a strengthening of a dominant position occurs in the markets for iridium and ruthenium. As for osmium, there is no overlap between the parties, since Lonrho does not produce this metal. Consequently only the platinum and rhodium markets are assessed further below.

A. *Sources of PGMs*

Proven and probable reserves and existing mines of primary PGMs

(101) PGMs occur naturally together in the same ore body. They also tend to be concentrated together with ferrous metals (iron, nickel, copper, chromium and cobalt) as a result of geological processes. The proportions in which the metals are found in the ore bodies vary across different geographic regions. For instance, in South Africa the PGM ores are richer in platinum than in other areas. Conversely, in Russia the ore body produces predominantly palladium; explaining why the Russians presently supply the major part of the world's palladium.

(102) PGMs are basically mined in two areas: the Bushveld Complex in South Africa and at the Noril'sk deposit in northern Siberia. The Bushveld Complex in South Africa is the only major area where deposits are being mined for their PGM contents alone. At the Noril'sk deposit in northern Siberia,

PGMs are mined as a by-product of nickel. Minor PGM deposits exist in several countries, but in most cases it is not economically viable to mine the ore. The most important deposits being mined outside the Bushveld Complex and Noril'sk are found in eastern Siberia, in the United States (Stillwater) and in Canada (Inco). According to official reserve figures from the European Minerals Yearbook the Bushveld Complex accounts for 89 % of the world's reserves of PGMs and Russia for about 10 %, as a by-product to the mining of nickel.

New mining projects

(103) Only the Hartley mine in Zimbabwe, which is owned by the Australian companies BHP and Delta Gold, is likely to be a new source of PGMs. However, this mine will only be an insignificant actor in terms of volume on the PGMs markets.

Recycling of PGMs

(104) Recycling is only expected to have a limited impact on the platinum market within the foreseeable future. Recycling takes two forms:

(a) *in closed circuits:* where PGMs are used in industrial catalysts and where the metals need to be refurbished after a certain period of operation. The metal is toll-refined and accordingly its ownership does not change because of recycling. Losses occur to a small extent (some 2 %) in the process. The recycled metals never enters the market. An impact on the market only comes from the replacement of these small losses;

(b) *recycling from scrap:* autocatalysts are by far the most important source of PGM scrap. Johnson Matthey has estimated that the following volumes (in troy ounces) were recovered in recent years from this source.

	1994	1995	1996
Platinum	310 000	335 000	370 000
Palladium	105 000	115 000	135 000
Rhodium	36 000	39 000	47 000

The 1996 recoveries represent, respectively, some 8 %, 2 % and 10 % of the total platinum, palladium and rhodium supplies in that year.

The volumes of PGMs recovered have increased over the last 20 years but the absolute share of the total supply of PGMs has remained low. This is despite the enactment of legislation for the protection of the environment in various countries. Even in 1996, the volume of platinum, palladium and rhodium recovered from autocatalysts only amounted, on average, to some 13 % of gross autocatalyst PGM consumption. This ratio was some 20 % in both Japan and North America: areas where legislation for the protection of the environment has been in place longer.

There are several reasons for these low levels of recovery: used cars are not necessarily scrapped but often exported (to Africa and Eastern Europe from the EEA, to Mexico from the USA) — exports have, it is estimated, reduced spent autocatalyst availability, in Europe, by 50 %; scrap yards do not remove autocatalysts and cars, including their catalysts, are lasting longer than originally forecast. Moreover the recovery process is long and costly. Long because it may take many months from the collection of the autocatalyst from a scrap yard to its conversion into PGMs; costly because collection systems have to be established and capital investment incurred in smelting and precious metal refining capacities. Consequently, the financial benefits to recyclers are limited and, given that a primary producer is processing spent autocatalysts, thereby driving up their price, it is questionable as to how long independent recyclers will continue to operate.

Notwithstanding these facts it is estimated by industry sources that, in the long run, recycled PGMs may account for up to two-thirds of gross autocatalyst demand. Such a level may be achievable given ever tighter environmental legislation and producers' responsibility for accounting for the whole of their production. In the light of the North American experience this is unlikely to happen within the next five years.

