

Jorge Correa
Law Report
Executive Summary

Jorge Correa Sutil obtained his law degree from Pontificia Universidad Católica de Chile (*summa cum laude*). There he was granted the Tocornal, Montenegro and Chamber of Commerce Awards for the best student of his class. Mister Correa holds a LL.M. from Yale Law School, where he went after obtaining a Fullbright and an Eisenhower scholarship. He is former Undersecretary of State and member of the Constitutional Court. Jorge Correa Sutil was dean of law and currently a professor at Universidad Diego Portales. He was worked as a legal Consultant for IDB, World Bank and UNDP. He has been also a visiting scholar at Notre Dame University.

The main conclusions of his report are the following:

1° *"It must, then, be highlighted that the intention of each party, clearly manifested in this clause, was that of granting CODELCO the right to buy up to 49% of the shares and not 49% of the same. The final percentage to which it has a right, possibly inferior, but never superior to that 49%, will be determined according to the percentage of shares held by the owner and the offerer (today Anglo and affiliates) at the date of purchase, in such a way that the owner and/or related companies would maintain the majority proportion of the shares.*

2° *"The transcribed clauses reflect the willingness of the parties not to prohibit, but rather to consider possible and licit that act of transfer which has been verified, not only because it is the only way of giving a useful effect to this pact, but also because it is irrational, and contrary to the rules of logic which should be noted with the evidence of a protection act, to suppose that the parties have considered illicit the act of disposition in conditions that would suppose, prefigure and regulate the effects of the same, showing that they wished to reduce the object upon which they could then exercise their right to purchase, without prohibiting or even stipulating a negative consequence for the offerer that took part in the sale, while the offer was pending and before exercising the option."*

3° *"[...] it is irrational and contrary to the rules of healthy criticism to grade as arbitrary or illegal an act that is licit, because of a contract in which such an act is presumed and foreseen as possible, without declaring it prohibited or with sanction, and in exchange, the parties control their effects on the right of purchase, none of which is negative for the offering vendor."*

4° *"The expression 'and in no other way' contained in the previously transcribed clause leaves clear the intention of the parties to convene that the only valid way that ENAMI (today CODELCO) had to validly exercise its right to purchase and in this way oblige Anglo to sell, was within 30 days following certain years, in such case, as of the year 2012 it has not been previously exercised."*

5° *"Previous events which we have taken into account do not show bad faith, as it is contrary to the maximums of experience to attribute bad faith to those who avail of the goods for a period in which, having complied with their obligation of providing information before the exercise of option, is not conventionally constrained in their right of disposition in favor of third parties".*

6° *"It is not that they cannot protect their right to property or other rights that rise from the contracts, but it is necessary that law (related to property, in this case) be unquestionable, so as to avoid that protection actions, precautionary by nature, become the means of declaring the existence or content of the law being claimed."*

7° *"The loss of an expected income, whatever the quantity, does not permit the contracting party to classify the act as illegal or arbitrary apart from the contract. A licit commercial operation does not become illegal nor can it be classified as arbitrary simply because it impedes another contracting party from making a good deal. The fact that this contracting party is the main company in the State of Chile does not alter that conclusion, in accordance with the principles of equality and the proposals of impartiality and security specified by law".*

8° *"In accordance with the contract clauses, CODELCO's right to purchase depended on a variable number of shares, with a maximum limit of 49% of them. In accordance with the contracts, the object due to which CODELCO could, and can, exercise the right to purchase, could be licitly reduced at any time previous to the purchase date to a figure less than 49% depending on the disposition acts of Anglo's shares in favor of third parties. The personal right that CODELCO has to purchase shares has not suffered any limitation, perturbation or threat, since due to its conventional titles, the legitimate exercise of that right depended on, with reference to its object, the freedom of transfer of the other party.*
