Department of Justice

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The Department of Justice announced it will file today a proposed consent decree that will settle a civil antitrust suit -- to be filed simultaneously -- challenging the planned acquisition by Alcan Aluminium Limited of Canada of most of the aluminum-producing assets of Atlantic Richfield Company.

The suit and proposed decree will be filed in U.S. District Court in Louisville, Kentucky. The decree will become final upon approval by the court, following a 60-day period for public comment.

The suit will allege that the acquisition may substantially lessen competition in the market for aluminum can body stock by eliminating Arco as an important prospective entrant into that market. Aluminum can body stock is a sheet product used to make the bodies of beverage cans. According to J. Paul McGrath, Assistant Attorney General in charge of the Antitrust Division, the proposed consent judgment would require Arco or its successor to retain a 60 percent interest in Arco's newly-completed rolling mill, located in Logan County, Kentucky, and designed to produce can stock.

Alcan would be permitted to acquire a 40 percent interest in the facility as part of a production joint venture.

McGrath said that the decree will preserve Arco, or its successor, as a significant and independent new entrant into the can body stock market.

Alcan, headquartered in Montreal, Canada, is the non-Communist world's largest aluminum company. It engages in all phases of aluminum production, including the mining and processing of bauxite -- the ore from which aluminum is refined -- the smelting of primary aluminum, and the fabrication of finished and semi-finished aluminum products. Its sales in the United States accounted for approximately one quarter of Alcan's total 1983 revenues of $5.2 billion.

Arco, headquartered in Los Angeles, California, is primarily an oil company. Arco entered the aluminum industry in 1977 when it acquired the Anaconda Aluminum Company of Louisville, Kentucky. Arco's aluminum operations contributed approximately $718 million of the company's total 1983 revenues of $26 billion.

On January 5, 1984, the companies announced that Alcan had agreed to buy most of Arco's aluminum assets for between $600 million and $1 billion. Among the assets to be transferred were a primary aluminum smelter in Sebree, Kentucky; a newly-completed rolling mill in Logan County, Kentucky; older rolling mills in Louisville, Kentucky, and Terre Haute, Indiana; and a 25 percent interest in an Irish alumina refinery. Alumina is a mid-product in the refining of aluminum from bauxite.

On June 19, 1984, following an extensive investigation, the Department of Justice announced that it would oppose the transaction as violative of Section 7 of the Clayton Act if consummated as originally structured.

The companies then requested an opportunity to meet with Department officials to discuss proposals for restructuring the transaction and agreed to postpone its completion. Subsequent negotiations produced the agreement announced today.

In explaining the basis for the Department's opposition to the original transaction, McGrath observed that:

> "The production of can body stock, which is one of the largest and most important segments of the aluminum business, is highly concentrated. Last year the four largest producers of can body stock accounted for 87.9 percent of all sales in the United States, including sales by foreign producers. The Herfindahl-Hirschman Index (a measure of industry concentration obtained by adding the squares of the market shares of all firms in the market) was approximately 2300. The Antitrust Division's Merger Guidelines consider anything over 1800 to be 'highly concentrated' and subject to the most stringent antitrust scrutiny.
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> "Last year Alcan was the fourth largest producer of can body stock with 13.5 percent of total shipments. Arco has not previously made can stock, but it recently completed construction of a large, modern rolling mill in Logan County, Kentucky, designed to produce can stock. Based on

the new plant's capabilities and Arco's plans for its utilization, it was clear that Arco would have become a significant new entrant into the can body stock market except for this acquisition.

"Under the proposed decree the companies would enter into a cost-sharing production joint venture. Arco would have a 60 percent undivided interest and Alcan a 40 percent undivided interest in the Logan County mill. A separate management company would be created to operate the plant and would be owned 60 percent by Arco and 40 percent by Alcan, with Arco designating a majority of the board of directors. Use of the plant's production capacity would also be on a 60 percent/40 percent basis. Each company is guaranteed the right to initiate and participate in further expansions of the plant's capacity, including the right to expand the plant unilaterally if the other declines to participate.

"The decree and the accompanying joint venture agreements contain a variety of provisions designed to ensure that the joint venture partners remain independent competitors. Unlike many joint ventures, this one is strictly limited to operation of the plant as a cost center rather than as a profit center. Each company is solely responsible for determining its own product mix and level of output, and each must independently market its share of the plant's output. The companies are prohibited from exchanging information concerning competitively sensitive subjects such as prices, customers, and marketing plans, and from agreeing on price or output. The partners may not sell each other more than minimal amounts of the plant's production and are restricted in their ability to transfer production rights to each other. Two of the seven members of the board of directors must be otherwise unaffiliated with Alcan and Arco. Likewise, no employee of the management company may be contemporaneously employed by Alcan or Arco.

"The decree would be in effect for 10 years following its entry by the court. During that period Alcan and the other major aluminum producers would be barred from acquiring Arco's interest in the Logan County plant."

McGrath said he considered this case and proposed settlement significant in two respects:

"First, this case involves a challenge under Section 7 of the Clayton Act to an acquisition involving a potential rather than an existing competitor in the can body stock market. It is the first potential competition case brought by the Department of Justice in recent years. The standards applied by the Department are those set forth in the potential entrants section of the Antitrust Division's Merger Guidelines.

"Second, the use of a production joint venture as a means of settling a Section 7 case is, I believe, an innovation. While this approach should not be viewed as a precedent for the settlement of future cases, particularly where the challenged acquisition is of an existing rather than a prospective competitor, it did offer a reasonable and procompetitive solution in the unusual circumstances of this case. In my view it accomplishes several important objectives.

"It preserves Arco or its successor as an independent and meaningful new participant in the can body stock market. If all of Arco's production at the Logan County plant were devoted to can body stock, it would become the fifth largest producer, surpassing three companies already in the market, with a market share of approximately 8.6 percent based on 1983 sales.

"The joint venture arrangement also allows Arco or its successor to expand its production of can stock or other rolled aluminum products by expanding the plant's capacity, either in conjunction with Alcan, in which case they would share in the increased capacity, or on its own, if

Alcan declines to participate. The Logan County plant is the only aluminum rolling mill built in this country for over a decade. It is a highly efficient, state-of-the-art facility designed to be easily expanded to several times its current capacity. The joint venture thus preserves Arco's or its successor's potential for growth in this market.

"In addition, the parties have claimed that Alcan's participation in this joint venture will enable them to bring the plant up faster and operate it more efficiently than would be the case if Arco alone were operating it. The joint venture agreement specifically provides for both parties to contribute their technology and expertise to the operation of the new mill. If this does increase the plant's efficiency, the joint venture will permit the parties and, ultimately, consumers to realize this benefit while still preserving Arco as an independent entrant."

McGrath stated that the Department reviewed other aspects of the proposed transaction and concluded there was insufficient basis for including any other markets in the complaint and settlement. The proposed decree would allow the parties to proceed with the remainder of the acquisition as originally planned.

In accordance with the Antitrust Procedures and Penalties Act of 1974, a competitive impact statement will be filed with the court explaining the proposed decree. Copies of the complaint, proposed final judgment, and competitive impact statement will be available on request from the Antitrust Division's Legal Procedure Unit, Room 7416, Department of Justice, Washington, D.C. 20530. They will also be available for inspection in the office of the Clerk of the United States District Court for the Western District of Kentucky.

Comments to the Department and to the court regarding the judgment are invited from members of the public. They should be directed to Steven C. Douse, Assistant Chief, General Litigation Section, Antitrust Division, United States Department of Justice, Washington, D.C. 20530.

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