Conclusion

(105) On the basis of the above, primary PGMs will essentially continue to come from known reserves in South Africa and Russia and recycled autocatalyst PGMs will only form a limited supplementary source of supply. These situations are not expected to change in the foreseeable future.

B. *Platinum*

Market position of the parties

(106) AAC controls either directly or indirectly Anglo American Platinum Corporation Limited and its related companies being: Rustenburg Platinum Holdings Limited ('Rusplats'), Potgietersrust Platinums Limited ('PP Rust') and Lebowa Platinum Mines Limited ('Lebowa'). These four companies are known, collectively, as Amplats. Specifically

AAC and DBCM hold, directly, 43,6 % of the shares of Anglo American Platinum Corporation Limited and, indirectly, some 1,5 %. The other major shareholders of Anglo American Platinum Corporation Limited are Standard Bank Nominees (Tvl) (Pty) Limited and SA Mutual which are also significant shareholders of AAC and DBCM.

(107) Lonrho holds 73 % of the shares of Western Platinum Limited and Eastern Platinum Limited, which together form LPD. Impala Platinum Holdings Limited ('Implats') holds the balance. In 1995 the combined market share of Amplats and LPD was 47 % of primary platinum and 44 % if recoveries from recycling is included (see Annexes II and III).

(108) Furthermore, AAC holds shares in two of the four main downstream operators in the PGM industry being Johnson Matthey based in the UK and Engelhard based in the USA. Both these companies are fabricators; i.e. they either transform pure PGMs into other products such as autocatalysts or catalytic gauze or resell or trade the metals, sometimes in smaller quantities, on behalf of downstream customers such as the jewellery industry.

Current competition

(109) The current competitors to Amplats/LPD are mainly Gencor through its subsidiary Implats and the Russian government through the Russian Ministry of Finance ('the Russian producer') ([1]).

(110) Amplats is the leading producer followed by Implats. However, competition in the platinum industry has mainly been provided by LPD and the Russian producer in the past decade. In the period 1985-96 the market thus almost doubled in size from 2,8 to 5,2 million ounces. Russia increased its market share from 8 % to about 21 % and LPD increased its market share from [less than 5 %] to [between 10 and 15 %]. The market share of Amplats and Implats decreased accordingly. The expansion of LPD and the Russian producer has been the main factor in keeping real prices roughly at their 1985 level. The development of the platinum price and the movement in market shares in a growing market are indications that competition in the platinum market, in the past decade, has mainly been provided by LPD and the Russians.

([1]) Before November 1996 the Russian Government controlled the sales of PGMs through its Committee for precious metals and its sales agency, Almaz. As of the end of November 1996 the responsibility was transferred to the Ministry of Finance (Platinum 1996, Johnson Matthey).

(111) Russia is currently a major supplier of platinum, which is mainly produced as a by-product of nickel in the Noril'sk nickel mine ('Noril'sk'). However, the mine is in a poor condition owing to a lack of investment and huge environmental problems. It is thus estimated that it could cost more than USD 1 billion to remove the environmental problems. It is widely accepted that production has fallen since the late 1980s and that sales have been made from stocks in recent years and not from production. It is estimated that some 50 % of Russian sales (some 600 000 ounces p.a. or more than 10 % of annual supply) are currently coming from stocks (see 'Platinum 1996', Johnson Matthey). It is believed, in the industry that the Russians will have to stop selling from stocks in about one to two years' time. The future reduction in Russian sales will lead to a decrease of the Russian producer as a competitive force in the platinum market. Only the three South African producers and in particular Amplats/LPD will be able to fill the future demand gap left by the Russian producer.

