

Part II

Relationship with Glencore



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Part II Relationship with Glencore

Commercial relationship

6.C.15

General

Immediately following the completion of the Acquisitions, the Merger and Admission, Glencore International will own 40% of the issued ordinary share capital of the Company (even if the Manager's Option is exercised) and will be its largest shareholder.

Established in 1974, Glencore is a major diversified natural resources group with world-wide activity in the mining, smelting, refining, processing and trading of metals and minerals, energy products and agricultural products and is principally owned by its employees and management. Glencore's principal offices are in Baar, Switzerland; Stamford, Connecticut, United States; London, United Kingdom; and Rotterdam, the Netherlands. Glencore's trading and investment activities and relationships with producers and consumers of raw materials are supported by a global network of 69 field offices located in over 50 countries. Glencore employs approximately 2,000 people world-wide excluding people employed in the operation of its industrial assets. Glencore's turnover for the year ended 31 December 2000 was US\$48 billion. As at 31 December 2000, Glencore had total assets of US\$10.2 billion and total shareholders' equity of US\$1.9 billion.

In 1990, Glencore International became a substantial shareholder in Xstrata AG, following which Xstrata AG built a portfolio of businesses operating in the natural resources sector.

The Company believes that the Group benefits from Glencore's ability to identify investment opportunities and to market the commodities which the Group produces. The Company further believes that Glencore benefits from its marketing agreements with the Group, which generally provide for exclusive marketing rights in favour of Glencore with respect to the commodities which the Group produces.

Most of the Company's operating subsidiaries have entered into long-term agency agreements with Glencore under which Glencore provides marketing services in exchange for agency fees. These fees are negotiated on arm's length terms and range from 3.5% to 5% of the FOB sales revenue. In a number of instances, Glencore acts as collecting agent and also assumes 60% of the non-payment risk of the Group's ferrochrome trade receivables and 100% of the non-payment risk of the Group's vanadium trade receivables.

For a description of certain of the Xstrata AG Group's, the Enx Group's and the Duiker Group's transactions with Glencore for the three years ended 31 December 2001, see "Accountants' Report on the Xstrata AG Group", "Accountants' Report on the Enx Group" and "Accountants' Report on the Duiker Group", respectively, in Part VI.

Coal Business

Duiker Marketing AG and Xstrata (Schweiz) AG have entered into a Market Advisory Agreement with Glencore International. Pursuant to this agreement, Glencore International will, for a fee of US\$0.50 per attributable tonne of coal exported by the Group from Australia or South Africa, act as the Group's market adviser with respect to its export production of coal (other than for Cumnock No. 1 Colliery Pty Limited ("Cumnock") while it is not a wholly-owned subsidiary and other than for export sales from the TAV/TESA joint venture unless and until the current marketing arrangements with TESA are terminated). Glencore International will advise the Group regarding the placement of its export coal in the world market, the future planning for that placement and market opportunities available for the future sale of export coal. Glencore International will also provide the Group's marketing department with real time market intelligence and access to Glencore International's network of global offices. In providing such services Glencore International has agreed not to act for the greater benefit of itself to the disadvantage of the Group.

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The Market Advisory Agreement will remain in full force and effect for a period of 20 years, with a review of the fee at the end of each fifth year thereof. The Market Advisory Agreement may be terminated by Duiker Marketing AG after giving 45 days' notice if any person and its affiliates holds, directly or indirectly, 50% or more of the issued share capital of Glencore International. The Market Advisory Agreement may also be terminated by either party with immediate effect if:

- the other party commits a material breach of the agreement and fails to remedy the breach, if capable of remedy, within 30 days of receiving written notice from the other party identifying such breach; or
- the other party enters into liquidation or is declared insolvent.

Xstrata (Schweiz) AG has agreed to guarantee the performance by Duiker Marketing AG of its obligations under the Market Advisory Agreement.

On 5 January 1995, Cumnock entered into a sales and marketing agreement with Glencore International. Pursuant to this agreement Glencore International provides sales and marketing services to Cumnock and

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Cumnock appoints Glencore International as its agent to market coal. Glencore International is entitled to a commission of US\$0.75 per tonne for all coal sold by Cumnock.

