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FAO: Mr Jean-Sébastien Jacques (CEO) and Mr Jan du Plessis (Chairman)

12 December 2016

Rio Tinto PLC
6 St James's Square
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BY EMAIL, FAX AND COURIER

Dear Sirs

**BSG Resources Limited -v- Rio Tinto Plc
Letter Before Action**

We act for BSG Resources Limited, BSG Resources (Guinea) Limited and BSG Resources (Guinea) Sarl (together "BSGR").

I. INTRODUCTION

Our client has recently become aware of emails sent in May 2011 and the payment of facilitation fees/bribes by Rio Tinto to Francois de Combret. These new developments are damning evidence against Rio Tinto, demonstrating that Rio Tinto had a central role in bringing about BSGR's loss of mining rights in Simandou, Guinea.

By reason of the matters set out in this letter, BSGR claims that Rio Tinto:

- Induced and/or procured a breach of by the Government of Guinea ("GoG") and/or Alpha Condé on behalf of the GoG of the Base Convention between BSGR and the GoG, and/or BSGR's rights under the Guinean Mining Code and Investment Code; and
- Intentionally caused BSGR loss by unlawful means.

This letter contains a concise summary of the claim BSGR intends to issue against Rio Tinto. It does not include all of the evidence upon which BSGR intends to rely, but the summary below is indicative of the behaviour in which Rio Tinto engaged in seeking to interfere with BSGR's mining rights.

II. THE RECENTLY DISCOVERED EVIDENCE

The recently discovered evidence demonstrates that:

- (1) Rio Tinto paid a facilitation fee / bribe to Francois de Combret in return for assistance with negotiations with Alpha Condé, his son Mohamed Condé, and the GoG. Emails in May 2011 refer to Mr de Combret's "unique" access to President Condé (as a former school and university friend).
- (2) Rio Tinto has terminated the contracts of three very senior employees – Alan Davies (Energy & Minerals Chief Executive), Debra Valentine (Legal & Regulatory Affairs Group Executive), and Ismael Diakite (Head of Guinea Operations) because of their involvement in Mr de Combret's activities. Mr Davies was the author of one of the emails in May 2011. Two other senior Rio Tinto employees implicated by the emails, Sam Walsh (at the time of the emails, the Head of Iron Ore operations, and later the CEO), and Tom Albanese (former CEO), had already retired at the time the new evidence was publically disclosed.
- (3) Rio has suppressed information regarding those emails, since they arose at least a year earlier in the context of the RICO claim issued by Rio Tinto against Vale, BSGR and others. This no doubt explains why Debra Valentine has also been dismissed, though Rio Tinto has failed thus far to explain the exact reasons for her termination.
- (4) The US\$700m paid by Rio Tinto to the GoG in 2011 was paid at least in part in order to set up a deal for Blocks 1 and 2 of Simandou, which were the interests held by BSGR (via VBG). As set out further below, Mr Davies of Rio Tinto wrote in his email of 10 May 2011 that thanks to Mr de Combret's efforts, *"there is also now a glimmer of possibility that we may be able to move ourselves into a useful position in relation to [blocks] 1 and 2."*
- (5) Not only that, but Steven Din, of Rio Tinto, attempted to bribe Mr Mahmoud Thiam (who was, at the time of this attempt, Minister of Mines) to return Blocks 1 and 2 to Rio Tinto.

This new evidence (set out in more detail below) is compelling and damning against Rio Tinto. It also puts in context Rio Tinto's earlier attempts to take Blocks 1 and 2 from BSGR. In essence, the corruption by Rio Tinto in 2010 and 2011 in relation to the GoG, was a continuation of Rio Tinto's ever increasingly desperate attempts to get BSGR out of Simandou. As set out below, those attempts started immediately after the GoG first informed Rio Tinto that its mining rights in relation to Simandou were to be withdrawn on the basis of illegality, in May 2008.

