ORDER OF THE PRESIDENT OF THE FIFTH CHAMBER (EXTENDED COMPOSITION) OF THE COURT OF FIRST INSTANCE

3 June 1997 *

In Case T-102/96,

Gencor Ltd, a company incorporated under South African law, established at Johannesburg (Republic of South Africa), represented by K. P. E. Lasok QC, and D. H. Hall, Solicitor, London, with an address for service in Luxembourg at the Chambers of Marc Loesch, 11 Rue Goethe,

applicant,

v

Commission of the European Communities, represented by R. Lyal, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: English.

APPLICATION for annulment of the Commission decision of 24 April 1996 declaring a concentration to be incompatible with the common market and the functioning of the Agreement on the European Economic Area (Case No IV/M.619 — Gencor/Lonrho), adopted pursuant to Article 8(3) of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1),

THE PRESIDENT OF THE FIFTH CHAMBER (EXTENDED COMPOSITION) OF THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

makes the following

Order

1 By applications lodged on 26 November and 6 December 1996 respectively, the Federal Republic of Germany, represented by Ernst Röder and Bernd Kloke, acting as Agents, with an address for service at the Bundesministerium für Wirtschaft (Federal Ministry for Economic Affairs), D-53107 Bonn, and the United Kingdom of Great Britain and Northern Ireland, represented by Stephanie Ridley, acting as Agent, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt, sought leave to intervene in Case T-102/96 in support of the form of order sought by the defendant.

2 Those applications for leave to intervene were served on the parties by the Registry of the Court of First Instance.

3 No observations on those applications have been submitted by the applicant or the defendant.

4 By letters of 11 December 1996 and 3 January 1997 the applicant requested that certain information contained in the documents before the Court be treated as confidential as against the Federal Republic of Germany and the United Kingdom.

5 By letter of 15 January 1997 the Commission submitted its observations on those requests.

The applications for leave to intervene

6 The applications for leave to intervene were submitted pursuant to the first paragraph of Article 37 of the EC Statute of the Court of Justice, which is applicable to the procedure before the Court of First Instance under the first paragraph of Article 46 of that Statute, and were made in accordance with Article 115 of the Rules of Procedure of the Court of First Instance. The Federal Republic of Germany and the United Kingdom must therefore be given leave to intervene in the case in support of the form of order sought by the defendant.

The requests for confidential treatment

Subject-matter of the requests and observations of the defendant

7 The applicant requests that, as against the interveners, the following information be treated as confidential:

(1) *Data appearing in the application:*

— paragraph 2.3: delete the date appearing in the second sentence, the last two sentences, footnote 4 (last sentence) and footnote 5 (information relating to the final date for fulfilment of the conditions to which the merger agreement was subject, the negotiations regarding a possible extension of that date, and the fact that a complete copy of the purchase agreement has been lodged at the Registry of the Court of First Instance);

— paragraph 2.9: delete part of the last sentence, from '... the day-to-day management' to the end of that sentence (information relating to the day-to-day management of Eastplats and Westplats ('LPD'), the agreement known as 'the Principals' Agreement' and the applicant's assessment of its effect on those two companies);

— paragraph 2.12: delete all market share figures set out in Table 3 other than the grand total; those figures were deleted from the public version of the decision (platinum and rhodium market shares held by the parties to the merger and their competitors at world level);

— paragraph 2.13: delete the two figures in the last sentence (combined platinum and rhodium market shares held by the parties to the merger at Community level);

— paragraph 2.14: delete the two figures in the second sentence (volumes of platinum sold by the parties to the merger in the Community and the European Economic Area);

— paragraph 2.15: delete, in the last sentence, the reference to the place of incorporation of Lonrho's marketing subsidiary;

— paragraph 4.10: delete, in the fifth line, the reference to the place of incorporation of Lonrho's marketing subsidiary;

— paragraph 4.28: delete the two figures in the second sentence (combined platinum and rhodium market shares held by the parties to the merger at Community level);