Zinc Business

During 1999, Asturiana entered into a service agreement with Glencore (the "Asturiana Service Agreement"), under the terms of which Glencore provides advice and assistance with respect to the acquisition of mining and/or metallurgical interests and advice in connection with Asturiana's hedging policy and improvement of its position in the zinc market.

The fees to be paid by Asturiana under the Asturiana Service Agreement are approximately US\$2.0 million per annum. Unless renewed, the agreement will expire on 31 December 2004.

Ferroalloys Business

Chrome operations

Xstrata South Africa has entered into a ferrochrome marketing agreement with Glencore International appointing Glencore International as its exclusive world-wide marketing agent for the sale of Xstrata South Africa's entire production of ferrochrome other than ferrochrome sold into the US, Canada and certain Asian countries. The agreement continues for as long as Xstrata South Africa produces ferrochrome. Glencore International is obliged to use its best endeavours to arrange sales at prevailing market rates as agreed from time to time by Xstrata South Africa and Glencore International. Glencore International is entitled to receive an agency fee of 4.25% on FOB sales revenues. Glencore International assumes 60% of the risk of non-payment by customers.

If at any time Xstrata South Africa notifies Glencore International that it is able to find purchasers for its production at prices higher than those generally obtainable by Glencore International, Xstrata South Africa may, unless Glencore International is able to obtain similar prices, sell its products in the market. Glencore International is nevertheless entitled to an agency fee of 3.5% of FOB sales revenue as set forth above in respect of such sales. Glencore International is also entitled to receive a US\$50,000 monthly fee in connection with market analysis and administration tasks performed by Glencore International.

Ferrochrome sold into the United States and Canada is distributed by Glencore Ltd. and Glencore Canada Inc., respectively, under two distribution agreements. These distribution agreements continue indefinitely, with both parties having the right to terminate the agreement on 12 months' notice. The percentage of distribution fees payable by the Xstrata AG Group in respect of ferrochrome sold under the distribution agreement is substantially the same as the commission paid in respect of ferrochrome sold under the marketing agreement. In addition, Mitsui & Co. Ltd. has the right to market 30,000 tonnes of the annual production from the Lydenburg furnaces to certain Asian countries.

Vanadium operations

Xstrata AG's wholly-owned marketing agent, Xstrata Marketing Corporation A.V.V. ("Xstrata Marketing"), has entered into a 20 year marketing agreement expiring on 31 December 2017, in respect of Rhovan's and Vantech's entire production of vanadium other than vanadium sold into the US or Canada. Pursuant to this agreement Glencore International agreed to purchase Rhovan's entire production of vanadium pentoxide and Vantech's entire production of vanadium pentoxide and ferrovanadium until 31 December 2000 and agreed to pay Xstrata Marketing a fixed minimum delivered price of US\$3.50 per pound of vanadium pentoxide and US\$16.80 per kilogramme of ferrovanadium (the "offtake arrangement"). The offtake arrangement was restructured with effect from 1 January 2000 and provided that half of the vanadium pentoxide offtake entitlement for the year 2000 was allocated equally to the years 2001 and 2002 at US\$3.65 per pound (representing a significant premium over the average price of a pound of vanadium pentoxide in the year ended 31 December 2001) and US\$3.80 per pound, respectively. As at 18 March 2002 (being the latest practicable date prior to the publication of this document) the price of a pound of vanadium pentoxide was US\$1.05/lb (Source: Datastream – minimum 98% V₂O₅ quoted by Metal Bulletin).

Glencore International is obliged to use its best endeavours to arrange sales of vanadium pentoxide and ferrovanadium which are not covered by the fixed price arrangement described above. Xstrata Marketing is obliged to pay to Glencore International an agency fee of 3.5% on FOB sales revenues and an additional fee of 1.5% on FOB sales revenues for assuming the risk of non-payment by customers on this material.

If at any time Xstrata Marketing notifies Glencore International that it is able to find purchasers for its production at prices higher than those generally obtainable by Glencore International, Xstrata Marketing may, unless Glencore International is able to obtain similar prices, sell its products in the market. Glencore International is nevertheless entitled to the 3.5% agency fees described above in respect of such sales.