The start of Rio Tinto's campaign against BSGR

On 30 March 2006 the then President of Guinea, Lansana Conté, issued a decree granting a mining concession to Rio Tinto's subsidiary, Simfer, over Simandou Blocks 1-4. That decree was revoked on 28 July 2008 and Rio Tinto's rights were 'downgraded' to those of a prospecting permit holder. The reasons for the revocation were set out in two letters

dated 22 May 2008 and 30 July 2008, and related to Rio Tinto's breaches of the Guinean Mining Code. In particular, because Rio Tinto had failed to do almost any significant exploratory work in these regions, particularly with regard to Blocks 1 and 2, it was required to retrocede half of its mining rights back to the GoG.

The GoG offered Rio Tinto the opportunity to remedy at least some of its breaches, and invited the company to submit a retrocession plan for 50% of its mining rights, or to agree to provide a greater level of financing for Guinean infrastructure projects. However, Rio Tinto failed to comply with the GoG's requests. As a result, on 4 December 2008, the Minister of Mines informed Rio Tinto that the GoG would enforce the retrocession and Simfer's prospecting permits to Simandou Blocks 1 and 2 were withdrawn.

Although there were subsequent negotiations over the precise area to be retroceded, the effect of the 28 July 2008 decree was clear – Simfer had to return half the land covered by its prospecting permits to the GoG. In view of the inevitability of a 50% retrocession by Simfer, the GoG invited applications for prospecting permits over Blocks 1-4 from other companies before the final decision as to which areas would be retroceded had been made. BSGR was one of the companies to apply, and submitted its application on 5 August 2008. BSGR provided evidence of its technical and financial capabilities, and referred to the success it had already achieved in Guinea, at the Zogota iron ore mine in Simandou South. As a result, on 9 December 2008, BSGR was awarded prospecting permits for Simandou Blocks 1 and 2.

The revocation of Rio Tinto's rights in Simandou Blocks 1 and 2 had nothing to do with BSGR, and everything to do with Rio Tinto's breaches of the 1995 Mining Code and its persistent failure to develop its iron ore project. The GoG made this absolutely clear at the time, and subsequent legal advice to President Condé confirmed it. However, from the start Rio Tinto held BSGR responsible and set out to recover its rights.

Rio Tinto instructed private investigators and commissioned reports against BSGR

As early as 4 August 2008, Rio Tinto instructed a private investigator to compile a "*brief on Steinmetz*". Rio Tinto also indicated that it would try to get the investigator's sources to "*give their thoughts on avenues/approaches that Rio should be exploring to address the concession issue*". Rio Tinto had a legitimate avenue to address this issue: comply with the Mining Code and provide a concession plan. Instead, it appears that Rio Tinto was seeking to pursue alternative means.

On 25 August 2008, Rio Tinto began to receive reports from the investigators it instructed. One of those reports reported that its "*best information at present, which is largely based on hearsay*" included that Mr Steinmetz had a "*business relationship with the President's 4th wife*", that he had funded the army and that he had offered to "*draw upon Israeli connections to provide personal security and intelligence to the President*". This was all false, and demonstrably so given that the allegations were prefaced by the warning that it was based on hearsay.

From this point until as recently as February 2015, Rio Tinto regularly and routinely hired a bewildering array of private detectives to investigate BSGR, with little oversight as to the methods used. This included Kroll, GardaWorld, Control Risks Group, Africa Risk Consultancy, BTG Global Risk and Veracity. Rio Tinto disseminated the contents of the

reports, which were often not supported by evidence and which relied on hearsay, to parties in positions to deprive BSGR of its rights or otherwise harm its integrity. This extended to the GoG, the US ambassador to Guinea and the authors of the DLA Report.

Rio Tinto's attempts to regain its rights over Blocks 1 and 2 – by making allegations of corruption against BSGR.

In January 2009, Mahmoud Thiam was appointed as Minister of Mines in Guinea. Soon after Mr Thiam's appointment, a delegation from Rio Tinto met with him to try to persuade him to overturn the previous government's decision to withdraw its mining rights in Blocks 1 and 2. The delegation made very serious allegations of corruption against BSGR, although they did not provide any evidence in support of their allegations. These included that BSGR was a corrupt organisation involved in arms trading, that Beny Steinmetz's French passport had been revoked on account of his connection to corruption, that no major bank was prepared to do business with BSGR and that the company had no experience in the mining sector. The false allegations regarding Mamadie Touré, which became the focus of the GoG's basis for ejecting BSGR, appear also to have originated from Rio Tinto, or at the very least, widely disseminated by Rio Tinto. There was no truth to those allegations at all, as Rio Tinto well knew.

