

# 7 Conclusions

## **The merger situation**

7.1. Under the terms of reference (made under sections 64, 69(2) and 75 of the Fair Trading Act 1973 – ‘the Act’) dated 24 October 1988 (see Appendix 1.1), we are required to investigate and report whether a merger situation qualifying for investigation has been created, or whether arrangements are in progress or in contemplation which if carried into effect would result in the creation of such a situation, in that enterprises carried on by or under the control of Consolidated Gold Fields PLC (incorporated within the United Kingdom) (Gold Fields) have within the six months preceding the date of the reference ceased to be distinct, or will cease to be distinct, from enterprises carried on by or under the control of Minorco *société anonyme* (incorporated in Luxembourg) (Minorco). For this purpose, the terms of reference, while referring specifically to the test in paragraph (b) (the ‘assets test’) of section 64(1) of the Act, do not exclude the test in paragraph (a) (the ‘market share test’).

7.2. In establishing whether a merger situation or situations qualifying for investigation have been or will be created, we are therefore required to consider both the existing situation, as it developed in the six months before the date of the reference, and any arrangements in progress or in contemplation.

7.3. As is apparent from paragraph 2.22, the value of the assets taken over or to be taken over (ie those of Gold Fields) exceeds £30 million. As this test is satisfied, we have not examined whether the test in section 64(1)(a) of the Act is also satisfied.

## *The existing merger situation*

7.4. We have therefore to consider whether, between 25 April 1988 and 24 October 1988, enterprises carried on by or under the control of Gold Fields ceased to be distinct from enterprises carried on by or under the control of Minorco. At first sight there would seem little need for extended reasoning. The two companies were at loggerheads over Minorco’s bid for Gold Fields, which the latter warmly contested; and since the bid lapsed on account of the reference, they have continued the conflict before the Commission. However, it is in terms of the law that the matter has to be resolved, and the relevant criteria are those set out in the Act and in particular in section 65. Sub-sections (3) and (4) of section 65 require us to consider whether, during the six months in question, Minorco acquired the ability materially to influence or control the policy of Gold Fields. Alternatively if we were satisfied that Minorco already had either of these abilities, we would have to consider whether Minorco moved to the acquisition of a controlling interest in Gold Fields, or, from the ability materially to influence, to the ability to control Gold Fields’ policy. We have had to consider the position, not only of Minorco, but also of any ‘associated persons’ under section 77 of the Act.

7.5. In approaching this question we can disregard Minorco's known holdings of Gold Fields' ordinary shares at 24 April 1988, the start of the six-month period, ie 28·63 per cent. (If allowance were made for Minorco's holdings of convertible bonds, Minorco's potential share of equity as at 24 April 1988 would be somewhat greater: some 30·14 per cent if only Minorco was to convert, or 29·44 per cent if all bond-holders were to convert). Two questions follow:

- (a) what changes were made in the following six months; and
- (b) how should those changes be interpreted under section 65 of the Act?

7.6. On the first point, the two parties were starkly at variance. Minorco stated categorically that it added 0·92 per cent to its shareholding, and in affidavits to the Take-over Panel some of its directors had sworn that, to the best of their knowledge and belief, there was no undisclosed 'concert party' increasing that holding. (Allowing for convertible bonds, Minorco's potential share of equity increased from 30·14 to 31·14 per cent were only Minorco to convert; from 29·44 to 30·45 per cent were all holders to convert.) Gold Fields on the other hand insisted first that there was no conclusive evidence yet as to what took place but that there were some suspicious circumstances, and that arrangements could have been made that raised Minorco's holding, together with the holdings of a concert party, to as much as 35 per cent (ie an increase of about 6·5 per cent, against the 0·92 per cent, disregarding the convertible bonds, conceded by Minorco). Gold Fields did not consider a conclusion could be reached until Inspectors appointed by the Secretary of State for Trade and Industry to investigate possible irregularities had reported. We have considered this view but do not regard this as a course which is properly open to us.

7.7. We have seen an interim report by the Inspectors on the movements in shares in the six months before the reference. The Inspectors stressed that their investigations were still at an early stage and that, at the date of their interim report, they were unable to draw any conclusions. They were therefore unable to express any opinion as to whether the disclosed shareholdings of Minorco and its associates in Gold Fields as at 24 April 1988 or the disclosed acquisitions in the subsequent six-month period represented the true position. Even if we were to seek an extension in the period of our reference and the maximum permissible (three months) was granted, it seems from the information available to us highly unlikely that the Inspectors would be in a position to complete their inquiries before we then had to report. We have therefore to reach a conclusion on the evidence at present available to us.

7.8. We note that Gold Fields' information falls short of definite evidence at any point, and that it considers an increase of about 6·5 per cent (to 35 per cent) to be an outside limit.<sup>1</sup> While the detailed information that it showed to us might if substantiated account for as much as that, it could equally well point in the direction of insider dealing or arbitrage as opposed to the existence of a concert party. The first two matters have of course no necessary relation to control or material influence over the policy of a company, and our reference is not concerned with them.

