
BHPB bids for Rio - Probe continuing to meet UK takeover rules

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It is reported that BHP has left the regulatory probe running on its abandoned bid for Rio because of UK takeover rules, even though a decision could limit its options in future.

BHP which earlier had said that it no longer wanted to buy Rio Tinto as economic conditions made the debt too risky and the divestments hard to make at fair value. But instead of formally ending its offer, BHP said it will leave the European Commission to complete its phase II antitrust probe, which it expects will end with a blocking decision in early to mid January 2009.

Meanwhile lawyers in Brussels have commented that they were surprised that the probe was continuing, wondering if there was a tactical motive behind it.

One of them said that it is quite common for companies to withdraw in phase II to avoid getting a negative decision published. BHP would learn little from a public decision that it does not already know from the EC's Statement of Objections, while a public decision would reduce its room for maneuver if it bids for Rio again or tries to buy other iron ore or coking coal assets, they explained.

However, a deal source and an independent UK takeover lawyer said BHP had little choice. Under UK takeover rules, BHP's firm intention to make a pre conditional offer places it under a heavy obligation from which it cannot escape without permission from the Takeover Panel.

They referred to Rule 13.4 of the Takeover Code, which obliges bidders to use all reasonable efforts to ensure the satisfaction of any conditions or pre conditions. Assuming that BHP's choice not to offer remedies is deemed reasonable, the offer could lapse within the rules. If the EC surprises BHP by clearing the deal anyway, the board will recommend shareholders to vote against the deal, so it fails on another condition.

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