Later that day, the Rio Tinto contingent met with the then President Camara to request an immediate reversal of the withdrawal decision.

Rio Tinto aggressively lobbied Mr Thiam. In a later letter to President Condé (on 26 November 2012), Mr Thiam said:

“Representatives of Rio contacted members of my family, endeavoured to discover the address of my mother, etc... Upon my arrival, the company [Rio Tinto] dangled all sorts of political gifts in front of me, including the dream of resolving all Guinea's water and electricity problems...”

Rio Tinto was pursuing all lines of attack in an attempt to recover its rights to Blocks 1 and 2, including making allegations against BSGR.

Rio Tinto's harassment campaign against BSGR

Having failed to bully Mr Thiam into reversing the decision to award BSGR the rights over Simandou Blocks 1 and 2, Rio Tinto then:

- (1) Informed BSGR that it had no legal right to carry out work in Blocks 1 and 2 – when that was obviously false.
- (2) Disrupted operations by encouraging demonstrations against the company and deploying low flying helicopters over Blocks 1 and 2 to intimidate BSGR staff.
- (3) Refused to move its equipment from Blocks 1 and 2 (finally removing it in July 2009, after the GoG threatened to suspend all Simfer's activities).

- (4) Provided its helicopter to the Minister of Environment, Papa Koly Kourouma, to visit a BSGR camp in July 2009 to make false allegations that BSGR had polluted the water of a nearby river.
- (5) Conducted a press campaign designed to undermine BSGR.

This was recorded by BSGR in *inter alia* letters dated 11 June and 24 June 2009.

Rio Tinto continued to ignore the withdrawal decision

In June 2009, Mr Thiam had to write to Rio Tinto again. He said in that letter that the GoG had evidence that they had:

“engaged in a subversive press campaign and in a defamation campaign against the Guinean State, its government, and some of its representatives... These activities are dangerously approaching an attempt at destabilising civil peace and weakening our socio-economic stability. We possess, I repeat, very clear evidence of these acts...”

Rio Tinto’s actions included making inflammatory statements to a group of ‘activists’, which were secretly recorded by a journalist.

On 14 July 2009, Rio Tinto was again asked by the GoG to remove its equipment from Simandou Blocks 1 and 2.

This conduct by Rio Tinto continued into later 2009, including false allegations made by Rio Tinto that BSGR and Mr Steinmetz were linked with a corruption investigation against a former Israeli Prime Minister. On 21 September 2009 BSGR was forced to write to the CEO of Rio Tinto, Tom Albanese in London about this. BSGR said:

“We are in possession of evidence showing that Mr Jordan Feildars of Simfer is engaging in an underhand and unlawful smear campaign against BSGR as well as against Mr Beny Steinmetz and others...”

The article, drafted by Mr Feildars and then published at his instigation, sets out a prejudicial, unsupported and erroneous description of relations between Mr Ehud Olmert, the former Israeli Prime Minister, BSG and Mr Steinmetz, and purports to create a link with the corruption investigation relating to Mr Olmert...

The text prepared by Mr Feildars was reproduced in its entirety in a highly damaging article which appeared in L’Aurore, a Guinean newspaper, in edition 112 published on 7 September 2009... The article was also published on L’Aurore’s web site and is, we have been informed, due to be broadcast by radio shortly as a result of Mr Feildar’s efforts...

The only basis on which your representative has procured the publication of these materials and is pursuing a campaign to expand publication is in an attempt to prejudice the perception of us in the region and our activities in Simandou – in the context of your own attempts to resurrect Simfer’s activities in that region.”

This letter was copied to Mr du Plessis, the Chairman of Rio Tinto, and Debra Valentine. We understand that Mr du Plessis has been tasked with taking the "lead on Guineagate",

which is a reference to the investigation into the de Combret payments. However, as far back as 2009, Mr du Plessis was in possession of information which suggested illegal conduct by Rio Tinto and/or its contractors against BSGR. As set out below, Mr du Plessis was put on notice of further illegal conduct by Rio Tinto in 2010. He appears to have done nothing. It is surprising that given his intimate involvement in the matters in question, Rio Tinto considers it appropriate that he should take a lead on investigating the issues.