7.9. We have therefore no firm evidence to show that the increase in Minorco's shareholding in the six months prior to the reference is greater than that stated by Minorco – ie an increase of some 0·92 per cent, or slightly greater if allowance is made for Minorco's holdings of convertible bonds. It seems to us, and both Gold Fields and Minorco appear to concede, that at 25 April 1988 Minorco already had the ability materially to influence Gold Fields' policy by

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<sup>1</sup>Gold Fields argued that a holding of around 35 per cent would ultimately enable Minorco effectively to control the company's policy. In the absence of any firm evidence to show an increase of such an amount, it is not open to us to make a finding on such a hypothesis.

virtue of its two directors on the Board, and its shareholding in excess of 25 per cent (since among other things this enabled it to defeat special resolutions). An increase as small as 0.92 per cent would not, we consider, enable Minorco to move from the ability materially to influence Gold Fields' policy to the ability to control such policy. *A fortiori* it would not represent the acquisition of a controlling interest in Gold Fields.

7.10. We therefore conclude on the evidence before us that enterprises carried on by or under the control of Gold Fields have not ceased to be distinct from enterprises carried on by or under the control of Minorco, and accordingly that a merger situation qualifying for investigation has not been created. A duty of considering whether such an existing merger situation operates or may be expected to operate against the public interest does not therefore arise (section 69(1)(b) of the Act). Had there been such an existing merger situation, the public interest issues would have been those we consider in examining the merger in contemplation.

*Arrangements in progress or in contemplation*

7.11. As stated in paragraph 3.15, Minorco announced on 21 September 1988 its intention to acquire all Gold Fields shares which it did not already own. Minorco has subsequently confirmed to us that, although its proposals now differ in certain respects from those announced prior to the reference to the Commission, it still intends to acquire the complete share capital of Gold Fields.

7.12. We accordingly conclude that there are arrangements in contemplation by Minorco for the acquisition of Gold Fields which if carried into effect will result in the creation of a merger situation qualifying for investigation. We have therefore to investigate and report on whether the creation of that merger situation may be expected to operate against the public interest.

**The companies involved**

7.13. As explained in Chapter 2, Gold Fields is a natural resources group, concentrating on a relatively small number of minerals enterprises in which it is a major participant. It is incorporated in the United Kingdom, but a substantial proportion of its shareholdings is held overseas: about 38 per cent of Gold Fields' shares, for example, are owned by Minorco, Gold Fields of South Africa and private individuals and institutions in South Africa and elsewhere. It has the following main subsidiaries and associates:

- (a) Gold Fields of South Africa (GFSA), a quoted South African mining house in which Gold Fields has a 38 per cent stake (see Appendix 2.2 which also shows the interests of Anglo American Corporation and De Beers in GFSA). The GFSA group is the second largest producer of gold in South Africa, and is in the process of developing the Northam platinum mine. It also has investments in base metal and coal;
- (b) Gold Fields Mining Corporation (GFMC), a wholly-owned subsidiary in the United States which concentrates on the exploration for and mining of gold;
- (c) Newmont Mining Corporation (Newmont), a United States mining company in which Gold Fields has a 49 per cent stake. As well as gold-mining, Newmont in turn has a 49 per cent stake in Peabody, the United States largest coal company;
- (d) Renison Goldfields Consolidated Ltd (Renison), an Australian naturalised company some 48 per cent owned by Gold Fields. Renison is the world's largest producer of mineral sands, including the feedstock for titanium and zirconium, and of monazite, a source of rare earths. Renison is also a one-third partner in the Porgera gold project in Papua New Guinea, and has other gold and tin operations;

- (e) ARC, a wholly-owned subsidiary in the United Kingdom producing a number of products which depend on crushed stone, sand or gravel for their principal raw material. ARC America operates landfill waste disposal facilities, and has a civil engineering subsidiary, and building division; and
- (f) ARC America (ARCA), which is the largest concrete pipe-maker and the fifth largest producer of crushed stone in America.

7.14. Minorco is a holding company incorporated in Luxembourg with interests in companies primarily engaged in natural resources (see also Appendix 2.2). Its principal holdings are:

- (a) three enterprises in the United States: Engelhard Corporation (30 per cent), Inspiration Resources Corporation (56 per cent), and Adobe Resources (49 per cent);
- (b) Eastern Investment Ltd, principally in Australia (21 per cent);
- (c) Anglo American Corporation of South America (21 per cent); and
- (d) two enterprises in the United Kingdom: Charter Consolidated PLC (Charter Consolidated) (36 per cent) and Gold Fields itself (29.5 per cent).

Charter Consolidated in turn has a 74 per cent shareholding in Cape Industries plc, and a 38 per cent shareholding in Johnson Matthey plc (Johnson Matthey). Among its other activities, Johnson Matthey, like Engelhard, is a leading refiner of gold and platinum.

7.15. Somewhat over 70 per cent of the shares in Minorco are at present held directly or indirectly by the Anglo American Corporation of South Africa Ltd (Anglo American), De Beers Consolidated Mines Ltd (De Beers), the interests of the Oppenheimer family and (through Minorco itself) Charter Consolidated. Minorco told us that an objective of the merger was to dilute the combined shareholding of Anglo American and De Beers to 40 per cent and to establish Minorco as an independent company in its own right. Charter Consolidated and the Oppenheimer family interests would, however, hold a further 8 per cent of shares, although Minorco asserted that these would not be used to exert influence or control over Minorco. In practice, it would seem to us likely that there will continue to be a close association of interests between the Anglo American Corporation, De Beers, the Oppenheimer family and Minorco.