(112) New investments are not currently under way at Noril'sk but the mine is part of the Russian Government's privatisation programme. According to Johnson Matthey ('Platinum 1996') the auction of shares was won by the Russian bank Uneximbank, which effectively acquired the government's 38 % shareholding (and 51 % of the voting rights) in 1995. However, Uneximbank's attempt to impose changes in the management met with strong resistance and was disputed in the Moscow Court of Arbitration. At the same time the company became the subject of an investigation of the privatisation of State owned companies by a special committee set up by the State Duma in which the Communists are the single largest group. According to Johnson Matthey '... to maintain output in the longer term, significant investment is required to develop replacement ore reserves and upgrade processing facilities. This is unlikely to be forthcoming while Noril'sk Nickel's ownership is in question.' (Platinum 1996, p. 18). At this stage the management and ownership issues of Noril'sk have not yet been settled. In this connection it is important to note that even if investments were to be forthcoming within the near future, then it would still take several years before there would be a market impact owing to the long investment lead times in the mining industry.

(113) Implats can only be expected to be a limited source of competition in the future. According to Implats, the annual reports of Amplats and Implats, and the circular to shareholders in the proposed Gencor/Lonrho merger, Amplats and LPD will together

control the large majority of reserves in the Bushveld Complex. More importantly, Amplats/LPD control almost all low-cost reserves in the Bushveld Complex, whereas Implats only has access to deeper and therefore high-cost reserves, a fact that has contributed to its declining market share in recent years (see Annex III). The difference in the nature of reserves gives Amplats/LPD a strategic advantage over Implats.

(114) Stillwater and Inco are marginal producers and mine platinum as a by-product of palladium and nickel respectively. The fourth South African mine, Northam, is also a marginal producer with a market share of between [less than 5 %] and [less than 5 %]. Moreover, it has very deep reserves making it a high-cost operator and, accordingly, its future is in doubt owing to its lack of profitability.

(115) The AAC and Gencor groups are linked via shareholdings in Gold Fields of South Africa which owns the majority of the shares in Northam. The current operation links AAC and Gencor via the minority shareholding of Implats in LPD.

(116) Finally, as discussed above, recycling is only expected to have a limited impact on the platinum market. Furthermore the impact of recycling will be limited by the competitive structure of the recycling industry. At present in Europe the main recyclers are Union Minière and Degussa. However, primary producers like Implats and the Russian producer recycle autocatalyst scrap for its contents of platinum. These producers have a competitive advantage in comparison to companies like Union Minière and Degussa, since recycling is a fringe activity and therefore can be carried out by these producers at lower costs. Consequently, the long-term viability of the recycling activities of companies like Union Minière and Degussa may be threatened by the operations of primary producers.

(117) In conclusion, the current operation will bring together Amplats and LPD which are the two producers having the best reserve prospects in the industry. When the Russian producer, as expected, stops selling from stocks it is forecast that the combined market share of Amplats/LPD is likely to increase to about [between 55 and 60 %] of the platinum market. Competition to Amplats/LPD is likely to come from Implats and the Russian producer. However, neither of these two producers are likely to be able to constrain the behaviour of Amplats/LPD: Implats is at a strategic disadvantage compared to Amplats/LPD due to the low-cost reserves of Amplats/LPD. The Russian producer has huge environmental problems and its mine is in a poor condition and in need of investment.

Potential competition

(118) As discussed above the global high quality ore reserves of platinum are in the hands of Amplats, Implats, LPD and Russia. This is a definitive barrier to entry. The only new mine likely to come on stream in the near future is the Hartley mine in Zimbabwe which should become operational by mid-1997. It is forecast to have the potential to produce 150 000 oz per year (less than 3 % of annual world production).

(119) Consequently there will be no significant potential competition, within the foreseeable future, in the platinum market.

No countervailing buyer power

(120) Industrial customers account for the greatest part of platinum purchases; such purchases are normally acquired under long-term contracts. However, fabricators, and other industrial users, are not the final customers. It is unlikely that end customers have any countervailing purchasing power of significance owing to the indispensable nature of the product and the large number of downstream customers. Fabricators and other industrial users can simply pass on price increases to the final consumers. Finally, any countervailing buyer power that may exist is diluted by the fact that two of the biggest fabricators, Johnson Matthey and Engelhard, are linked to Amplats.