— paragraph 7.4: delete the figures in the first sentence (platinum market shares held by Gencor and Lonrho at world level, as used by the Commission) and the second sentence (platinum market shares held by the parties to the merger at Community level);

— paragraph 8.2: delete the figure in respect of the commitment to increase platinum output offered by the parties during the administrative procedure with regard to certain mine shafts; that information has been deleted from the public version of the contested decision (paragraph 215);

— paragraph 8.5: delete the figures relating to current output at other mine shafts and the commitment to develop the capacity of certain mine shafts; that information has been deleted from the public version of the contested decision;

— paragraph 8.11: delete from the penultimate sentence, to the end of that sentence, the passage following the words 'failing to mention that' (statement of Lonrho's position in relation to the expert's report on which the Commission based its rejection of the commitment offered by that company and Gencor in the course of the administrative procedure);

(2) *Data appearing in the annexes to the application:*

(a) Annex 1: substitute the non-confidential version of the contested decision for the confidential version;

(b) Annex 3: delete the extract from the purchase agreement concerning the conditions to which that agreement was subject;

(c) Annex 4: delete the letter of 21 May 1996 from Lonrho Plc concerning the extension of the deadline for fulfilment of the conditions to which the merger agreement was subject;

(d) Annex 6:

— paragraph 6.1.7: in the last sentence, delete the figure relating to the margin of error in the calculation of demand for platinum group metals ('PGMs') in the Community;

— paragraph 6.1.8: delete all the figures in the table (estimated shares of the PGMs market held by Gencor and Lonrho at Community level);

— paragraph 6.1.9: delete all the figures in the table (volumes of PGMs sold by Gencor and Lonrho in the Community, broken down into 'contract sales' and 'spot sales');

— paragraph 6.1.10: delete all figures and the whole of the fourth sentence (sales volumes in the Community in 1995 and comparison with other years);

— 6.1.11: delete the final word and figure appearing in the first sentence, the whole of the second sentence, the wording preceding the word 'for' and the two figures in the fourth sentence (share of the palladium market held by the parties to the merger at Community level and future developments in respect of that share);

(e) Annex 7:

— paragraph 7.1: delete all the figures in the tables (total sales of platinum — in terms of value and volume — in the Community);

— paragraph 7.2: delete all the figures in the tables (sales of platinum — in terms of value and volume — effected by Gencor and Lonrho in the Community);

— paragraph 7.3.2: delete the figures relating to the market shares of Amplats and Almaz (shares of the PGMs market held by Amplats and Almaz, the main competitors of Gencor and Lonrho, in the Community);

(f) Annex 8: delete the entire extract (discussion concerning LPD's commercial strategy in relation to its possible future expansion);

(g) Annex 9: delete the whole of this annex, consisting of an economic report by National Economic Research Associates ('NERA') on the merger and on the Commission's statement of objections; the thrust of that report is summarized in the public version of the decision (paragraphs 193 to 199);

(h) Annex 13: in the final paragraph of the passage headed 'Paragraphs 117-126', delete the whole of the text following the word 'that' in the first line (forecasts by Implats/Gencor and an expert concerning platinum market trends);

(3) *Data appearing in the defence:*

— paragraph 12: delete the figures relating to the shares of the PGMs market held by Implats and LPD at world level;

— paragraph 14: delete, in the first line, the figure relating to the share of the world platinum market held by Russian mines and, in the fifth and sixth sentences, the reference to the source of that information;

— paragraph 15: in the penultimate line, delete the figure in respect of the shares of the platinum market held by Implats and LPD at world level;

— paragraph 18: in the third line, delete the figure relating to the level of output which the parties were willing to maintain pursuant to the commitment offered to the Commission;

— paragraph 21: delete the dates for fulfilment of the conditions to which the merger agreement was subject;

— paragraph 22: at the end of the final sentence, delete the date for fulfilment of the conditions to which the merger agreement was subject;

— paragraph 60: delete the two figures appearing in the third and last sentences respectively and all the figures in footnote 4 (combined market shares which the parties to the merger would have held at world level if it had taken place, and short-term forecast by the Commission of changes in those shares);

— paragraph 80: in the second sentence, second line, delete the name of the mine to be developed pursuant to the commitment offered to the Commission (deleted from the public version of the decision, paragraph 215);

— paragraph 81: in the penultimate line, delete the name of the mine to be developed pursuant to the commitment offered to the Commission.

