

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

NOVELIS, INC.

and

ALERIS CORPORATION

Defendants.

Case No. 1:19-cv-02033-CAB

Judge: Christopher A. Boyko

**MEMORANDUM IN SUPPORT OF APPLICATION OF
PLAINTIFF UNITED STATES TO APPOINT DIVESTITURE TRUSTEE**

The United States files this Memorandum in support of the Application of Plaintiff United States to Appoint Divestiture Trustee in the above-captioned case. This case arises from a civil antitrust Complaint filed by the United States on September 4, 2019, (Docket No. 1).

The success of the proposed Final Judgment in remedying the competitive problems identified in the Complaint depends upon the timely divestiture of the Divestiture Assets, as defined in the proposed Final Judgment, (Docket No. 47-1). Defendants Novelis, Inc., (“Novelis”) and Aleris Corporation (“Aleris”) (collectively, “Defendants”) have not been able to successfully divest the Divestiture Assets in the time permitted under the proposed Final Judgment. Accordingly, this Court should appoint a Divestiture Trustee, pursuant to Section V of the proposed Final Judgment. (*See* Docket No. 47-1). The United States has informed

Defendants that it is filing this application, which, pursuant to the terms of the proposed Final Judgment, they may not oppose.¹ The Court may therefore proceed with the appointment.

The United States has selected Julie Myers Wood, the chief executive officer of the firm Guidepost Solutions, LLC (“Guidepost Solutions”), as the candidate Divestiture Trustee. Julie Myers Wood is well-qualified to serve as a divestiture trustee for the United States and possesses the expertise and experience necessary to accomplish the successful divestiture of the Divestiture Assets. In addition, Guidepost Solutions will provide her with the necessary organizational support to complete the divestiture.

I. INTRODUCTION

The United States brought this action to prevent and restrain Defendants from violating Section 7 of the Clayton Act. The Complaint alleges that the acquisition of Aleris by Novelis would eliminate important competition and consolidate the already concentrated market for aluminum automotive body sheet in North America. (*See* Docket No. 1). If allowed to proceed, the likely result of Defendants’ transaction would be to substantially lessen competition for the development, manufacture, and sale of aluminum automotive body sheet in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. *Id.* The United States sought only injunctive relief.

Following an arbitration decision in favor of the United States issued on March 9, 2020, the United States filed a Modified Hold Separate Stipulation and Order (“Stipulation and Order”) (Docket No. 47) and a proposed Final Judgment (Docket No. 47-1) on May 12, 2020. The proposed Final Judgment was designed to remedy the alleged anticompetitive effects of the acquisition. The United States also filed a Competitive Impact Statement (Docket No. 48)

¹ *See* Paragraph V(A) of the proposed Final Judgment, Docket No. 47-1 (“Upon application of the United States, the Court will appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.”).

explaining how the proposed Final Judgment remedied the competitive harm alleged in the Complaint. The injunctive relief sought includes the divestiture of an aluminum automotive body sheet rolling mill in Lewisport, Kentucky, a technical sales and support facility in Madison Heights, Michigan, and related assets identified in the proposed Final Judgment (collectively the “Divestiture Assets”). (Docket No. 47-1 at Paragraph II(E)). The sixty-day public comment period required by the Antitrust Procedures and Penalties Act (“APPA”), 15 U.S.C. § 16, expired on July 31, 2020. No comments from the public were received.

A. Proposed Final Judgment

The proposed Final Judgment provides that Novelis must divest the Divestiture Assets to assure that competition is not substantially lessened. (*See* Docket No. 47-1). The essence of the proposed Final Judgment is the prompt and certain divestiture of the Divestiture Assets to preserve competition in the development, manufacture, and sale of aluminum automotive body sheet in North America. *Id.* To this end, Paragraph IV(A) of the proposed Final Judgment requires Defendants to “use their best efforts to divest the Divestiture Assets as expeditiously as possible” to “an Acquirer or Acquirers acceptable to the United States, in its sole discretion.” *Id.* at Paragraph IV(A).