7.16. Minorco said that a number of directors representing the interests of the Anglo American group would be leaving the Minorco Board following the merger, and that it intended to strengthen the Minorco Board by the appointment of new independent directors, including some directors from within Gold Fields. The Chief Executive told us that it would not therefore be possible for the Anglo American directors on the Board to enforce decisions against the wishes of other directors. However, even though Minorco may well maintain considerable independence in its day-to-day operations, particularly under its present Chief Executive, the size of the shareholding given the disposition of the remaining shares would seem clearly sufficient to put the Anglo American group (by which we mean the combined interests of Anglo American and De Beers) in a position of effective control over Minorco, and hence as a result of the merger over Gold Fields. We believe it is therefore relevant to consider the merger in the context of the activities of the Anglo American group as a whole.

7.17. Anglo American and De Beers are two South African corporations connected by interlocking shareholdings, mutually held directorships and other long-standing business relationships. The Oppenheimer family is substantially involved in the management and on the Boards of both companies; Oppenheimer family interests have a substantial shareholding in Anglo American (but not, Minorco told us, directly in De Beers); and some directors of the two companies and of Minorco are in part remunerated by a private Oppenheimer family company.

7.18. The Anglo American group is of major importance in the South African economy, as well as operating outside South Africa, particularly through Minorco. Its interests cover not only the companies it controls directly, but many other enterprises where its influence is exercised by means of minority shareholdings often linked with Board representation and/or management agreements. Among the group's extensive activities are gold mining (including interests in GFSA), platinum mining (through Johannesburg Consolidated Investment Company and Rustenburg Platinum Mines) and the mining and marketing of diamonds. De Beers produces between 40 and 50 per cent of the world's gem diamonds, and, through the Central Selling Organisation which it controls, markets over 80 per cent of the world's diamond production; we were told that this is widely regarded as a most effective cartel.

*The merger proposals*

7.19. The arrangements proposed by Minorco include substantial divestments of the present assets of Gold Fields:

- (a) In its offer document, Minorco said that it 'will commit itself to sell Gold Fields' 38 per cent passive investment in GFSA, and all other South African investments'. Minorco told us that both Anglo American and De Beers had confirmed to the Competition Board in South Africa that neither had any intention of seeking control of GFSA, and that neither would acquire any additional interest in GFSA if that would have the consequence of Anglo American/De Beers becoming the single largest shareholder in GFSA. Gold Fields' 38 per cent interest in GFSA would be sold to the highest bidder, subject to the Rembrandt group's right of first refusal over 30 per cent. In draft undertakings agreed with the South African Competition Board, Minorco is committed to sell these shares only as soon as it is 'commercially advantageous to do so'.
- (b) In the offer document, Minorco also stated that it would negotiate with Newmont's management to reduce Gold Fields' shareholding in Newmont. Before the merger was referred to the Commission, Minorco announced that it regarded the entire stake in Newmont as being available for sale on the best terms possible; and it informed us that it was now committed to the disposal of Gold Fields' entire holding in Newmont. It also told us during the inquiry that none of Anglo American, De Beers, nor the Oppenheimer family interests, nor any associates of theirs, had any plans or intention to buy any shares in Newmont.
- (c) During the course of our inquiry Minorco told us that it was now unequivocally committed to the disposal of Gold Fields' entire interest in Renison, and that it was committed to finding a buyer who would have no links with the Anglo American group.

7.20. As a general matter, the Commission have to consider arrangements in contemplation at the time a merger is referred to them; but also to take into account any developments in these arrangements notified to them during the course of the inquiry; how they do so must depend on the particular circumstances of the reference before the Commission. Following the disposals to which Minorco told us it was now committed, Minorco would have acquired two main businesses: GFMC in the United States, and ARC in the United Kingdom (plus ARCA). However, we consider that we should also take into account the possibility that none of the disposals may be implemented as intended – there could, for example, be considerable delay before it appeared to Minorco to be commercially advantageous to dispose of Gold Fields' shares in GFSA. We believe therefore that we should consider whether any detriments to the United Kingdom public interest would arise if Minorco were to retain all Gold Fields' interests, as well as if it were to retain only GFMC and ARC.

**Public interest issues**

7.21. During our inquiry, concern was expressed to us about the effect on the United Kingdom public interest of three main aspects of the merger: Minorco's connection with the Anglo American group, the South African involvement of Minorco and its major shareholders, and the effect on competition in the world markets for certain minerals and precious metals and for aggregates and related products in the United Kingdom.

**Minorco's connection  
with the Anglo American  
group**

7.22. As discussed above, following the merger the Anglo American group and the Oppenheimer family would in total own about 46 per cent of Minorco shares excluding the shares held in Minorco by Charter Consolidated (about 41 per cent in the case of Anglo American and De Beers alone); and would we believe be in a position to control Minorco even though it might choose not to do so, and even though Minorco's own management might assume a considerable degree of independence. A number of arguments were raised with us as to why this connection with the Anglo American group in itself raised issues of public interest concern.

7.23. First, it was suggested that the strategic objective of the Anglo American group (or the Oppenheimer family) might itself be at variance with the United Kingdom public interest, namely, that the acquisition was part of an overall strategy to diversify away from South Africa, and to build up 'a store of value' outside South Africa with little regard for the ongoing profitability of the assets acquired. We find it difficult to accept this implication of the merger: the merger is not in itself being financed by any further funds from South Africa; but even if the overall aim of the Anglo American group is to diversify outside South Africa, we see no reason why it should have any less regard for the profitability of its investments than any other multinational organisation.