8 The Commission considers, in essence, that confidential treatment should not be accorded to documents containing arguments presented to the Court (or to the Commission during the administrative procedure preceding the adoption of the decision), statements of opinion or experts' reports (except in so far as these contain sensitive information relating to the business of the undertaking in question).

9 It therefore contends that the application for confidential treatment should be rejected as regards the following documents:

(1) *Data appearing in the application:*

— in paragraph 2.3 and Annexes 3 and 4;

— in paragraph 2.9;

— in paragraphs 2.12, 2.13, 2.14, 4.28 and 7.4, and paragraphs 6.1.8, 6.1.10 and 6.1.11 of Annex 6; the information in question is indeed of a confidential nature and should be replaced by approximate ranges, as in the public version of the decision (the Commission nevertheless questions whether sales figures of a purely historical nature should be treated as confidential);

— in paragraph 8.11;

— in Annexes 3, 4 and 6;

— in Annex 7 (publicly available or aggregated data);

— in Annex 9, apart from the data contained in figure 3.1, in footnote 8, in figure 3.2 and in table 3.1, which should be replaced by approximate ranges, and the commercial details in paragraph 3.2.1;

— in Annex 13;

(2) *Data appearing in the defence:*

— Gencor's market share and sales volume figures, given in paragraphs 12, 14 and 60 (only the first figure in the latter paragraph): those data, which are indeed of a confidential nature, should be replaced by approximate ranges, as in the public version of the decision;

— the figure appearing in the first line of paragraph 14 (publicly available data);

— the figure in paragraph 15, which merely constitutes an assessment by the Commission of the market shares of the parties to the merger in the near future should the merger take place;

— the dates referred to in paragraphs 21 and 22;

— the figures in paragraph 60 (to which the same remarks apply as in the case of paragraph 15 — see above).

Findings of the President

10 Article 116(2) of the Rules of Procedure provides:

'If the President allows the intervention, the intervener shall receive a copy of every document served on the parties. The President may, however, on application by one of the parties, omit secret or confidential documents.'

11 That provision lays down the principle that a copy of every document served on the parties must be served on the interveners. It is only by way of derogation therefrom that the second sentence of Article 116(2) permits certain documents to be treated as confidential, thereby exempting them from the requirement that copies must be served on the interveners.

12 For the purpose of determining the conditions under which confidential treatment may be given to certain documents in the file, it is necessary, in respect of each document, to balance the applicant's legitimate concern to prevent substantial damage to its business interests and the intervener's equally legitimate concern to have the necessary information for the purpose of being fully in a position to assert its rights and to state its case before the Court (see, in particular, the orders of the Court of First Instance of 4 April 1990 in Case T-30/89 *Hilti* v *Commission* [1990] ECR II-163, paragraph 11, and of 6 February 1995 in Case T-66/94 *Auditel* v *Commission* [1995] ECR II-239, paragraph 31).

13 In the present case, it is necessary, before considering the merits of the application for confidential treatment, to examine the applicant's argument that, in the light of its binding confidentiality agreement with Lonrho, the Court should allow that application, at least as regards information relating to the latter company.

14 That agreement was relied on by the applicant in its letters of 11 December 1996 and 3 January 1997 requesting confidential treatment, but it has not been produced.

15 Nevertheless, having regard to the considerations set out below, it does not appear necessary to require its production.

16 According to the applicant, Lonrho has always regarded the information provided in connection with the Commission's administrative procedure as private and confidential information, the disclosure of which could cause irreparable harm to its business. Accordingly, at the outset of the proceedings, it required the applicant and those advising it in connection with the merger to undertake to use relevant information solely in connection with the Commission's procedure and not to make any unauthorized disclosure. Those restrictions remain in force, and Lonrho has informed the applicant's advisers that it is not prepared to waive them in the event of any intervention in the proceedings pending before the Court. They relate to 'detailed information concerning the business and properties of [Lonrho's] operations'.