Rio Tinto's Attempts to Bribe Guinean Officials

According to an article in *Bloomberg*, in early 2010, Steven Din of Rio Tinto offered Mr Thiam, then Minister of Mines for Guinea, a bribe to win back control of half of the undeveloped Simandou project. This was a reference to Blocks 1 and 2.

In February 2010, Mr Din then met with the US ambassador to Guinea and said that Mr Thiam had effectively been paid by BSGR, which was completely false. Mr Din apparently made those allegations in order to sour relations between BSGR and Guinea, as part of Rio Tinto's attempts to gain back control of Blocks 1 and 2. This allegation was then included in the DLA Report and Rio Tinto's failed RICO claim, with the intent to cause BSGR further damage.

Breaches of privacy and data protection laws

After the attempted bribe of Mr Thiam failed, Rio Tinto ramped up its investigation efforts into BSGR. In a redacted Rio Tinto email dated May 2010, disclosed to Mr Steinmetz in response to a Subject Access Request, reference is made to it being "*very important for RT to keep tabs on the Steinmetz Empire*". On 6 September 2010, Rio Tinto received a "*proposal for the continued due diligence review of Beny Steinmetz*".

Following receipt of information which demonstrated to BSGR that Rio Tinto was engaged in such widespread surveillance, BSGR was again forced to write to Rio Tinto. In a letter dated 9 September 2010 to Mr du Plessis (again), BSGR raised its concerns in relation to:

- (1) A well-funded and covert special project group dedicated to committing espionage in respect of BSGR and its affairs;
- (2) Serious breaches of privacy and data protection laws; and
- (3) The further dissemination of false allegations about BSGR.

Payment of US\$700m to GoG and payment of bribe via Francois de Combret

In April 2011, Rio reached the settlement with the Condé government, paying US\$700 million. On the face of the agreement, the payment was made to secure Blocks 3 and 4, and for confirmation that Rio Tinto would not be subject to an investigation by the Technical Committee, nor "*any changes introduced by the Government of Guinea as a result of its current review of the Mining Code or any future reviews*". The transparency of the Rio Tinto settlement has been called into question but never properly scrutinised, including the accounting of the settlement monies. For instance, the payment was described by Rio Tinto as a "*settlement agreement*" to resolve disputes between Rio Tinto and the GoG, but these "*disputes*" have never been detailed by either party. The South African newspaper *Business Day* went so far as to question whether the settlement was an "*effective US\$700 million bribe to hold on to southern Simandou*".

Now the latest evidence demonstrates that Mr de Combret secured this deal for Rio Tinto (though the GoG says it was unaware that he was negotiating for Rio Tinto) and that, shortly afterwards, on 10 May 2011, Rio Tinto discussed paying US\$10.5 million to Mr de Combret for his services in securing that deal.

In the first email on 10 May 2011, Alan Davies (a senior executive) emailed Sam Walsh (then head of iron ore) asking for “final approval” to make a payment of US\$10.5 million to Francois de Combret. This said:

- (1) There had been discussions between Mr Walsh and Tom Albanese (Rio’s then CEO) about the payment.
- (2) Mr de Combret had said US\$10.5m was his bottom line (having asked for US\$15m).
- (3) The “*result we achieved was significantly improved by Francois’ contribution and his very unique and unreplaceable services and closeness to the President.*” The “result we achieved” is not described, but it is apparent from later parts of this letter that this was (at least in large part) in respect of promises regarding Blocks 1 and 2.
- (4) “*He vouched for our integrity when it was needed and helped bring us together when things were looking extremely difficult. These services were of the most unique nature...*”
- (5) “*My belief is that we had a very low probability of resecuring [sic] 3 and 4, but through a combination of the negotiations and Francois’ unique help to me and Rio Tinto, we were able to close. There is still an enormous amount to do to secure the investment fully.*”
- (6) Mr de Combret has helped him on “*a number of communication issues*” with President Conde.
- (7) Mr de Combret is an “*extremely valuable insurance that things do go smoothly as we bed down the arrangements with the [government of Guinea].*”
- (8) Without him, Rio could lose its “*direct connection*” with President Condé: “*I am extremely worried if we lose the direct connection to the president that I have cultivated with Francois...*”
- (9) “*Francois has behaved with the utmost integrity and as I say, I have extreme confidence that he will continue to assist us to improve our relationship with the [government] and the President.*”
- (10) This is “*not a standard situation, and is indeed extremely unique*”
- (11) “*I am very worried if we are not able to stabilise the situation and start delivering the project. Finalising these discussions in a satisfactory way is extremely good insurance for Rio Tinto.*”