7.24. It was also argued that, given the large shareholding of the Anglo American group in Minorco and the structure of ownership of the group, both Minorco and the group in general were effectively 'bid-proof', and would remain so after the merger. It was therefore suggested that – if the risk of take-over were eliminated – there would be less pressure on the management of Gold Fields' assets acquired and maintained by Minorco than Gold Fields' management experiences at present.

7.25. Both Minorco and the Anglo American group in general would seem immune from the risk of hostile take-over, and the implications of their structure would seem a valid cause for concern. However, Minorco is by no means unique as a bidding company protected from take-over bids; this description could also be applied to many companies based outside the United Kingdom, and indeed to a number of United Kingdom companies. This argument raises questions far wider than the present merger. There is at present

no governmental policy in the United Kingdom to deter take-overs by companies in such a protected position – and to institute such an approach would itself reduce the pressure on quoted companies of possible acquisition. There are moreover means other than public offers for shares by which companies may be taken over and pressure may be brought to bear on management. If Minorco's assets performed badly, the Anglo American group would, we believe, be likely to consider changing management or divesting. Were it to fail to do so, and support any poor performance by Minorco, the loss would be that of Minorco's shareholders, including the Anglo American group itself, but not necessarily a matter affecting the United Kingdom public interest.

7.26. Doubts were also expressed about Minorco's capacity to manage Gold Fields' various enterprises – and indeed about the record of the Anglo American group in general outside South Africa. Minorco itself intends following the acquisition to strengthen its Board and its own management structure, and is confident that it can retain the management of those enterprises it does not plan to divest. We believe it would have every incentive, and be under considerable pressure, to manage the enterprises acquired efficiently. It is essentially for Gold Fields' shareholders, in deciding on acceptance of the terms offered by Minorco, to judge whether or not assets of Gold Fields can be managed more profitably than without a merger.

7.27. A further aspect of Minorco's connection with the Anglo American group, on which considerable emphasis was placed in submissions to us, was the apparent record (so it was alleged) of collusive and cartelistic practices by the group, and indeed by South African industry in general. The main example quoted to us was the Central Selling Organisation for diamonds; it was also suggested to us that some South African platinum producers at least in the early 1970s had agreed to restrict production and hence maintain prices; and we were quoted examples of alleged action by companies in the Anglo American group to maintain and exploit their monopoly position in South African and world markets.

7.28. We do not believe it relevant or feasible for the Commission to undertake any detailed enquiries into the existence or otherwise of cartelistic or other anti-competitive practices within the Anglo American group. We do, however, see the need to consider the effects of the merger on competition in each of the markets affected by the merger, and the consequent effect on the United Kingdom public interest.

7.29. We do not therefore expect the merger to operate against the United Kingdom public interest by reason of Minorco's connection with the Anglo American group.

**South African  
involvement**

7.30. It was argued to us that the merger may be expected to operate against the public interest, as a consequence of the South African involvement of Minorco and of the Anglo American group in general. In particular, it was suggested that the merged company would suffer commercial damage because of its association with South Africa and of the anti-apartheid policies of many organisations in different countries in which Gold Fields operates. Particular concern was expressed about the action that could be taken following the merger against the present Gold Fields operations in the United States – in, for example, the awarding of mineral leases and in contracting for the public sector; in the United Kingdom, particularly by some local authorities and private sector organisations in awarding contracts for aggregates and other products of ARC; and in Papua New Guinea, if not in Australia itself over operations of Renison.

7.31. It is very difficult to assess the extent to which the merger would increase the risk of discrimination against Gold Fields' current operations. Some 38 per cent of Gold Fields' shares, as mentioned above, are already owned by South African companies and their associates, or by South African nationals. South African ownership of Minorco would be diluted as a result of the merger, but clearly be above that of Gold Fields now, and there is no real doubt that Minorco would be under the effective control of South Africans. Some 20 per cent of Gold Fields' profitability is at present derived from South Africa, although Gold Fields has said that it would divest its interests in GFSA if its business elsewhere suffered as a result of this South African investment. It has not, however, as yet had to do so. Minorco's operations, but not its ownership, are exclusively outside South Africa and will remain so if Gold Fields' interests in GFSA are sold. Minorco's view is that its current operations do not suffer from its South African associations, and it is confident that those of Gold Fields' subsidiaries it plans to retain would also suffer no loss of business as a result of the merger.

7.32. In general, we would regard the risk of any such discrimination against Minorco as one primarily for Minorco to consider in making the offer and for Gold Fields' shareholders in evaluating it: should Gold Fields' businesses suffer in consequence, it is open to Minorco to divest. Minorco's intention to divest of Newmont and Renison may indeed be influenced by the attitude of authorities elsewhere. Whether effective South African control of Minorco will have detrimental effects on ARCA and GFMC is also primarily for Minorco, and for the United States authorities. The question we have to consider, therefore, is whether ownership of ARC by a company effectively controlled by South African interests will have adverse effects in the United Kingdom. This would be an issue primarily for Minorco to judge, were it not for the possible effect on competition in the United Kingdom markets in which ARC operates; we return to this question in paragraph 7.62.