17 Although natural or legal persons other than the parties to the dispute are entitled to protection in respect of confidential information concerning them (order of the President of the Second Chamber of the Court of First Instance of 23 July 1993 in Case T-24/93 *Compagnie Maritime Belge Transport* v *Commission*, not published in the European Court Reports, paragraph 7), the applicant's argument, according to which confidential treatment should automatically be accorded to information regarded by Lonrho as confidential business information, cannot be accepted. The fact that the parties have concluded a confidentiality agreement cannot justify derogation from the abovementioned rule laid down by Article 116(2) of the Rules of Procedure, as interpreted by the Court of Justice and the Court of First Instance.

18 It is only once an examination has been carried out to determine the confidentiality or otherwise of each document in respect of which an application for confidential treatment, duly supported by reasons, has been submitted and, as the case may be, once the interests of the third party and of the interveners have been weighed in the balance, that the President can rule on the merits of the application, since the existence of a confidentiality agreement between the applicant and the third party in question cannot preclude such an examination.

19 It is necessary, therefore, to examine each request for confidential treatment, including those relating to information emanating from Lonrho, in accordance with the principles set out above.

20 Since the items of data in issue possess different characteristics, it is necessary to divide them into several distinct categories and to examine each of those categories in turn.

A — Paragraph 2.3 of, and Annexes 3 and 4 to, the application and paragraphs 21 and 22 of the defence

21 The applicant requests that confidential treatment be accorded to the deadlines for fulfilment of the conditions to which the merger agreement was subject and the position adopted by the parties with regard to the possible extension of those deadlines.

22 As the Commission has rightly observed, that information is fundamental to any examination of the objection of inadmissibility raised by it, on which the interveners should have the opportunity to comment; it also relates to past events, the commercial significance of which has not, moreover, been established.

23 That information cannot therefore be regarded as secret or confidential within the meaning of Article 116(2) of the Rules of Procedure.

B — The purchase agreement lodged at the Registry of the Court of First Instance

24 The applicant also seeks confidential treatment in respect of the fact, referred to in footnote 4 to the application, that a complete copy of the purchase agreement has been lodged at the Registry of the Court of First Instance.

25 The Commission has not commented on that part of the application for confidential treatment.

26 That request must be interpreted as seeking to obtain confidential treatment for the purchase agreement itself. It cannot be regarded as seeking only to conceal the fact that a copy of the agreement has been lodged at the Registry. Such a request would be manifestly inadmissible: the Court cannot conceal from the interveners the existence of certain documents in its files, since Article 116(2) of the Rules of Procedure provides that the interveners are to receive a copy of every document served on the parties, apart from secret or confidential documents.

27 As a commercial agreement, the purchase agreement itself qualifies, in principle, for the protection accorded to confidential information (see, in particular, the order of the President of the Fourth Chamber, Extended Composition, of the Court of First Instance of 26 February 1996 in Case T-322/94 *Union Carbide Corporation* v *Commission*, not published in the European Court Reports, paragraph 32). Apart from the passages discussed in paragraphs 21 to 23 above, it has no particular relevance to the outcome of the case. The Commission has not, moreover, contested the application made in respect of it. That agreement may therefore be regarded as confidential.

C — Paragraph 2.9 of the application

28 The applicant requests that the passage in paragraph 2.9 of the application concerning the day-to-day management of LPD and the agreement known as 'the Principals' Agreement' be regarded as confidential.

29 The information contained therein already appears in paragraphs 114 and 116 of the public version of the contested decision. The application for confidential treatment in respect of it must therefore be rejected (see the order of the President of the Second Chamber, Extended Composition, of the Court of First Instance of 9 November 1994 in Case T-7/93 *Langnese-Iglo* v *Commission*, not published in the European Court Reports, paragraph 11).

30 The applicant also seeks confidential treatment in respect of its assessment of the level of influence which it has on LPD.