Conclusion

(121) The transaction will create a dominant position for AAC in the platinum market. The combined market share of Amplats and LPD is an estimated [between 40 and 45 %] in 1996. Amplats/LPD are the only operators with significant growth prospects within the foreseeable future due to their large, low-cost reserves and will therefore hold the key to the platinum market in the future. The market share of Amplats/LPD is likely to increase over the next few years to an estimated [between 55 and 60 %]. Furthermore, it must be recalled that Implats and Northam are linked with both Amplats and LPD and that AAC holds indirectly shares in downstream fabrication and trading operations in the industry. Amplats/LPD will therefore have an overwhelming market position in the platinum industry which will allow it to act, to an appreciable extent, independently of its competitors, customers and ultimately its consumers.

(122) More specifically it is expected, according to industry sources, that the Russian producer's share of the market will be halved in the next one to two years and that total demand for platinum will continue to grow over the next ten years. This will leave a supply deficit, which will have to be filled from new sources or else result in price increases. In view of the higher cost reserves of Implats it is unlikely that much of the supply deficit can be covered from Implats' mines within the current price range. Furthermore, additional supplies from North America, Zimbabwe and recycling will be limited. Therefore the only major source of platinum to cover the supply deficit will be Amplats/LPD. Accordingly Amplats/LPD would be in a position to determine the increase of the platinum price due to the price inelasticity of demand in the current price range and, in this respect, be able to act, to an appreciable extent, independently of its competitors, customers and ultimately its consumers.

C. *Rhodium*

(123) As for platinum Amplats/LPD had.a combined market share in 1996 of [between 45 and 50 %] of the primary rhodium market and [between 40 and 45 %], if recycling is included. The competitive structure of the rhodium market is similar to platinum. For similar reasons as discussed under the platinum market the current transaction, therefore, gives rise to a dominant position for rhodium.

VII. UNDERTAKINGS SUBMITTED BY AAC

(124) AAC has submitted undertakings to resolve the competition concerns raised by the concentration both with the notification and subsequently within the period foreseen by Article 18 of Commission Regulation (EC) No 3384/94. Neither the undertakings submitted with the notification nor those submitted on 26 March 1997 satisfied the Commission's concerns. Subsequently, on 9 April 1997, AAC submitted a revision of the undertakings previously supplied. These revised undertakings were finally formalised on 17 April 1997; this letter of 17 April 1997 and its integral, attached documents contain the detail of the revised undertakings which are not set out in this Decision.

(125) It is appreciated that the revised undertakings have been submitted outside the time period foreseen in Commission Regulation (EC) No 3384/94; however this Regulation also provides that the Commission may in exceptional circumstances extend the three-month period. In this case it should be noted that AAC had already submitted undertakings within the three month period, but following their discussion at the Advisory Committee meeting on 2 April, was prepared to reconsider and offer an acceptable remedy within one week of that meeting. This case is exceptional because the preliminary, draft decision discussed at the Advisory Committee was a combined decision pursuant to Article 8(3) and 8(4) of the Merger Regulation. The Article 8(4) order therein effectively contained the same terms as the revised undertaking submitted by AAC. Consequently, as the concentration has already been implemented, and in order to avoid any unnecessary harm to AAC and its related companies, it is considered to be appropriate to permit AAC greater flexibility by allowing it to put in place its undertaking on its terms rather than imposing the same terms by way of an Article 8(4) order. Both the Member States and third parties have been allowed a reasonable time to submit their comments on the revised undertakings.

(126) In summary the revised undertakings include a transfer of shares (the 'trust shares') held by AAC and DBCM in Lonrho to an independent trustee so that AAC, DBCM, CHIL and Southern retain 9,99 % of Lonrho's shares. During a subsequent period of [. . .] from the date of this Decision, the trust shares can not be voted by AAC or DBCM except with the prior approval of the Commission. Furthermore the trustee will abstain from voting the shares [. . .].

(127) In addition, AAC and DBCM have undertaken to dispose of the trust shares so that the aggregate shareholding of AAC, DBCM, CHIL and Southern does not exceed 9,99 % by the end of [. . .] following the date of this Decision. However, if Lonrho disposes of the entirety of its shareholding in Eastern Platinum Limited and Western Platinum Limited to an independent third party, which may include Gencor Limited should the Court of First Instance find against the Commission in Case T102/96 — Gencor v. Commission, the undertaking that AAC and DBCM are to dispose of the trust shares will cease to have effect.

