

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALCAN INC.,
ALCAN ALUMINUM CORP.,
PECHINEY, S.A., and
PECHINEY ROLLED PRODUCTS, LLC,

Defendants.

Case No. 1:030 CV 02012-GK

Judge Gladys Kessler

Deck Type: Antitrust

**UNITED STATES’S ANSWER TO THE AMENDED
COMPLAINT OF INTERVENOR STATE OF WEST VIRGINIA**

The United States of America, acting under the direction of the Attorney General of the United States, answers each allegation of the Amended Complaint of Intervenor State of West Virginia (“Amended Complaint in Intervention”) as follows:

1. “West Virginia does not oppose the acquisition of Defendant Pechiney, S.A., by Defendant Alcan Aluminum Corporation. It does however, oppose the proposed Amended Final Judgment filed by the United States on May 26, 2004.”

The United States admits this allegation of the Amended Complaint in Intervention.

2. “Under the proposed Amended Final Judgment, Defendants are given 180 days to sell either Alcan’s Brazing Sheet Business or Pechiney’s Brazing Sheet Business. It is alleged in the Complaint filed by the United States on September 29, 2003, that a combination of the Alcan and Pechiney brazing sheet businesses would account for over 40% of all brazing sheet sold in North America and that it would “likely result in an increase in brazing sheet prices and a reduction in quality and innovation for brazing sheet in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. §18.”

The United States admits that the terms of the Amended Final Judgment (“AFJ”) would provide defendants up to 180 days after filing, or five days after the AFJ’s entry, whichever is latest, to divest either Alcan’s or Pechiney’s brazing sheet business. The United States also

admits that the Complaint in the case charged that Alcan's proposed acquisition of Pechiney would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, as explained in the Complaint. The United States denies all other allegations of this paragraph of the Amended Complaint in Intervention.

3. "On May 26, 2004, Alcan issued a press release announcing a plan to restructure its product lines, spinning off some production facilities, including its brazing sheet plants at Olean, New York, and Fairmont, West Virginia, to a newly formed corporation. The press release states that "Alcan's proposed spin-off transaction provides an alternative remedy to the existing order to divest the Ravenswood, West Virginia rolling mill."

The United States admits the allegations of this paragraph of the Amended Complaint in Intervention.

4. "On the same day as Alcan's press release, the United States filed the proposed Amended Final Judgment. This proposed judgment would allow Alcan to choose whether to divest its own brazing sheet business or the brazing sheet business of Pechiney within 180 days. The choice is evidently given to Alcan so that if the restructuring announced in the press release is successful, resulting in the spin-off of Alcan's brazing sheet production facilities at Olean and Fairmont to a new company, Alcan could retain the Pechiney brazing sheet business, including the facility in Ravenswood, West Virginia ('the Ravenswood plant') at issue herein."

The United States admits that the AFJ, by its terms, allows defendants an opportunity to elect whether to divest Alcan's or Pechiney's brazing sheet business by the divestiture deadline set forth in the AFJ.

5. "As of the date of filing of this Amended Complaint, the spin-off announced in the Alcan press release of May 26, 2004, has not occurred."

The United States admits that the proposed spin-off has not occurred.

6. "On the facts presented by the present situation, if the spin-off does not occur, the Defendants will divest the Pechiney Brazing Sheet Business, defined in the proposed Amended Final Judgment to consist of Pechiney's Ravenswood Plant."

The United States admits that if defendants do not elect to divest Alcan's brazing sheet business to an acceptable purchaser, then they may choose to divest Pechiney's brazing sheet business pursuant to the terms of the AFJ. The United States denies all other allegations of this paragraph of the Amended Complaint in Intervention.

7. "The proposed Amended Final Judgment's requirement of divestiture of the Ravenswood plant is contrary to the public interest in that it would have disastrous effects upon the State of West Virginia, its citizens and communities, businesses operating within the state, the employment security of workers in the state, and the security of retired persons within the state."

The United States denies the allegations of this paragraph of the Amended Complaint in Intervention.

8. "The divestiture of Pechiney's Brazing Sheet Business, compelled by the proposed Amended Final Judgment if there is no spin-off, is unnecessary in light of conditions in the brazing sheet market in the United States. If Alcan were to continue to own the brazing sheet production facilities at Ravenswood, West Virginia, along with its other existing brazing sheet facilities, competition would remain vigorous in the brazing sheet market and no injury to competition would result."

The United States denies the allegations of this paragraph of the Amended Complaint in Intervention.

9. "The divestiture of Pechiney's Brazing Sheet Business, compelled by the proposed Amended Final Judgment in the absence of spin-off, would include the divestiture of assets having nothing to do with the brazing sheet market and, hence, would adversely affect other markets not analyzed in the Department's Amended Competitive Impact Statement. The Amended Competitive Impact Statement should therefore be rejected by the Court."

The United States denies the allegations of this paragraph of the Amended Complaint in Intervention.