7.33. An argument suggested to us in view of the South African involvement in Minorco was that we should take into account the labour practices of the Anglo American group compared with GFSA's in South Africa; and the possible damage to United Kingdom foreign policy interests of approving such a major acquisition by a leading South African company. Minorco and Gold Fields each claimed that, in some respects, the labour policies of Anglo American and GFSA were respectively superior to the other. It may be that the employment policies of both are far below the standards that would be acceptable in Western Europe. However, we do not regard the South African operation of either company in this respect as relevant to determining the United Kingdom public interest which as a Commission is our only concern. We also received no evidence of United Kingdom governmental concern about the effect of the merger on the foreign policy interests of the United Kingdom.

7.34. Subject to the further discussion of the effects on ARC's markets below, we do not therefore expect the merger to operate against the United Kingdom public interest by reason of the South African involvement in Minorco.

*Loss of United Kingdom control*

7.35. A related argument put to us was that to break up the overseas natural resources of Gold Fields would itself represent a serious loss to the British economy. We do not believe that the merger will affect the United Kingdom public interest, other than through any effect on competition. We do not doubt Gold Fields' success in developing mineral resources overseas, but given the devolution of responsibility through the Gold Fields group and the relatively small scale of its central organisation, the merger cannot be regarded as significantly putting at risk the development of the United Kingdom's technological expertise. Similarly, we do not believe any weight should be given

to the reduction in the number of United Kingdom resource groups as a result of the merger. RTZ remains as a major United Kingdom participant in the world minerals industry. Also we do not consider that the merger raises strategic issues. Strategic uses of the minerals produced by the Gold Fields group are relatively limited, and would not, we believe, be seriously put at risk by the merger. The effect on the United Kingdom balance of payments can also not be regarded as either significant or of particular relevance in this inquiry.

**The effect on competition**

7.36. Gold Fields and the Anglo American group are both major world producers of natural resources, and concern was expressed to us about the effects of the merger on competition in world markets for gold, platinum, titanium, zircon and rare earths; our interest in these markets is, however, confined to the effects of the merger on the United Kingdom public interest. Concern was also expressed about the effect of the merger on competition in the supply of aggregates and related products in the United Kingdom.

*Gold*

7.37. As shown in Table 7.1, the Anglo American group is the Western world's largest gold producer, with interests in over 20 per cent of Western world gold production; Gold Fields is the world's second largest producer, with interests in about 12 per cent.

TABLE 7.1 Proportions of total 1987 Western world gold production

	<i>per cent</i>
Anglo American Group	20·2
<i>Gold Fields</i>	
GFSa and other South African holdings	9·3
Newmont	2·0
GFMC	0·5
Renison	0·2
Total Gold Fields	12·0
Total Anglo American Group and Gold Fields	32·2

Source: See Table 4.2.

7.38. Minorco suggested that these figures exaggerated the effects of the merger. Firstly, it told us that in terms of 'beneficial production', taking into account the percentage shareholding of the Anglo American group in each of its associates, its total share of the Western world gold production following the merger would be substantially less, below 10 per cent, even without disposals. It is true that both Newmont and Renison, for example, have said that they are not controlled by Gold Fields and some Anglo American associates may also be said not to be controlled by Anglo American. Looking only at 'beneficial production', however, would seem to us seriously to understate the market position of the Anglo American group: the various minority shareholdings held by Anglo American (and indeed also by Gold Fields) would seem sufficient to give a strong degree of influence, if not always legal control.

7.39. Secondly Minorco said that following the disposal of GFSa, Newmont and Renison (as described in paragraph 7.19), the increase in the Anglo American group's market share following the merger would be negligible: from 20·2 to 20·7 per cent (on the basis of gross production). While not calling into question Minorco's intention to sell Gold Fields' shareholdings in these companies, we have borne in mind the possibility that such disposals could be delayed, or not fully implemented.

7.40. Finally, Minorco suggested that since the bulk of the two groups' production was in South Africa (28·7 per cent out of the 32·2 per cent), where all gold production is sold to, and marketed by the Reserve Bank of South Africa, the merged group's influence on the supply of gold to world markets would be negligible. Gold Fields told us that South African producers, particularly Anglo American, had attempted for many years to get these restrictions relaxed; we have, however, seen no evidence to suggest that this is likely to happen.

7.41. In practice, we do not believe that the Anglo American group would be able to abuse its position after the bid: its overall position could indeed be virtually the same as now, as soon as its proposed disposals took place. The ability of the group to withhold production to secure price increases, or to manipulate prices in the shorter term, is constrained not only by the obligation to market all gold produced in South Africa to the Reserve Bank, but also by the extensive stocks of gold, equivalent to over 70 years of current world production, and by the scale of reserves of unmined gold both within and outside South Africa. Hence the gold price is at present determined by many factors, including financial transactions and speculative influences, as well as by the level of gold production (see Chapter 4).