(128) If AAC and DBCM have failed to dispose of the trust shares prior to the expiry of [. . .] from the date of this Decision, AAC will appoint an investment bank or similar institution to work with AAC to find a purchaser for the trust shares. The investment bank will be irrevocably mandated to sell the

trust shares within the [. . .] period. Any sales of the trust shares will be to a party unrelated to AAC.

(129) Finally, AAC has undertaken to procure the resignation of Mr T. C. A. Wadeson, its nominee on the Lonrho board, who will resign within [. . .] of the date of this Decision. However, after the trust shares have been transferred to the trustee, the Commission does not object to AAC putting forward a candidate for appointment to the Lonrho board in accordance with the company's articles of association.

(130) During the period in which AAC has a nominee on the Lonrho board and the trust shares are held by the trustee, AAC and Lonrho have agreed to ring-fence the activities of the AAC director meaning that he would not be party to commercially sensitive information etc. concerning LPD. The ring-fencing would appertain to Lonrho's board of directors, the action of LPD shareholders and commercial agreements with LPD. The ring-fencing would be monitored by an independent trustee who would report thereon to the Commission.

VIII. ASSESSMENT OF REVISED UNDERTAKINGS

(131) The revised undertakings address the competition concerns of AAC and Lonrho combining their operations to form a dominant position in the markets for platinum and rhodium. The Commission is satisfied that the reduction in AAC's shareholding to 9,99 % removes any possibilty of it exercising decisive infuence over Lonrho. This will be achieved by either the divestment of shares held by AAC and DBCM in Lonrho, so that they become passive financial investors in that company, or by the sale of LPD by Lonrho.

(132) The transfer of the trust shares and the appointment of an investment banker to oversee and, if necessary, to effect the sale of the trust shares are structural remedies as required by the Merger Regulation.

(133) Moreover, the procurement of the resignation of Mr T. C. A. Wadeson as a director of Lonrho is consistent with the transfer of the trust shares to the trustee. This is because Mr Wadeson was appointed when AAC became entitled to acquire shares under the agreements of 13 and 15 March and 12 April 1996. Thus at the time of appointment AAC was interested in the whole block of shares which would give it the possibility of exercising decisive influence over Lonrho. On the other hand, given that AAC and DBCM still remain large shareholders in Lonrho, the Commission would not object if a nominee of AAC were appointed to the Lonrho board in accordance with Lonrho's articles of association.

(134) However, the Commission also believes that it must impose obligations on AAC to ensure the effective operation of the revised undertakings. These obligations concern the method by which the Commission would permit the trustee to vote the trust shares and the means to control the identity of the parties to which the trust shares may be sold. In order to deal with these matters in a timely fashion and in order to reduce any hardship to AAC and DBCM, the obligation that the trust shares are only voted when the Commission permits and the method for controlling the identity of purchasers of the trust shares are based on a procedure of non-opposition by the Commission as indicated in paragraph 135 below.

(135) Whenever AAC and DBCM wish the trustee to vote the trust shares, AAC is to provide the Commission with all relevant data appertaining to the vote together with information [. . .]. AAC is to provide all this information at least [. . .] prior to the date of the vote on the resolution in question. If the Commission does not, within [. . .] of the submission of the request, object to the trustee voting the trust shares or require that further information be submitted, the trustee will be free to vote the trust shares.

(136) As regards the identity of a purchaser for the trust shares, the Commission considers that such a sale should not be made to a company which has a significant platinum operation. However, the Commission also appreciates that, should the Court of First Instance of the European Communities uphold Gencor's application in Case T102/96 — Gencor v. Commission, a sale to Gencor may also be appropriate. Accordingly the choice of a party to whom any sale of the trust shares can be made, by either AAC, DBCM, the trustee or an investment banker must be restricted. Therefore, the purchaser

must not be a company or person connected with either the AAC or Gencor groups of companies (including but not limited to all their subsidiaries, parent companies and associated companies) and members of Oppenheimer family or any company controlled directly or indirectly by the family. The Commission must be in a position to assess the choice of purchaser and evidence of its independence must be produced by AAC to the Commission before the sale is made. If the Commission does not; within [. . .] of the submission of the request, either formally indicate its disagreement with the choice of the purchaser or require that further evidence of the independence of the purchaser be provided, the sale to the chosen purchaser shall be free to proceed.

