

Humberto Nogueira  
Law Report  
Executive Summary

Mr. Humberto Nogueira Alcalá has a Ph.D. in Constitutional Law from Universidad Católica de Lovaina La Nueva, in Belgium. He is a former Deputy Justice of Santiago's Court of Appeals and former Dean of Law of Universidad de Talca. He has acted as legal advisor for the Presidency's Secretary General Ministry. Mr. Nogueira is a very prominent professor and director of several postgraduate programs, particularly relating to constitutional law and other public law topics. Professor Nogueira has been a visiting scholar at various foreign universities and is an extensively published author on constitutional law and other public law issues, member of several editorial boards of public law journals in Chile and other countries. He obtained his law degree from Universidad de Chile.

The main conclusions of his report are the following:

1. Codelco can only exercise its Option over the shares in excess of the 51% in Anglo American Sur S.A. owned by Anglo American at the time of exercise, as set out by clause Third, number Five of the "Convenio Empresa Nacional de Minería con Inversiones Anglo American Dos Limitada, Anglo American Chile Dos Limitada y Anglo American PLC" of 2002. This clause provides for an exercise within a time frame of thirty days following January 1<sup>st</sup>, 2012 and in no other way, as the same clause explicitly clarifies. Before this period, Codelco holds no vested right but only a mere expectation on the acquisition of a portion of the 49% Interest owned by Anglo American when the Option is timely and validly exercised.
2. Codelco holds no property right which can serve as basis for its constitutional claim brought against the Anglo American entities. Likewise, Anglo American's conduct is neither arbitrary nor illegal and its has not affected any of Codelco's constitutional rights. These considerations should lead the Court to dismiss the claim.
3. Pursuant to the contractual rules contained in the relevant agreements, Anglo American sold part of its Interest in Anglo American Sur S.A. to a third party, Mitsubishi Corporation. This sale falls within its contractual rights and Anglo American ability to dispose of its Interest is protected by the Constitution, the law and the relevant contractual provisions. The only limit for this right to dispose of said Interest is set out by Clause Third of the 2002

contract, especially number Five which regards the time period mentioned above. Beyond the period defined by the contract, Anglo American is entitled to freely dispose of its property.

4. The attempt to create an inexistent contractual clause by way of interpretation which hinders Anglo American's constitutional property right is contrary to the basic standards of legal interpretation and clearly violates the Constitution.
5. Codelco has unduly affected Anglo American's freedom to develop any economic activity and to exercise the powers inherent to its property right over its Interest in Anglo American Sur S.A.. This conduct violates Anglo American's constitutional rights.
6. The injunction granted in favor of Codelco by the Court of Appeals is contrary to the limitations these kind of measures need to comply with, as it constitutes a forbidden anticipatory decision on the contractual conflict between the parties.
7. The Chilean government and House members have deployed a behavior, mainly through the press, which exceeded the limits of the non intervention principle and could be interpreted as undue pressure over the Courts which must decide the legal controversies between companies, according only with the legal and contractual provisions in force. The government and all of its entities are under the duty to respect, assure, guarantee and promote judicial impartiality and independence. Additionally, the Constitution commands these same entities not to establish arbitrary discriminations among the parties acting within the national economy.

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