



U.S. Department of Justice

Antitrust Division

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City Center Building  
1401 H Street, NW  
Washington, DC 20530

September 20, 2004

The Honorable Clair Roseberry  
Mayor  
City of Ravenswood  
212 Walnut Street  
Ravenswood, West Virginia 26164

Re: *Public Comment on Proposed Amended Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed May 26, 2004)*

Dear Mayor Roseberry:

This letter responds to your August 5, 2004, comment on the proposed Amended Final Judgment in this case. That comment is similar to your comment on the initial settlement to which the United States previously responded (69 Fed. Reg. 18930, 18938-42 (Apr. 9, 2004)). Before addressing your current comment, however, it may be helpful to summarize the major terms of the amended settlement.

The Amended Final Judgment requires Alcan to divest either its own or Pechiney's "brazing sheet business."<sup>1</sup> Alcan's brazing sheet business includes Alcan's aluminum rolling mills in Oswego, New York, and Fairmont, West Virginia, which produce the brazing sheet sold by Alcan in North America. Pechiney's brazing sheet business includes its aluminum rolling mill in Ravenswood, West Virginia, which makes the brazing sheet sold by Pechiney in North America. Prompt divestiture of either brazing sheet business to a viable new competitor would advance the public interest in competitive prices and continuing high quality and innovation in the brazing sheet market by quickly restoring the rivalry that existed in domestic sales of this crucial material before Alcan's acquisition of Pechiney. To ensure that the proposed divestiture is expeditiously completed

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<sup>1</sup>The initial proposed Final Judgment would have required Alcan (or a court-appointed trustee) to divest Pechiney's brazing sheet business. The amended settlement, on the other hand, would allow Alcan to restore competition in the brazing sheet market by selling (or spinning off) its own brazing sheet operations. Alcan has indicated that it will sell its own brazing sheet operations only as part of a major corporate reorganization, an undertaking motivated, at least in part, by business considerations unrelated to Alcan's acquisition of Pechiney. See Revised Competitive Impact Statement, n. 3.

and competition restored, the Amended Final Judgment (§ V(B)) provides that if Alcan does not sell either brazing sheet business to an acceptable purchaser by the established deadline, the Court may appoint a trustee to complete the divestiture of Pechiney's brazing sheet business.

Alcan already has taken steps to divest its own brazing sheet business by spinning it off to its shareholders along with many of Alcan's other domestic and foreign businesses. There is a possibility, however, that Alcan might choose (or a trustee later may be appointed) to divest the Pechiney brazing sheet business.

Your primary concern is that if Alcan chooses (or a trustee is appointed) to divest the Pechiney brazing sheet business, then the new owner must "have the capability[,] . . . commitment [, and resources] necessary to operate the plant [well] into the future."

The United States also strongly believes that if Alcan chooses to divest Pechiney's brazing sheet business, the new owner must be capable of operating the Ravenswood plant as part of an ongoing, viable new enterprise. In fact, a lynchpin of the Amended Final Judgment is the requirement that the Alcan or Pechiney brazing sheet business be divested to a person who, in the United States's judgment, is able to operate it successfully in competition against Alcan and others (*see* Amended Final Judgment, §§ IV(J) and V(B)). To that end, the Amended Final Judgment requires Alcan to sell any tangible and intangible assets used in the production and sale of brazing sheet, including Pechiney's entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* Amended Final Judgment, §§ II(E)(1)-(3). Because the proposed amended decree ensures that any new purchaser of Pechiney's brazing sheet business would obtain every tangible and intangible asset previously used by Pechiney to compete in developing, making, and selling brazing sheet and any other aluminum products made by the Ravenswood facility, there is no reason to believe that that business can only survive if it remains in the hands of a dominant aluminum manufacturing concern, such as Alcan.<sup>2</sup>

In any event, at this stage, since Alcan has not proposed a buyer for Pechiney's Ravenswood plant, much less negotiated any terms of sale, there is no reasonable basis for concluding that *any* effort to divest Pechiney's brazing sheet business will fail to produce an acceptable, viable new owner capable of continuing the firm's competition against Alcan and others in developing, producing, and selling brazing sheet in North America.<sup>3</sup> It would clearly be

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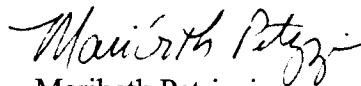
<sup>2</sup>You implicitly assume Alcan must be allowed to retain Pechiney's brazing sheet business because it would maintain current levels of employment and benefits at Ravenswood. However, a firm that acquires market power will be more likely to raise its prices and reduce its output, leading to a *reduction* in premerger employment levels.

<sup>3</sup>An "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is not viable. *See* Amended Final Judgment,

an error to reject the amended settlement on speculation that an alternative purchaser will not turn up when the reasonable canvass the parties envisioned has not been allowed to run its course. *Citizens Pub. Co. v. United States*, 394 U.S. 131 (1969); *Dr. Pepper/Seven Up Cos. Inc. v. FTC*, 991 F.2d 859, 864-66 (D.C. Cir. 1993) (“good faith attempt to locate an alternative buyer” must be made before anticompetitive acquisition of failing firm may be allowed); *FTC v. Harbour Group Investments, LP*, 1990-2 Trade Cas. (CCH) ¶ 69,247 (D.D.C. 1990). See generally, Horizontal Merger Guidelines ¶ 5.2 (1990 ed.); Areeda, Hovenkamp, and Solow, Antitrust Law ¶ 952 (rev. ed.). If neither Alcan nor the trustee can find an acceptable buyer for Pechiney’s brazing sheet business, then the Court has the power to consider what additional measures should be taken, presumably including whether to relieve Alcan of its divestiture obligation. Amended Final Judgment, § V(G). See generally, *Dr. Pepper/Seven Up Cos. Inc.*, 991 F.2d at 864-66.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,



Maribeth Petrizzi

Chief

Litigation II Section

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§ IV(J): Divestiture terms must not give the defendants “the ability unreasonably to raise the [new firm’s] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively.”

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# City of Ravenswood

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August 5, 2004

Maribeth Petrizzi  
Chief, Litigation II Section  
Antitrust Division  
United States Department of Justice  
1401 H Street, NW  
Suite 3000  
Washington, DC 20530

Re: Pechiney Rolled Products Plant, Ravenswood, West Virginia

Dear Ms. Petrizzi:

I am the mayor of the City of Ravenswood, West Virginia. On February 4, 2004 I sent you a Resolution adopted on February 3, 2004 by the Common Council of the City of Ravenswood expressing our concern over the sale of the Pechiney Rolled Products plant at Ravenswood under the terms of a consent decree pending before the United States District Court in Washington. I write again because, though the proposed consent decree has been amended, the potential for a sale of the plant still exists.

As the Resolution stated, the well-being of the city is linked to the successful operation of the plant because many of our citizens work there and also because about one-third of the families in the city are retirees, many being former workers at the Pechiney plant. The average age in the city's population is 42. If the plant were to close, all of the people of this area would be affected.

It is vital that any purchaser of the Pechiney plant have the capability and commitment necessary to operate the plant into the future. We are concerned that, if Alcan does not retain the plant, a buyer will be found to satisfy the requirement of divestiture, but the buyer will lack the resources to keep the plant in operation in the long term.

The importance of this plant to our community cannot be over-estimated. The public interest requires that the plant be owned and operated by Alcan or by some buyer at least as capable as Alcan, with resources and support capabilities as extensive as Alcan's.

Respectfully yours,

*Clair Roseberry*  
Clair Roseberry  
Mayor

Cc:  
Common Council