- (12) That thanks to Mr de Combret's efforts, "there is also now a glimmer of possibility that we may be able to move ourselves into a useful position in relation to [blocks] 1 and 2." This could not be clearer that part of Mr de Combret's efforts had been in order to position Rio Tinto to take BSGR's rights (held via VBG) over Blocks 1 and 2.

In turn, in the second email, Mr Walsh referred that email to his boss at the time, Mr Albanese (Rio's then CEO). Mr Walsh said there is "no question" Mr de Combret "delivered sizeable value". He said the funds should be placed in an account in Mr de Combret's name and only released once the first shipment from Simandou took place.

In the third email, Mr Albanese replied that this approach is worth "a try" but Mr Walsh should also:

"think about optics to the government of Guinea"

That was apparently a reference to political ramifications from the GoG if Mr de Combret was not paid immediately.

In the fourth email, Mr Walsh wrote back to Mr Davies saying he was prepared to pay the full US\$10.5 million "but only holding an amount in escrow in his name subject to first shipment". He concludes "I know you won't like this, but put your thinking cap on."

The repeated reference in those emails to Mr de Combret's "unique help" is because he is a former classmate of Mr Condé, who attended high school and university in Paris together.

The \$700million payment was, in part, made in order to interfere with BSGR's rights

As set out above, Mr Thiam said to Rio Tinto in early 2010 that he would ensure it kept Blocks 3 and 4 if it accepted its loss of Blocks 1 and 2. But Rio Tinto refused. Rio then, in 2011, paid US\$700 million for Blocks 3 and 4. As Mr Thiam says, "So they paid \$700 million for something I was offering them for free". The only explanation for that is that Rio Tinto was paying the \$700 million for something else, and as Mr Davies' email on 11 May makes clear, it was, at least in part, to set up a deal on Blocks 1 and 2.

This was all reported on Bloomberg on 18 November 2016 (*Rio Tinto Offered Bribe for Mine, Ex-Guinea Minister Says*)

"Mahmoud Thiam, the former mining minister, said that the head of Rio Tinto's Guinea operation, Steven Din, offered him a bribe in early 2010 in order to win back control of half of the undeveloped Simandou project, considered the world's biggest untapped iron ore deposit. Din was attempting to regain control of the blocks from billionaire investor Beny Steinmetz's BSG Resources Ltd., Thiam said in a Nov. 9 phone interview."

"Rio offered to pay me off," Thiam said after Bloomberg News inquired about Rio Tinto's disclosure of the banking consultant's payment. "There is no possibility of doubt. They assumed that BSGR had paid me. He said, 'Whatever BSGR offered to pay you, you know we are bigger, we can do better.'" BSGR has denied that it paid any bribes."

“In February 2010, around the time that Thiam said the meeting took place, Din met with the U.S. ambassador to Guinea to discuss the country’s mining industry, according to a diplomatic cable published by WikiLeaks. According to the ambassador’s memo, Din said that Thiam had benefited personally from promoting BSGR and another company, citing as evidence Thiam’s purchase of a \$3 million property in New York...”

“Thiam says he was offered the bribe as Rio Tinto lobbied the government to restore its rights, arguing that they had been dispossessed illegally. By his account, shortly before the offer he had told Rio Tinto that he would ensure that the company kept the rights to blocks 3 and 4 if it would agree in writing to accept its loss of blocks 1 and 2. Rio Tinto refused, he said.”