B. Novelis’s Failure to Divest the Divestiture Assets

Paragraph IV(A) of the proposed Final Judgment gives Novelis 90 calendar days “after the Court’s entry of the Modified Hold Separate Stipulation and Order in this matter” to divest the Divestiture Assets.² *Id.* It further provides that the United States, “in its sole discretion, may

² Paragraph IV(A) contemplates that certain regulatory approvals may be required. “Regulatory Approvals” is defined in the proposed Final Judgment as “(i) any approvals or clearances pursuant to filings with the Committee on Foreign Investment in the United States (“CFIUS”), or under antitrust or competition laws required for the Transaction to proceed; and (ii) any approvals or clearances pursuant to filings with CFIUS, or under antitrust, competition, or other U.S. or international laws, or any local regulatory approvals by the City of Lewisport, Kentucky

agree to one or more extensions of this time period not to exceed one hundred eighty (180) calendar days in total[.]” *Id.* The Court entered the Stipulation and Order on May 19, 2020, (Docket No. 53). The United States has not agreed to Novelis’s request for extension of the 90-day time period for divestiture. The Competitive Impact Statement explained that the United States provided Novelis an extended divestiture period of 90 days in light of the disruption caused by the Covid-19 pandemic. (*See* Docket No. 48 at Paragraph III). Thus, under the proposed Final Judgment, Novelis had until August 17, 2020, to divest the Divestiture Assets. Novelis has failed to complete the divestiture in the prescribed period.³

Because Novelis failed to complete the divestiture by August 17, 2020, it is now appropriate, pursuant to Paragraph V(A) of the proposed Final Judgment, to appoint a Divestiture Trustee selected by the United States to complete the required divestiture of the Divestiture Assets. (*See* Docket No. 47-1 at Paragraph V(A)). The United States therefore requests that the Court appoint Julie Myers Woods as the Divestiture Trustee and transfer responsibility for the sale of the Divestiture Assets to the Divestiture Trustee upon appointment.

II. DIVESTITURE TRUSTEE PROPOSED BY THE UNITED STATES

The United States requests that this Court appoint Julie Myers Wood, the chief executive officer of the firm Guidepost Solutions, as Divestiture Trustee. Ms. Wood is highly qualified to serve as Divestiture Trustee in this matter. She has over 20 years of experience in the public and

or the City of Madison Heights, Michigan, required for Acquirer’s acquisition of the Divestiture Assets to proceed.” (Docket No. 47-1 at Paragraph II(G)). No Regulatory Approval is currently pending. First, Novelis’s acquisition of Aleris (the “Transaction”) closed on April 14, 2020, and hence there is no pending Regulatory Approval for the Transaction to proceed. Second, there is no Acquirer, and hence no Regulatory Approval related to the Acquirer, because Novelis failed to enter into a definitive agreement with a divestiture buyer within the 90 days prescribed under the proposed Final Judgment.

³ Pursuant to its obligation under Paragraph V(A) of the proposed Final Judgment, Novelis notified the United States in writing on August 17, 2020, that it did not divest the Divestiture Assets within the period specified in Paragraph IV(A).

private sector working on regulatory and enforcement issues. She has also served as a monitor or independent consultant on numerous occasions and has previously served as a monitoring trustee for the Department of Justice in antitrust matters. Her previous experience in the public sector includes serving as an Assistant U.S. Attorney, as Chief of Staff for the Criminal Division at the U.S. Department of Justice, and as an Assistant Secretary in the U.S. Department of Homeland Security heading up its largest investigative component. The professional biography of Ms. Wood is attached as Exhibit A.

Guidepost Solutions is also well-qualified to support Ms. Wood as the Divestiture Trustee, having supported numerous receiverships that required divestitures, including a recent court appointment in federal district court in Wyoming. Neither Ms. Wood nor Guidepost Solutions have conflicts of interest that would disqualify them from fulfilling the role of Divestiture Trustee in this case.

The United States has determined that Ms. Wood is well-suited to assume the responsibilities of Divestiture Trustee under the proposed Final Judgment.

III. STATUS

To speed the transition for the proposed Divestiture Trustee to accomplish the divestiture of the Divestiture Assets, Ms. Wood and Novelis have begun discussions. Ms. Wood attended a Novelis virtual management presentation and Novelis provided her with additional information regarding the Divestiture Assets. If the Court appoints Ms. Wood as Divestiture Trustee, she will thus quickly begin to undertake the duties of the Divestiture Trustee as established by the proposed Final Judgment.

IV. CONCLUSION

For all of the foregoing reasons, the United States respectfully requests that this Court appoint Julie Myers Wood as Divestiture Trustee pursuant to Section V of the proposed Final Judgement.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

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