(137) It must also be recognised that should the combined shareholding of AAC and its related companies be reduced, excluding trust shares, below 9,99 % they should be permitted to transfer, to themselves, shares which were previously designated as trust shares. AAC has undertaken that such a transfer would not occur unless it was approved by the Commission and that a disposal of shares, that were previously trust shares, would not take place unless the disposal was first approved by the Commission. The Commission would not object to a transfer of shares that were previously designated as trust shares provided that AAC demonstrates that the combined holding of the AAC group of companies (including but not limited to all their subsidiaries, parent companies and associated companies) and members of the Oppenheimer family or any company controlled directly or indirectly by the family will not exceed 9,99 % in Lonrho. If the Commission does not, within [. . .] of the submission of the request, formally indicate its disagreement with AAC's request, the transfer of trust shares to AAC may proceed.

(138) Furthermore AAC has stated that the Commission must approve the name and the terms of appointment of an investment bank or similar institution, within [. . .] of the adoption of this Decision, to work with AAC as regards the sale of the trust shares. Therefore [. . .] prior to the naming and appointment of the investment bank or similar institution AAC is to provide all relevant details to the Commission. If the Commission has not objected thereto, within [. . .] of having received all relevant details, the appointment may proceed.

IX. **CONCLUSION**

(139) Consequently the notified operation, as modified by the revised undertakings submitted on 17 April 1997, will not create or strengthen a dominant position in the markets for platinum and rhodium and is, therefore, on the condition that the revised undertakings are adhered to, compatible with the common market and the functioning of the EEA Agreement.

(140) Should any of the commitments entered into by AAC and DBCM not be followed, the conditions of this Decision would be breached and the conditional approval by the Commission of the operation would be void. Similarly should either of the obligations imposed on AAC be breached, the Commission may revoke this Decision pursuant to Article 8(5) of the Merger Regulation,

HAS ADOPTED THIS DECISION:

Article 1

Subject to full compliance with the commitments contained in AAC's letter of 17 April 1997 vis-a-vis the Commission and identified in paragraphs 124 to 138 above and the obligations imposed by the Commission in Articles 2, 3, 4 and 5, the concentration notified by AAC on 14 November 1996 relating to acquisition of shares in Lonrho is declared compatible with the common market and the functioning of the EEA Agreement.

Article 2

Whenever AAC and DBCM wish the trustee to vote the trust shares, AAC shall provide the Commission with all relevant data appertaining to the vote together with information [. . .]. AAC shall provide all this information at least [. . .] prior to the date of the vote on the resolution in question. If the Commission does not, within [. . .] of the submission of the request, object to the trustee voting the trust shares or require that further information be provided, the trustee will be free to vote the shares.

Article 3

The party to whom the trust shares may be sold should be subject to the following restrictions: the purchaser shall not be a company or person connected with either the AAC or Gencor (except if the Court of First Instance of the European Communities upholds Gencor's application in Case T 102/96 — Gencor v. Commission) groups of companies (including but not limited to all their subsidiaries, parent companies and associated companies) and members of the Oppenheimer family or any company controlled directly or indirectly by the family. The Commission must be in a position to assess the choice of purchaser and evidence of its independence must be produced by AAC to the Commission before the sale is made. If the Commission does not, within [. . .] of the submission of the request, either formally indicate its disagreement with the choice of the purchaser or require that further evidence of the independence of the purchaser be provided, the sale to the chosen purchaser may proceed.