“So they paid \$700 million for something I was offering them for free,” Thiam said. “I’ve never seen such value destruction in my life for a publicly traded company.”

Not only have Rio Tinto failed to respond to those allegations, they have made no attempt to deny them.

Furthermore, the settlement agreement between Rio and the GoG included a commitment to export iron ore via rail links within Guinea. The effect of that was to destroy the transport solution which had been envisaged for BSGR’s Blocks 1 and 2 mining rights, which were to be exported through Liberia. This was a contractual term of BSGR’s Base Convention with the GoG, which was signed in September 2009. It was widely accepted that without a transport solution through Liberia, a project to develop an iron ore mine at Simandou was commercially not viable. Accordingly, in insisting on these terms, Rio Tinto knew that it would be undermining BSGR’s project.

Rio Tinto’s investigation and sacking of Alan Davies and Debra Valentine

Rio Tinto says that it commenced an investigation into these matters on 29 August 2016, after the emails appeared online.

It has apparently conducted an internal investigation and an external one, by Kirkland and Ellis (who have apparently produced a report). This has *“involved a significant data collection and review exercise”*, said Jean-Sebastian Jacques (current CEO of Rio Tinto).

On 16 November 2016, Rio Tinto announced the sacking of Alan Davies (Energy and Minerals chief executive) and Debra Valentine (Legal & Regulatory Affairs Group executive). It has reported itself to the UK, Australian and US authorities. It described Mr de Combret as *“a consultant who provided advisory services on the Simandou project in Guinea.”* But Rio Tinto has failed to say anything more about his role nor explain the emails set out above.

Rio Tinto has suppressed this information for over a year

Rio Tinto only began an investigation in August 2016. It said that was when it discovered the emails for the first time, after they were anonymously posted online. This cannot be true.

As you well know, Rio Tinto was aware of those documents well before then, but failed to start an investigation. Those emails were uncovered by lawyers acting for Rio Tinto in the RICO claim more than a year earlier. The emails must have been reviewed and considered

at least twice by Rio Tinto: first, to conclude that the emails were relevant to the document requests, and second, to decide the confidentiality designation of the documents.

The sacking of Debra Valentine suggests that she knew of the emails (via the RICO proceedings) over a year ago, or even at the time that they were sent in 2011. No details have been given about that. As Bloomberg says *“The question then is, what does Jacques know that the rest of us do not?”* And the Financial Times notes (18 November 2016, *Rio Tinto: headhunting*): *“That Ms Valentine has also departed hints at something badly awry.”*

Rio Tinto has, again, failed to answer those points.

As the Financial Times has noted: (17 November, *Rio Tinto faces fresh controversy over \$10.5m mining payment*)

“Rio Tinto’s lawyers uncovered more than a year ago internal emails about a questionable \$10.5m payment to a consultant, but the mining company did not alert law enforcement authorities and investors about the matter until last week.”

This appears to have been a deliberate attempt to suppress this information.

Rio Tinto contributed to the Technical Committee process which led to the revocation of BSGR's rights

After Rio Tinto secured its rights in relation to Blocks 3 and 4, it continued to focus on obtaining Blocks 1 and 2 from BSGR. While the settlement payment had put Rio Tinto in a better position, it continued to take active steps to undermine BSGR's contractual relations.

First, an executive from Rio Tinto attended a meeting at George Soros' New York apartment in or about September 2011, to discuss the future of Guinean mining. Mr Soros was an individual who is close to Alpha Condé, and who had expressly stated his intention to help shake up the Guinean mining regime. He represented a willing partner for Rio Tinto's desire to remove BSGR from Guinea.

Second, Rio Tinto’s allegations against BSGR, which were wholly false, became central allegations in the GoG’s case against BSGR. The DLA Report (which was the starting point for those allegations, and which BSGR believes was funded by Mr Soros) refers to interviews with persons believed to include:

- (1) a former Rio Tinto executive based in Conakry and at that time an official with the Guinean government;
- (2) a then current Rio Tinto executive based in Paris and Conakry, in charge of Simandou mining operations for Rio Tinto; and
- (3) an investigator contracted by Rio Tinto.

