

Lautaro Ríos
Law Report
Executive Summary

Mr. Lautaro Ríos Álvarez has a Ph. D. granted by Universidad Complutense of Madrid. He was member of the Constitutional Court and chairman of the Lawyer's Association of Valparaíso. Mr. Ríos is a constitutional law Professor at Universidad de Valparaíso and the author of several publications on constitutional law. He received his law degree from Universidad de Chile.

The main conclusions of his report are the following:

1° *“[...] it would be impossible to see an intention other than that which both parties have stated in their interpretation of the clauses. Far less can we suppose that there exists a legal restriction on the dealings of the owners of the Disputed shares, as this would be equivalent to accepting a **tacit** no transfer clause for a period of 25 years – the time period stated in number NINE of Clause Three of the Agreement from 2002 – which would infringe upon the free exercise of the ability to deal, which is the very essence of the right to property, which is forbidden even to legislators, in accordance with the terms of Art. 19 No. 26 CPR.”*

2° *“And by the same token, but in the reverse sense, the sale by Anglo American to Mitsubishi Co. of 24.5% of its shares in Anglo American Sur S.A. carried out in November 2011, i.e. when the option was not actionable, is clearly in line with the intentions of the parties of the contract, the tenor and spirit of the 2002 Agreement and the principle of good faith.”*

3° *“[...] the projection of the will of CODELCO as regards its exercise of the right to purchase is outside the terms and conditions set out in the Agreement of 2002, and does not constitute an exercise of its rights. In this way, no legal consequence can be attributed to announcements made by the beneficiary, in an emotive manner, in the social communication media.”*

4° *“[...] the ‘Right to Purchase’ invoked by CODELCO in the present Motion is not an unchallenged right; as, whilst CODELCO tried to exercise it over the entire 49% of the total share property of Anglo American, in the 2002 Agreement, clause THREE, it is limited to a maximum of 49% of the total Company Interest existing on the date of purchase.”*

5° *“[...] adopting the M.P. would represent an affirmation of an imaginary obligation, unduly claimed by CODELCO from ANGLO AMERICAN of not making*

its property available during the six months after its obligation to provide information about its financial status until the end of January 2012. ”

6° *“CODELCO’s ‘Right to Purchase’ is an expectation to exercise it within the 30 days following the 2nd of January 2012; it is not a right that is currently in force and – so – it is not protected by an M.P.”*

7° *“A simple qualitative and quantitative comparison of the request in the motion and the issue of the NIO leads to the conclusion that the no innovation order in question is anti-legal in nature, unjustified, exorbitant and prejudicial for the appellants.”*

8° *“[...] the NIO, in the manner that it was issued by the I. Court of Santiago is unconstitutional: a) Because it manifestly exceeds the margin and significance of the right which is requested be protected in the Protection Motion presented; given that the Constitution only authorizes the Court to take ‘the measures its deems necessary to... ensure the proper protection of the person affected,’ and not more than this; b) Because, as the Court has at its disposition the arguments put forward by both parties – both in the request for the N.I.O. and the request to reject it – it was adopted without stating the reasoning behind this decision, given its gravity; c) Because the Constitution, in its most relevant right, art. 19 No. 3, ensures to all persons ‘The equal protection of the law in the exercise of their rights,’ which obliges the courts to administer justice protecting – under equal conditions – both interested parties during the conflicts that come before it. In this case the I. Court of Santiago has excessively protected the appellant to the evident detriment of the rights of their counterpart’.*