31 It should be noted that the level of influence exercised by Gencor on the companies in question constitutes one of the points at issue between the parties and may have a considerable effect on the substance of the case. The Commission denies that Gencor and Lonrho jointly control those two companies. Had LPD already been effectively under the joint control of Gencor and Lonrho prior to the merger, that might have led the Commission to reach a different conclusion as to the effects on competition in the markets concerned of the merger operation notified to it.

32 Furthermore, the passage in question contains merely an assessment of the facts and not a description of the facts themselves, and it should be noted that the main points of the agreement are described in paragraph 114 of the public version of the contested decision. The interveners must therefore have that information available to them in order to assert their rights and present their case to the Court.

33 Moreover, the applicant has not requested confidential treatment in respect of the passages in the Commission's letter of 22 November 1996 contesting Gencor's allegations on that point.

34 The application for confidential treatment of that information must therefore be rejected.

D — Paragraphs 2.12, 2.13, 2.14, 4.28 and 7.4 of the application, paragraphs 6.1.7, 6.1.8, 6.1.9, 6.1.10 and 6.1.11 of Annex 6 to the application, paragraphs 12, 14 (apart from the figure relating to Almaz) and 60 of the defence, and paragraph 7.2 of Annex 7 to the application

35 The applicant requests that confidential treatment be accorded to certain of the figures given, in particular the market shares, sales volumes and turnover of the parties to the merger and of its main competitor, Amplats.

36 Those data, which contain information relating to the competitive positions of the principal undertakings operating on the market, may indeed be regarded as secret or confidential within the meaning of Article 116(2) of the Rules of Procedure (see the order of the President of the First Chamber, Extended Composition, of the Court of First Instance of 19 May 1995 in Case T-290/94 *Kaysersberg* v *Commission*, not published in the European Court Reports, paragraph 12). Nevertheless, as the Commission has suggested, those figures must be replaced by approximate ranges, as in the public version of the contested decision, so that the interveners can properly present their arguments before the Court.

37 The Commission has argued that certain sales figures are purely historical in nature. However, it has not specified which figures it is referring to, nor why, having regard to the characteristics of the market in question, those data have no commercial value. In any event, a refusal to allow confidential treatment in respect of the figures for 1992 and 1993, which are contained in paragraph 6.1.10 of Annex 6 and paragraph 7.2 of Annex 7 to the application, would enable the interveners to

deduce the shares of the Community platinum market held by the parties during 1994 and 1995 (paragraph 6.1.10 of Annex 6 to the application) and their total platinum sales in the Community (paragraph 7.2 of Annex 7 to the application).

38 This part of the application for confidential treatment must therefore be allowed, and the applicant must be requested to provide a non-confidential version of the passages referred to above, containing approximate ranges instead of the figures in question.

E — Paragraphs 7.1 and 7.3.2 of Annex 7 to the application and the first line of paragraph 14 of the defence

39 The applicant requests that confidential treatment be accorded to the figures for total European consumption of platinum, in terms of volume and value, and for the approximate market shares held by Amplats and Almaz in the Community.

40 As for the figures relating to total European consumption of platinum, these are aggregated figures which do not fall within the category of information qualifying for the protection accorded to secrets and other confidential information under Article 116(2) of the Rules of Procedure (see the order of the Court of First Instance in Cases T-134/94, T-136/94, T-137/94, T-138/94, T-141/94, T-145/94, T-147/94, T-148/94, T-151/94, T-156/94 and T-157/94 *NHM Stahlwerke and Others* v *Commission* [1996] ECR II-537, paragraph 24).

41 As regards the figures in respect of the market shares held by Amplats and Almaz at Community level, these are expressed, as the Commission has pointed out, in the form of a very broad range, and cannot therefore qualify for confidential treatment.

42 It follows that this part of the application for confidential treatment cannot be allowed.

F — Annex 9 to the application: the NERA report

43 The applicant seeks confidential treatment for the economic report prepared by NERA on the merger and on the Commission's statement of objections.