BSGR believes that key allegations in the DLA Report were founded on intelligence reports provided by Rio Tinto to the GoG, which contained untested allegations and hearsay.

The DLA Report formed the basis of the Technical Committee's 30 October 2012 "Allegations Letter" against BSGR, which was the case for the revocation of BSGR's rights.

Rio Tinto's malice in bringing its RICO claim

BSGR's mining rights were revoked by three orders dated 17 April 2014, 18 April 2014 and 23 April 2014. Almost immediately thereafter, Rio Tinto took steps to acquire those rights, or at least prevent any other operator from acquiring them.

On 30 April 2014, an email provided by Rio Tinto in response to a Subject Access Request refers to *"real opportunities for progress for RTZ if the nettle is grasped and as you will see, Benny [Steinmetz] no longer represents a threat – but the Chinese and others still could"*.

That same day, Rio Tinto issued a United States' Racketeering Influenced and Corrupt Organizations Act 1970 ("RICO") claim in the Southern District of New York against BSGR, two of BSGR's subsidiaries, Vale S.A., Mr Steinmetz, Mr Thiam and a number of other parties. On the face of it, the complaint was meritless and contained a number of unsubstantiated and false allegations, many of which originated from Rio Tinto's unreliable investigator reports.

In May 2014, Rio Tinto informed the GoG that it would not sign a framework agreement on essential infrastructure in Guinea unless the government compelled mines lying within 150m of its planned railway to use that highly expensive railway. This would have required any future operator of Simandou Blocks 1 and 2 to use Rio Tinto's railway, rather than exporting through Liberia, effectively rendering the development of the blocks prohibitively expensive. This was described by *Africa Mining Intelligence* as a *"move to put the Simandou project under lock and key"* and, together with the RICO claim, part of Rio Tinto's *"drive to regain full control of iron ore riches in the Simandou mountains"*. This was notwithstanding that over a year earlier, press reports revealed that Rio Tinto had reduced its staff levels in Guinea by 90%, frozen its investment in Guinea, and reported that it would be unable to meet the deadlines for the Simandou project.

In August 2014, Rio Tinto amended its RICO complaint, in an effort to improve the strength of the claim. For instance, it amended the unfounded claim that BSGR had paid a \$200 million bribe to Mahmoud Thiam, to the claim that BSGR had paid a \$100 million bribe. Neither were true. This was reflected in the judgment of the Court on 23 November 2015, which dismissed the claim without prejudice. The decision was based on Rio Tinto's failure to allege any sufficient or coherent claim against BSGR and Mr Steinmetz under RICO and therefore Rio's conspiracy claim under RICO did not and could not exist.

The timing of the RICO claim, and in particular the inclusion of BSGR's former joint venture partner, Vale S.A., was likely intended to weaken BSGR's position to challenge the revocation of its rights, and to deny the granting of those rights back to Vale. This is demonstrated by the comments of Rio Tinto's CEO at the time of the issue of the claim. In an article in *The Times* dated 13 December 2014, Sam Walsh stated in relation to the RICO claim:

"Quite frankly, you take something from Rio or you do us an injury, then watch out. We're not just going to sit here and take it lying down. We must protect shareholder value. We must ensure that people understand we don't play games. "We're in this for real. That's

what Vale and BSG are learning. It shouldn't have come as a surprise to them, but it will teach them a lesson and there will be consequences for them."

However, at the time of making this statement and instructing lawyers to issue the RICO claim, Mr Walsh was aware of the emails relating to the corrupt payments to Mr de Combret, as he was involved in the email chain.

Mr Walsh also states that the allegations which arose in relation to BSGR's Simandou rights came as a surprise to him: "*It was fascinating as it unfolded . . . A lot of that we didn't have line of sight on until the investigation details became public. We knew that something had gone on, but exactly what, we didn't know.*". Yet, as set out above, Rio Tinto fed many of those same allegations to the Technical Committee which investigated BSGR's rights. They were the joint architects of the process. Mr Walsh's feigned fascination was a lie.

The RICO claim had a devastating effect on BSGR's commercial interests, severely damaging its banking relationships. It now seems that the claim was made to further Rio Tinto's desire to obtain Simandou Blocks 1 and 2, or at least ensure that neither BSGR nor Vale could re-acquire those rights.