7.42. Gold Fields also suggested that the acquisition of gold production outside South Africa, and thus available for delivery to support trading in futures markets would put the Anglo American group in a position to manipulate the price of gold through the use of futures and options markets. We find it difficult to accept that acquisition of Gold Fields' interests outside South Africa – equivalent to less than 3 per cent of world production (less than 1 per cent of production if interests in Newmont were to be sold), and a much lower proportion of the volume of gold traded on the financial markets – would put the Anglo American group in a significantly stronger position to manipulate world markets except quite marginally; it could thus have no significant effect on the United Kingdom public interest. Gold prices are already subject to significant fluctuations, reflecting general economic factors. We do not believe that any attempt at manipulation by Anglo American would seriously increase the instability of the gold price, nor do we see that such instability would be in the interests of Anglo American as a producer. The Bank of England also expressed no concern to us.

7.43. We do not therefore believe that the merger may be expected to operate against the United Kingdom public interest by reason of any effect on the gold market.

#### *Platinum*

7.44. As shown in Table 7.2, the Anglo American group company Rustenburg Mines accounts for almost 50 per cent of Western world mine production of platinum, and 87 per cent of production is accounted for by Anglo American and the South African corporation Gencor.

TABLE 7.2 Western world mine production of platinum

	<i>per cent</i>
<i>South Africa</i>	
Rustenburg including Lebowa (Anglo American)	49·6
Impala (Gencor)	37·4
Western (Lonrho)	5·6
Other South African production	0·7
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Total South Africa	93·3
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Canada	5·2
USA	1·1
Other Western world	0·4
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Total	100·0

Source: See Table 4.3.

Some 2.7 million ounces of platinum were mined in the Western world in 1987. Other sources of supply are relatively limited: the Soviet Union exports 0.3 to 0.4 million ounces per annum, and recovery of platinum from scrap is estimated to provide a further 0.1 to 0.2 million ounces. South Africa also accounts for about 88 per cent of reserves of platinum (estimated at about 1,000 million ounces). The Anglo American group also has interests in about 52 per cent of the Western world's platinum-refining capacity, through its shareholdings in Johnson Matthey and Engelhard. Demand for platinum is likely to continue to grow, particularly for use in autocatalysts; stocks are not extensive, probably the equivalent to only a few years of production, although there could be an increasing recovery of platinum from old autocatalysts.

7.45. Various allegations were made to us about collusion between the two main platinum producers. This was denied by Minorco. It is clearly impossible for us to pursue these allegations in detail, but a lack of competition is clearly possible given the limited number of producers, and the growing world demand.

7.46. Gold Fields does not at present produce platinum. It is, however, involved through GFSA, and a direct shareholding of 13 per cent, in the development of the new Northam platinum mine, which is due to commence production in 1992, with an initial share of the world market likely to be about 6 per cent. Northam has signed an exclusive contract with Heraeus, one of two independent German refiners, giving that company exclusive rights to treat Northam's output. It was argued that without the merger the Northam development would increase competition in both production and refining of platinum, and that the merger would therefore result in a loss of potential competition if influence or control over Northam was to be retained within the Anglo American group, or passed to the Gencor group. Minorco's intention to dispose of Gold Fields' interests in GFSA would not preclude sale to Gencor unless that were prevented by the South African Competition Board.

7.47. Northam is expected to be among the five leading producers of platinum by 1992, but considerably smaller than Rustenburg and Impala and accounting for only a 6 per cent share of the world market (although Gold Fields suggested that Northam's production could be higher if demand grew rapidly). Given the market share which Northam expects to supply, we find it difficult to be confident that the development of Northam will significantly increase competition in the supply of platinum to the benefit of users in the United Kingdom; or that the availability of supplies from Northam will significantly increase competition in the refining of platinum for users in the United Kingdom. Gold Fields did indeed tell us that it could itself dispose of its interests in GFSA including Northam if its other business suffered on account of Gold Fields' South African connections: the extent to which competition would exist would be determined by the attitude of the South African Competition Board towards potential purchasers. In our view, therefore, the Northam development does not represent a sufficient increase in competition to justify our intervention in this context: the reduction in competition in the supply of platinum should the present merger proceed is not sufficient to justify finding that in this respect the merger may be expected to operate against the United Kingdom public interest. Minorco is moreover committed to the disposal of Gold Fields' interests in GFSA and hence in Northam; this matter is the subject of undertakings to the South African Competition Board (see paragraph 7.19).

*Titanium, zircon  
and rare earths*

7.48. A number of organisations expressed concern to us about the effect of the merger on competition in world markets (with implications for users in the United Kingdom) for a number of high-value metals and minerals produced by Renison.

*Titanium* 7.49. Titanium dioxide is of importance as a pigment, notably in the manufacture of paint, and titanium metal is particularly important in the aerospace industry. About 95 per cent of titanium dioxide goes into production of pigments. We were told that there was no cost-effective substitute for the use of titanium dioxide in paint (which accounts for more than one-half of the use of titanium pigment), or for the use of titanium metal in airframes or jet engines.

7.50. Titanium dioxide is produced by two distinct processes known as the 'sulphate route' and the 'chloride route' (see paragraph 4.25) – the sulphate route, due to environmental problems and the lower purity of the product, having declined from 80 per cent in 1970 to just over 50 per cent of current world production. The different routes require different feedstocks: in general the chloride route requires natural or synthetic rutile, or some titanium slag produced from rock ilmenite, or primary sand ilmenite. Titanium metal can only be produced from titanium tetrachloride produced in the chloride route.