44 The analysis contained in that report forms an integral part of the applicant's arguments contesting the assessment contained in the Commission's statement of objections. That analysis is thus not as such confidential (see paragraph 46 of the order in *Union Carbide Corporation* v *Commission*, cited in paragraph 27 above, and paragraph 34 of the order of the Court of First Instance of 10 February 1995 in Case T-154/94 *Comité de Salines de France* v *Commission*, not published in the European Court Reports).

45 Nevertheless, as the Commission has rightly pointed out, confidential treatment is justified in respect of the following items:

— footnote 8 (information concerning the Implats mine);

— figure 3.2 (market share figures);

— table 3.1 (data concerning turnover and market shares — subject to the insertion of approximate ranges);

— certain commercial information in paragraph 3.2.1, to be specified by the applicant.

46 This part of the application for confidential treatment must therefore be allowed.

47 As regards figure 3.1 (cost figures in respect of the exploitation of individual platinum mines by South African producers), NERA has itself stated (footnote 7 to the report) that it based its findings on published information. Before the Court can rule on that part of the report, the applicant must be requested to state whether or not those data are confidential.

48 Furthermore, inasmuch as the applicant has not had an opportunity of undertaking a detailed examination of the precise data which may qualify for confidential treatment, it must be asked to state whether it accepts the Commission's proposal or whether it wishes confidential treatment to be accorded to other data. In the latter case, the applicant will be required to provide a non-confidential version of the report accompanied by a proper statement of reasons.

G — Annex 8 to, and paragraphs 2.15 and 4.10 of, the application

49 The applicant claims that confidential treatment should be given to certain passages in the reply to the statement of objections, especially those relating to the discussions within LPD concerning its commercial strategy (Annex 8 to the application) and the place of incorporation of Lonrho's marketing subsidiary (paragraphs 2.15 and 4.10 of the application).

50 The Commission has submitted no observations in this connection.

51 Those data constitute aspects of the applicant's commercial policy concerning the future development of its mining operations and its establishment policy. Consequently, they may be regarded as business secrets or confidential information within the meaning of Article 116(2) of the Rules of Procedure.

H — Paragraphs 8.2 and 8.5 of the application and paragraphs 18, 80 and 81 of the defence

52 The applicant requests that confidential treatment be accorded to certain data concerning the current production of various mine shafts, the increase in output envisaged in the commitment offered to the Commission during the administrative procedure, and the name of the mine to be developed.

53 The Commission has not submitted any observations in this connection.

54 The figures contained in paragraphs 8.2 and 8.5 of the application and paragraph 18 of the defence constitute sensitive commercial information relating to the applicant's expansion prospects. They may be regarded as business secrets.

55 In contrast, the application in respect of the name of the mine to be developed in the context of the commitment referred to in paragraphs 80 and 81 of the defence does not prima facie constitute a business secret or confidential information, particularly since — especially in paragraphs 8.2 and 8.5 of the application — the applicant itself has not sought the deletion of that information.

56 However, the name of that mine has been deleted from the public version of the contested decision (paragraph 215) and the Commission has not opposed that part of the application for confidential treatment.

57 In those circumstances, and having regard to the fact that the name of the mine does not constitute an essential factor in enabling the interveners to submit their observations on the merits of the rejection of the commitment proposed by the Commission, the application for confidential treatment must be allowed, on the basis that it should also extend to paragraphs 8.2 and 8.5 of the application.

I — Paragraph 8.11 of, and Annex 13 to, the application

58 The applicant requests that confidential treatment be accorded, first, to the position adopted by Lonrho with regard to the expert's report on which the Commission based its decision to reject the commitment offered by the parties to the merger during the administrative procedure and, second, to the applicant's assessment of likely market trends, expressed in support of its argument that the Commission erred in its analysis of the circumstances surrounding the commitment offered.

59 As the Commission has observed, the applicant has not explained why the fact that Lonrho disassociated itself from one expert's report on the likely trend of platinum sales on the world market should constitute a business secret or sensitive information.