III. BSGR's CLAIMS

Rio Tinto's conduct set out above, in particular that contained in the recently discovered evidence, was intentional and unlawful. BSGR makes *inter alia* the following claims arising out of it. BSGR reserves its right to rely on other causes of action arising out of the conduct set out herein, including in conspiracy.

Inducing / procuring a breach

The taking of BSGR's rights was a breach by the GoG (and/or Alpha Condé on behalf of the GoG) of:

- (1) the Base Convention between BSGR and the GoG; and
- (2) BSGR's rights under the Guinea Mining Code 1995 and Investment Code, which protect its investment from an unlawful taking.

Those breaches were knowingly induced and/or procured by Rio Tinto since, amongst other things:

- (1) Rio Tinto paid US\$700 million to the GoG in part to pave the way for a deal on Blocks 1 and 2, once BSGR were out. This was only possible by means of a facilitation fee / bribe paid to Francois de Combret.
- (2) Rio Tinto was a central source of the allegations of corruption and bribery relied upon by the Technical Committee and GoG.
- (3) Rio instructed private detectives to dig up allegations against BSGR to be used by the GoG. For instance, following the revoking of Rio Tinto's rights over Blocks 1 and 2 in July 2008, Rio Tinto instructed private investigators to carry out an investigation into BSGR to find some basis to allege

corruption. This included GardaWorld, Control Risks Group and Africa Risk Consultancy.

- (4) Rio gave information to DLA / Veracity in its investigation (motivated by Rio Tinto's desire to cause harm to BSGR). The DLA Report relied heavily on Rio's information.
- (5) The DLA report lists sources, which it is believed refer to Rio Tinto employees and an investigator commissioned by Rio Tinto. In addition, the results of Rio Tinto's private detective and undercover reports into BSGR, which were designed to uncover allegations of fraud, were disclosed and discussed with DLA for the purposes of its report. The DLA report was used as the basis for the Technical Committee findings (and the subsequent unlawful taking of BSGR's rights).

The unlawful inducement and/or procuring of breaches has caused BSGR loss and damage.

Intentionally causing loss by unlawful means

Rio Tinto intentionally interfered with BSGR's interests in order to bring about the revoking of its mining rights in Simandou.

It did so by unlawful means, including

- (1) Paying a facilitation fee / bribe to Francois de Combret (to not only re-secure Blocks 3 and 4, but also set up a deal on Blocks 1 and 2).
- (2) Making allegations (to DLA and news media) of corruption by BSGR which were false and which Rio Tinto knew were false, and defamatory and/or made maliciously in order to cause BSGR harm, for example:
 - (a) in 2009, Rio Tinto (itself and/or through its subsidiary Simfer) engaged in a smear campaign against BSGR including publishing false allegations in the publication l'Aurore that BSGR was involved in a corruption investigation against a former Israeli Prime Minister; and
 - (b) on 21 September 2009, BSGR was forced to write to the CEO of Rio Tinto, Mr Tom Albanese, to insist that the smear campaign and false allegations against BSGR cease.

There was no legitimate basis for Rio Tinto's conduct. It was done to harm BSGR.

This has resulted in loss and damage to BSGR.

IV. LOSS AND DAMAGE

BSGR has suffered very extensive loss and damage as a result of the above unlawful action by Rio Tinto.

That includes, but is not limited to,

- 1) Loss of BSGR's mining rights (i.e. what those rights would have been worth had they not been revoked).
- 2) Loss of the sums unpaid by Vale under its joint venture with BSGR (since Vale would have had no basis to withhold those sums had it not been for Rio's actions which led to the revoking of the mining rights).
- 3) Loss of business opportunities as a result of the conspiracy / false allegations made by Rio.
- 4) Reputational harm.

BSGR's estimate of its loss runs to billions of US dollars.

V. UNDERTAKINGS AND COMPENSATION SOUGHT

Unless you provide a satisfactory response to the matters set out in this letter by 3 January 2017, including proposals to compensate BSGR for the extensive loss and damage suffered as a result of Rio Tinto's unlawful actions, proceedings will be issued without further notice.

Yours faithfully



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