7.51. Production of chlorinatable feedstocks is summarised in Table 7.3.

TABLE 7.3 World production of chlorinatable titanium feedstocks, 1987

	<i>'000 tonnes</i>	<i>per cent</i>
Renison (Gold Fields)	206	24.4
Consolidated Rutile Ltd (Gencor)	95	11.3
Richards Bay Minerals (BP and Gencor)†	155	18.3
Other	388	46.0
Total	844	100.0

Source: See Table 4.6.

\*'000 tonnes of titanium dioxide content.

†A somewhat higher share of RBM products may be chlorinatable - see paragraph 4.28. There is an agreement in principle for BP's interest to be sold to RTZ

Renison's operations, primarily in Australia, account for about 24 per cent of world production of chlorinatable feedstocks; a further 18 per cent of production is accounted for by Richards Bay Minerals in South Africa, jointly controlled by BP and Gencor; and 11 per cent of production by Consolidated Rutile Ltd (a non-naturalised company in Australia), which is operated and effectively controlled by Gencor. (A wholly-owned subsidiary of Gencor has a 49.9 per cent shareholding in Cudgen RZ Ltd, which in turn has a 50.1 per cent shareholding in Consolidated Rutile Ltd.)

7.52. Neither Minorco nor the Anglo American group is at present involved in the production of titanium feedstocks, other than through the existing shareholding in Gold Fields, and a 5 per cent investment in Gencor. The transfer of Gold Fields' 48 per cent interest in Renison would therefore not directly affect the structure of the market. It was, however, argued to us that the transfer of Gold Fields' shareholding in Renison would increase the proportion of production accounted for by South African companies – ie the Anglo American group and Gencor – to over 50 per cent, and hence reduce competition, or even result in active collusion, in the supply of titanium.

7.53. We believe that the risk that the merger will result in collusion in the supply of titanium has been exaggerated. Renison is itself a naturalised Australian company, a requirement for which is that majority ownership and control should be by Australian nationals; loss of naturalised status would inhibit Renison's development in Australia. The largest shareholding in Richards Bay Minerals is held by a United Kingdom company, BP (which has agreed in principle to sell it to another one, RTZ), rather than by Gencor; the Anglo American group has no effective influence through its small shareholding in Gencor. We do not therefore accept that the increase in any South African influence over the marketing of titanium would be as great as has been suggested to us, nor that the merger would significantly increase the risk of any cartelisation of the market.

7.54. We have also had regard to future developments in production of titanium. Rutile reserves have been estimated at over 20 million tonnes, the bulk of which are outside South Africa; reserves of ilmenite are more extensive. A recent discovery, which includes chlorinatable titanium feedstocks in Victoria, Australia, by CRA Ltd (49 per cent owned by RTZ) could be brought to production by 1992; there are a number of other developments outside either South Africa or Australia.

7.55. We do not therefore believe that the risk of successful collusion in the supply of titanium feedstocks is sufficient to suggest that the merger may be expected to operate against the United Kingdom public interest. Minorco is moreover committed to the disposal of Gold Fields' interests in Renison outside the Anglo American group (see paragraph 7.19), and hence in the production of titanium feedstocks.

#### Zirconium

7.56. Ninety-seven per cent of all zirconium minerals are mined in the form of zircon. Zircon is used in a variety of industries, including foundries, refractories and ceramics; zirconium metal (a small percentage of the total) is used in cladding fuel for nuclear reactors. Zircon prices have recently increased significantly, leading to some substitution for zircon in foundries; in other cases zircon is less easily substitutable, and in some cases not at all.

7.57. Production of zircon is summarised in Table 7.4.

TABLE 7.4 Western world production of zircon, 1987

	'000 tonnes	
	Tonnage	per cent
Renison (Gold Fields)	296	41.3
Consolidated Rutile Ltd (Gencor)	80	11.2
Richards Bay Mineral (BP and Gencor)*	110	15.3
Other	231	32.2
Total	717	100.0

Source: See Table 4.7.

\*See note 2 to Table 7.3

About two-thirds of production is within Australia, mainly by Renison. Reserves represent over 25 years' production, with a number of new sources of supply likely to be developed over the next ten years.

7.58. As with the supply of titanium, the merger does not directly affect the structure of the market, but it has been suggested to us that it will increase the risk of collusion between South African producers, since Renison, Gencor and Richards Bay will together account for about two-thirds of production. Similarly, as with the supply of titanium, we find it difficult to accept that the transfer of ownership of Gold Fields' shares in Renison, without any direct effect on market structure, significantly increases the risk of successful collusion, or on these grounds may be expected to operate against the United Kingdom public interest. Minorco is moreover committed to the disposal of Gold Fields' interests in Renison, and hence in the production of zircon.

*Rare earths* 7.59. Concern was also expressed to us about the implications of the merger on the production of monazite, a main source of a number of rare earth elements. Renison is the Western world's largest producer of monazite, with a market share in excess of 40 per cent. Alternative sources are limited. CRL, controlled by Gencor (see paragraph 7.51), recently commenced production of monazite.

7.60. As with titanium and zircon, the merger does not directly affect the structure of the market for monazite; nor do we have any reason to believe that the strategic interests of the United Kingdom would be adversely affected by any transfer of Gold Fields' minority shareholding in Renison. We do not therefore expect the merger to operate against the United Kingdom public interest on account of the supply of rare earths.