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Vanadium pentoxide and ferrovandium sold into the United States or Canada is distributed by Glencore Ltd. and Glencore Canada Inc., respectively, under two distribution agreements. The distribution agreements have the same term as the marketing agreement. The percentage of distribution fees payable by the Xstrata AG Group in respect of vanadium pentoxide and ferrovandium is substantially the same as the commission paid in respect of vanadium pentoxide and ferrovandium sold under the marketing agreement.

Xstrata Windimurra Pty Ltd has entered into a 10 year marketing agreement with Glencore International, dated 24 December 1998, in respect of the entire production of the Group's Australian vanadium operation pursuant to which an agency fee of 3.5% on FOB sales revenues is payable by Xstrata Windimurra Pty Ltd to Glencore International or, if production exceeds four million pounds of vanadium pentoxide in any year, the greater of US\$500,000 (CPI) or 3.5% on FOB sales revenues. Glencore International assumes the risk of non-payment by customers.

If at any time Xstrata Windimurra Pty Ltd notifies Glencore International that it is able to find purchasers for the Group's Australian vanadium operation's production at prices higher than those generally obtainable by Glencore International, Xstrata Windimurra Pty Ltd may, unless Glencore International is able to obtain similar prices, sell the Group's Australian vanadium operation's production in the market. Glencore International is nevertheless entitled to the 3.5% agency fees described above in respect of such sales.

Relationship with controlling shareholder

Immediately following the completion of the Acquisitions, the Merger and Admission, Glencore International will own 40% of the issued ordinary share capital of the Company (even if the Manager's Option is exercised) and will be regarded as a controlling shareholder of the Company for the purposes of the Listing Rules. 3.12 3.13

Glencore International and the Company have entered into an agreement dated 20 March 2002 (the "Relationship Agreement") which will, conditional upon Admission, regulate the ongoing relationship between them. The principal purpose of the Relationship Agreement is to ensure that the Group is capable of carrying on its business independently of Glencore and that transactions and relationships with Glencore are at arm's length and on normal commercial terms. The Relationship Agreement will therefore ensure that the Company complies with its obligations under the Listing Rules. The Relationship Agreement will continue for so long as the Ordinary Shares are listed on the Official List and traded on the London Stock Exchange and Glencore International is the Company's controlling shareholder under the Listing Rules. Currently, a controlling shareholder is a person who holds either 30% or more of the votes exercisable at general meetings of the Company or has the right to control the appointment of the majority of the Directors. 6.C.23(a) 6.C.23(b) 6.C.15 6.C.19

Under the Relationship Agreement:

- the Company and Glencore International agree that transactions and relationships between the Group and Glencore will be conducted at arm's length and on a normal commercial basis;
- the Company and Glencore International agree to ensure that the Company is capable, at all times, of carrying on its business independently of any member of Glencore;
- Glencore International is only permitted to nominate a maximum of three directors of the Company or (if lower or higher) such number of directors of the Company nominated by Glencore International as is equal to one less than the number of Independent Directors. In this respect, Glencore International has initially nominated Messrs. Strothotte, Glasenberg and Issroff to the Board;
- Directors of the Company nominated by Glencore International shall not be permitted, unless the Independent Directors agree otherwise, to vote on any resolutions of the Board to approve any aspect of the Company's involvement in or enforcement of any arrangements, agreements or transactions with any member of Glencore;
- Glencore International undertakes to procure that Glencore shall not exercise its voting rights to procure amendment to the constitutional documents of the Company which would be inconsistent with, or undermine, the Relationship Agreement; and
- Glencore International undertakes to observe the provisions in the Company's Articles providing takeover protection whilst the City Code does not apply to the Company.

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The Directors believe that the terms of the Relationship Agreement as described above will enable the Group to carry on its business independently from Glencore.

In addition, under the Acquisition Agreement Glencore International has agreed for a period of three years following Completion to cooperate with the Company to give it the opportunity to enter into any transaction which involves the mining of coal or any related processing business which is carried on in whole or in part within Australia or South Africa in preference to Glencore International or a member of its group. Under the terms of the Acquisition Agreement, the Vendors are also prohibited for a period of 12 months from soliciting offers of employment with any senior executive of the Group. See "Additional Information – Agreements relating to the Acquisitions and the Merger – The Acquisition Agreement" in paragraph 10 of Part VIII.