60 The same remark applies to the applicant's forecast of likely market trends.

61 In any event, and in accordance with the case-law of the Court of First Instance (order in *Union Carbide Corporation* v *Commission*, paragraphs 44 and 46), assessments of that kind cannot be confidential in nature as against interveners. Moreover, those assessments form part of the applicant's arguments regarding the Commission's analysis of market trends contained in the contested decision, on which the interveners must be allowed to comment.

62 It follows that this part of the application for confidential treatment must be rejected.

J — Paragraphs 15 and 60 of the defence

63 The applicant requests that confidential treatment be accorded to the figures in respect of the approximate market shares which the parties to the merger, or those parties and their main competitor, Amplats, would be likely to hold in the near future should the merger take place.

64 However, those figures concern an assessment by the Commission of likely trends in the market shares of the main undertakings operating on the relevant markets. That assessment constitutes a fundamental part of the Commission's arguments concerning the creation of a collective dominant position. Consequently, the data in question cannot be confidential in nature as against the interveners.

65 This part of the application must also be rejected.

K — Annex 1 to the application

66 Lastly, the applicant requests that the confidential version of the decision (Annex 1 to the application) be replaced by the non-confidential version.

67 Since the items treated confidentially by the Commission in the non-confidential version of the decision have been regarded above as indeed meriting the same treatment under Article 116(2) of the Rules of Procedure, this part of the application must be allowed.

On those grounds,

THE PRESIDENT OF THE FIFTH CHAMBER
(EXTENDED COMPOSITION)
OF THE COURT OF FIRST INSTANCE

hereby orders:

1. **The Federal Republic of Germany and the United Kingdom of Great Britain and Northern Ireland are granted leave to intervene in support of the form of order sought by the defendant.**

2. The request for confidential treatment as against the interveners is allowed as regards the following data:

— the purchase agreement lodged at the Registry of the Court of First Instance, apart from the clauses contained in Annex 3 to the application;

— the figures contained in:

— paragraphs 2.12, 2.13, 2.14, 4.28 and 7.4 of the application;

— paragraphs 6.1.7, 6.1.8, 6.1.9, 6.1.10 and 6.1.11 of Annex 6 to the application;

— paragraphs 12, 14 (apart from the figure relating to Almaz) and 60 (apart from the figure mentioned in the last sentence) of the defence;

— paragraph 7.2 of Annex 7 to the application;

— in Annex 9 to the application (NERA report), the business information and figures contained in the following:

— footnote 8;

— figure 3.2;

— table 3.1;

— paragraph 3.2.1 (confidential data to be specified by the applicant);

— Annex 8 to the application;

— the place of incorporation of Lonrho's marketing subsidiary, referred to in paragraphs 2.15 and 4.10 of the application;

— the figures and the name of the mine appearing in paragraphs 8.2 and 8.5 of the application and paragraph 18 of the defence;

— the name of the mine appearing in paragraphs 80 and 81 of the defence.

3. As regards the NERA report (Annex 9 to the application), the applicant is requested to indicate to the Court whether it accepts the Commission's proposal, stating the commercial data contained in paragraph 3.2.1 of the report in respect of which it requests confidential treatment, or whether it wishes to request confidential treatment for other detailed data. In the latter case, it shall provide a non-confidential version of the report, duly supported by a statement of reasons.

In addition, the applicant shall state whether or not it regards the data contained in figure 3.1 of the NERA report, relating to the costs of the operation of individual platinum mines by South African producers, as confidential in nature.

4. The applicant shall provide a non-confidential version of those parts of the file which contain figures regarded above as confidential, including therein, where indicated by this order, approximate ranges instead of the figures in question.

5. The confidential version of the Commission's decision (Annex 1 to the application) shall be replaced by the non-confidential version thereof.

6. The Registrar shall serve on the interveners a non-confidential version of every document served on the parties.

7. A period shall be prescribed within which the interveners are to state in writing the pleas relied on in support of the form of order which they seek.

8. The costs are reserved.

Luxembourg, 3 June 1997.

H. Jung — Registrar

R. García-Valdecasas — President