**The supply of aggregates and related products**

7.61. Gold Fields' wholly-owned subsidiary, ARC, is estimated to be the leading supplier of aggregates in Great Britain (with an 18 per cent share of the £1,600 million aggregates market), and also of concrete pipes and concrete bricks (with an estimated share of these much smaller markets of 42 per cent and 26 per cent respectively). It is also among the leading suppliers of coated stone, ready-mixed concrete, and concrete blocks.

7.62. Minorco is not at present involved in the supply of any of these products in the United Kingdom. The merger will not therefore have any direct impact on the structure of these markets. Gold Fields (and indeed other organisations) argued, however, that competition would be adversely affected as a result of the merger if local authorities and other users and their agents discriminated against ARC on account of Minorco's South African associations.

*The risk of discrimination against ARC*

7.63. There is considerable opposition in the United Kingdom to South Africa by trade unions, and by many local authorities. ARC (unlike Charter Consolidated, Minorco's other direct United Kingdom interest) derives a substantial part of its business from local authorities actively opposed to South Africa. Both ARC and Tarmac (which had previously had investments in South Africa) told us they had experienced discrimination on account of their South African associations; there would therefore seem to be some risk of increased discrimination against ARC should it, following the merger with Minorco, come effectively under South African control.

7.64. Due to the importance of transport costs, many of the markets in which ARC operates are primarily local. Were particular local authorities not to purchase from a major supplier such as ARC, competition would be reduced with local competitors able to increase prices, or materials would have to be acquired from more distant suppliers, at increased cost. Gold Fields estimated that a loss of one-third of ARC's public sector turnover could increase transport costs by about £25 million. A weakening of ARC could also reduce the competition to the few other national suppliers of aggregates and related materials such as Tarmac.

7.65. As discussed in paragraph 7.31, we believe it is impossible to judge the extent to which the acquisition by Minorco will increase discrimination against ARC: although Gold Fields is under United Kingdom control, it has South African interests of its own and a substantial body of South African shareholders. The fact that Gold Fields already suffers to a degree from its South African associations makes it even more difficult to establish the extent to which discrimination could be increased by the merger.

7.66. Discrimination by local authorities would indeed, we think, be liable to contravene the provisions of the Local Government Act 1988. This Act provides (Section 17) that award of public supply or works contracts should be without reference to non-commercial matters such as the location in any country of the business activities or interests of contractors. Gold Fields told us that it believed such provisions to be unenforceable because discrimination could be effected without detection. It does, however, seem to us implausible that discrimination against a leading competitor such as ARC could not be detected, and no action taken to rectify it. ARC could also respond to discrimination by withdrawing from particular markets, selling its local production facilities, and providing the opportunity for new entrants to maintain competition.

7.67. While, therefore, we acknowledge some initial risk of increased discrimination against ARC, we do not expect it to be sufficiently significant or sustained for us to conclude that the merger would operate against the public interest.

*Anti-competitive practices*

7.68. It was also argued to us that, although Gold Fields through ARC has a relatively limited share of many of these markets on a national basis, it has a higher share in certain local areas, and that the more limited scale of local competition would allow Minorco to increase prices or encourage the adoption of anti-competitive practices in these areas. Gold Fields told us that ARC was particularly vigilant in its efforts to remove the anti-competitive practices that had previously occurred in these markets, and indeed in the construction industry in general. We note the difficulties the industry has had in controlling anti-competitive practices, but there is no evidence that Minorco is any more likely than Gold Fields to engage in such practices, nor that the regulatory authorities would be powerless to prevent any attempt by Minorco to exploit its position in these markets. Some of these markets are also characterised by relatively low barriers to entry, and a significant level of entry; and we doubt whether restrictive practices could be successfully maintained in the longer term. We do not therefore expect the merger to increase the risk of anti-competitive practices in the supply of aggregates and related products in the United Kingdom, or in this respect to operate against the United Kingdom public interest.

*Coal*

7.69. Further arguments were put to us that the acquisition by Minorco would put at risk Gold Fields' plans (based on Peabody's expertise) to participate in the possible privatisation of the United Kingdom coal industry after the next election. The privatisation of coal is still at only an early stage of consideration. Minorco already has some involvement in coal and told us that it had also considered participation in the United Kingdom coal industry following privatisation, and would make use of any plans developed by Gold Fields to do so. We do not believe that there are sufficient grounds to expect that the merger will significantly affect any prospects for possible competition in coal production in the United Kingdom.

**Summary of conclusions**

7.70. We have examined the many aspects of the proposed merger which have been put to us. We do not expect the merger to operate against the United Kingdom public interest by reason of Minorco's connection with the Anglo American group, nor of the South African involvement in Minorco. The main issues which could affect the United Kingdom public interest are those of competition in various markets. We have examined the effects of the proposed merger on the world markets for gold, platinum, titanium, zircon and rare earths, and on the United Kingdom market for aggregates and related materials; we do not expect the merger to operate against the United Kingdom public interest by reason of effects on any of these markets.

7.71. We conclude that the creation of the merger situation qualifying for investigation which we have identified may be expected not to operate against the public interest.

D G RICHARDS (*Chairman*)

M E BEESLEY

F E BONNER

ROBERT CLAYTON

B C OWENS

N L SALMON

S N BURBRIDGE (*Secretary*)

23 January 1989