10. "Under the proposed Amended Final Judgment, in the absence of spin-off, the defendants are directed to locate an Acquirer who would purchase the Pechiney

Rolled Products plant at the Ravenswood Plant. The plant is to be divested to the Acquirer “as expeditiously as possible.”

The United States admits that under the terms of the AFJ, the defendants may choose to divest either Alcan’s or Pechiney’s brazing sheet business, and that the mandated divestiture under the AFJ should be accomplished as expeditiously as possible. The United States denies all other allegations of this paragraph of the Amended Complaint in Intervention.

11. “In addition to brazing sheet, the Ravenswood Plant produces aluminum sheet, plate and coil which is sold to the aerospace, transportation, and building products industries. The total output of the Ravenswood plant is approximately 320 million pounds, only 72 million pounds of which is brazing sheet.”

The United States admits that brazing sheet has, as a rule, comprised about thirty percent of the total annual output of Pechiney’s Ravenswood, West Virginia plant. Brazing sheet is, however, a very high margin product compared to other items produced at that facility (*e.g.*, aluminum sheet, plate and coil), and thus accounts for a disproportionately high percentage of the Ravenswood plant’s profits. The United States denies all other allegations of this paragraph of the Amended Complaint in Intervention.

12. “The Acquirer must demonstrate only that the acquired assets will be used ‘as part of a viable, ongoing business, engaged in developing, manufacturing, and selling brazing sheet in North America.’ Proposed Amended Final Judgment, ¶ IV.J. This requirement ignores the important fact that brazing sheet is only one of the products (22.5% of the total production) manufactured at Ravenswood.”

The United States admits that under the AFJ, it will consider whether a proposed purchaser will use either Alcan’s or Pechiney’s brazing sheet business as part of a viable, ongoing business engaged in developing manufacturing, and selling brazing sheet in North America. The United States denies all other allegations of this paragraph of the Amended Complaint in Intervention.

13. “The plant will not survive unless the Acquirer makes a commitment to make and sell all of the Ravenswood products.”

The United States admits that in reviewing a proposed Acquirer’s qualifications, it will consider that person’s “managerial, operational, and financial capability” to compete effectively in the sale of brazing sheet in North America, and that that necessarily will require an assessment of the person’s ability to operate the Ravenswood plant effectively. The United States denies all other allegations of this paragraph of the Amended Complaint in Intervention.

14. “Finding an Acquirer who would produce only brazing sheet, as contemplated by the proposed Amended Final Judgment would not be in the public interest, but would be a disaster to the State of West Virginia and its citizens. Operation of the plant on that basis would lead inevitably to its closure, to the great detriment and harm to thousands of people and hundreds of communities and businesses and the public interest.”

The United States denies that the AFJ “contemplates” “[f]inding an Acquirer who would produce only brazing sheet.” The AFJ requires that the divested assets be used as *part* of a “viable, ongoing” business engaged in development, production, and sale of brazing sheet in North America. That such a business enterprise can – and should – engage in development, production, and sale of other products is “contemplated” by the AFJ, which requires defendants to divest all tangible and intangible assets previously used by Alcan or Pechiney to develop, produce, and sell not only brazing sheet, but all other products produced in the aluminum rolling mill(s) required to be sold. The United States denies all other allegations of this paragraph of the Amended Complaint in Intervention.

15. “Because of the interdependence of the Pechiney plant and the nearby Century Aluminum plant, it is only realistic to contemplate that the shutdown of one would lead to the shutdown of, or at least substantial adverse impact to, the other since the Century plant produces 375 million pounds of aluminum per year, of which it sells 300 million pounds to Pechiney Rolled Products, its next-door neighbor.”

The United States denies the allegations of this paragraph of the Amended Complaint in Intervention.

16. “The States estimates that the closing of both plants would cause a direct economic loss of \$486 million to the State and \$3.35 million annually in lost taxes to Jackson County. The loss in manufacturing jobs alone would be 1,700.”

The United States denies that the divestiture mandated by the proposed AFJ would cause any loss, direct or otherwise, to the State of West Virginia or to Jackson County, West Virginia.

WHEREFORE, the United States requests that the Court:

- a. Dismiss, with prejudice, the Amended Complaint in Intervention for failure to state any claim upon which relief may be granted in a proceeding under the Tunney Act, 15 U.S.C. §§ 16(b)-(h);
- b. Enter the proposed AFJ;
- c. Allow the United States to recover the costs of this action; and
- d. Order such other and further relief as the case requires and this Court may deem proper.

Dated: September 20, 2004.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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CERTIFICATE OF SERVICE

I, Anthony E. Harris, hereby certify that on September 20, 2004, I caused copies of the foregoing United States's Answer to the Amended Complaint of Intervenor State of West Virginia to be served by mail by sending them first-class, postage prepaid, to duly authorized legal representatives of the parties, as follows:

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