Article 4

In the event that the combined shareholding in Lonrho of AAC and its related companies is reduced, excluding trust shares, below 9,99 % they shall be permitted to transfer, to themselves, shares which were previously designated as trust shares. The Commission will not object to a transfer of shares that were previously designated as trust shares provided that AAC demonstrates that the combined holding of the AAC group of companies (including but not limited to all their subsidiaries, parent companies and associated companies) and members of the Oppenheimer family or any company controlled directly or indirectly by the family will not exceed 9,99 %. If the Commission does not, within [. . .] of the submission of the request, formally indicate its disagreement with AAC's request, the transfer of trust shares to AAC may proceed.

Article 5

Within [. . .] of the adoption of this Decision, AAC shall propose to the Commission the name and terms of appointment of an investment bank or similar institution to work with AAC in the sale of the trust shares. If the Commission has not objected within [. . .] of having received all relevant information, the appointment may proceed.

Article 6

This Decision is addressed to:

Anglo American Corporation of South Africa Limited
44 Main Street
Johannesburg
Republic of
South Africa.

De Beers Consolidated Mines Limited
36 Stockdale Street
Kimberley 8301
Republic of
South Africa.

Done at Brussels, 23 April 1997.

For the Commission
Karel VAN MIERT
Member of the Commission

ANNEX I

Holding of 27,47 %

	Total shares in issue	Number held by AAC, DBCM, CHIL and Southern	Shares voted total (million)	AAC percentage total
1993 AGM	763 734 144	215 139 925	333,26	64,56 %
1994 AGM	768 573 806	215 139 925	– 286,33	75,14 %
1994 AGM	768 573 806	215 139 925	295,00	72,93 %
1995 AGM	773 317 629	215 139 925	486,10	44,26 %
1995 EGM	776 860 919	215 139 925	379,90	56,63 %
1996 AGM	778 486 448	215 139 925	400,90	53,66 %
1996 EGM	782 977 299	215 139 925	429,80	50,06 %
Shares in issue at 5.11.1996	782 977 299	215 139 925		

Notes: The shareholding of AAC, DBCM, CHIL and Southern has been calculated based on the number of shares held by these companies at the date of the notification of the operation. This fixed number has then been applied to the total number of shares polled at shareholders' meetings during 1993-96.

If the 3,3 % shareholding in Lonrho held by SA Mutual was included in the above figures, the AAC percentage total would increase by between 5 % and 8 %.

Source: AAC/Lonrho.

ANNEX II

Estimated worldwide market shares for 1995

(%)

	Platinum	Palladium	Rhodium
Amplats	[35-40]	[10-15]	[30-35]
LPD	[10-15]	[0-5]	[10-15]
Subtotal	[45-50]	[15-20]	[45-50]
Implats	[15-20]	[5-10]	[25-30]
Northam	[0-5]	[0-5]	[0-5]
Total South Africa	68	26	75
Russia	25	64	20
Other	7	10	5
Total	100	100	100

Source: AAC.

ANNEX III

Platinum supply 1985-96

(in %)

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Amplats	[45-50]	[45-50]	[40-45]	[40-45]	[35-40]	[35-40]	[30-35]	[30-35]	[35-40]	[30-35]	[30-35]	[30-35]
Lonrho	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[5-10]	[5-10]	[5-10]	[5-10]	[5-10]	[5-10]	[10-15]
Total	[45-50]	[45-50]	[45-50]	[45-50]	[40-45]	[40-45]	[40-45]	[40-45]	[45-50]	[40-45]	[40-45]	[40-45]
Impala	[30-35]	[30-35]	[30-35]	[30-35]	[25-30]	[25-30]	[20-25]	[20-25]	[20-25]	[20-25]	[15-20]	[15-20]
Northam	0	0	0	0	0	0	0	0	[0-5]	[0-5]	[0-5]	[0-5]
Russia	8	10	13	12	15	18	25	19	14	21	24	21
Stillwater	0	0	0	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Inco	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Other	3	2	2	2	2	2	2	3	4	5	3	2
Recycling	2	3	4	5	5	5	5	6	6	6	6	7
Total	100	100	100	100	100	100	100	100	100	100	100	100
Volume	*2 820*	*2 920*	*3 215*	*3 440*	*3 600*	*3 945*	*4 345*	*4 065*	*4 665*	*4 840*	*5 325*	*5 220*

Source: AAC.