UNITED STATES DISTRICT COURT
FOR THE 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. 1:03CV02012 DECK TYPE: Antitrust DATE STAMP: Sept. 29, 2003

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, filed its Complaint on September 29, 2003, and plaintiff and defendants, Alcan Inc., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

AND WHEREAS, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to the United States that the divestiture required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Definitions

As used in this Final Judgment:

A. "Acquirer" means the entity or entities to whom defendants divest Pechiney's Brazing Sheet Business.

B. "Alcan" means defendant Alcan Inc., a Canadian corporation with its headquarters in Montreal, Canada, its successors and assigns, and its subsidiaries (including defendant Alcan Aluminum Corp.), divisions, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

C. "Pechiney" means Pechiney, S.A., a French corporation with its headquarters in Paris, France, and its successors and assigns, its subsidiaries, divisions (including Pechiney Rolled Products, LLC), groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

D. "Brazing sheet" means a layered aluminum alloy that consists of a core clad on one or both sides with an aluminum alloy whose melting temperature is lower than that of the core material. Brazing sheet is used primarily in making components of heat exchange systems (*e.g.,* radiators, oil coolers, and air conditioning units) for motor vehicles.

E. "Pechiney's Brazing Sheet Business" means all assets, interests, and rights in Pechiney Rolled Products, LLC's aluminum products rolling mill located in or near Ravenswood, West Virginia 26164 ("Ravenswood Facility"), including:

1. all tangible assets of the Ravenswood Facility and the real property on which the Ravenswood Facility is situated; any facilities used for research, development, and engineering support to the Ravenswood Facility ("the Engineering Facilities"), and any real property associated with those facilities; manufacturing and sales assets relating to the Ravenswood Facility and to the Engineering Facilities, including capital equipment, vehicles, supplies, personal property, inventory, office

furniture, fixed assets and fixtures, materials, on- or off-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations issued by any governmental organization relating to the Ravenswood Facility and to the Engineering Facilities; all contracts, agreements, leases, commitments, and understandings pertaining to the operations of the Ravenswood Facility and to the Engineering Facilities; supply agreements; all customer lists, accounts, and credit records; and other records maintained by Pechiney Rolled Products in connection with the operations of the Ravenswood Facility and of the Engineering Facilities;

2. all intangible assets, including but not limited to all patents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names (except to the extent such trademarks, trade names, service marks, or service names contain the trademark or names "Pechiney" or any variation thereof), technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information Pechiney Rolled

Products, LLC provides to its employees, customers, suppliers, agents or licensees in connection with the operations of the Ravenswood Facility; provided, however, that defendants may require the Acquirer, in the United States's sole discretion, to license defendants to make, have made, use, or sell outside of North America any Pechiney product or process made by or used in connection with the Ravenswood Facility; and

3. all research data concerning historic and current research and development efforts relating to the operations of the Ravenswood Facility and of the Engineering Facilities, including designs of experiments, and the results of unsuccessful designs and experiments.

F. "Date that Alcan's tender offer for Pechiney ends" means the date Alcan receives a preliminary indication from the Conseil des Marches Financiers of Paris, France, that Alcan's tender offer has been successful.

III. Applicability

A. This Final Judgment applies to Alcan and Pechiney, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include Pechiney's Brazing Sheet Business, that the purchaser agrees to be bound

by the provisions of this Final Judgment, provided, however, that defendants need not obtain such an agreement from the Acquirer.

IV. Divestiture

A. Defendants are ordered and directed, within one hundred twenty (120) calendar days after the date that Alcan's tender offer for Pechiney ends, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest Pechiney's Brazing Sheet Business in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed in total sixty (60) calendar days, and shall notify the Court in each such circumstance. Defendants agree to use their best efforts to divest Pechiney's Brazing Sheet Business as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of Pechiney's Brazing Sheet Business. Defendants shall inform any person making inquiry regarding a possible purchase of Pechiney's Brazing Sheet Business that it will be divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to Pechiney's Brazing Sheet Business customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privilege. Defendants

shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide prospective Acquirers of Pechiney's Brazing Sheet Business and the United States information relating to the personnel involved in the production, operation, development, and sale of Pechiney's Brazing Sheet Business to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any of the defendants' employees whose responsibilities includes the production, operation, development, or sale of the products of Pechiney's Brazing Sheet Business.

D. Defendants shall permit prospective Acquirers of Pechiney's Brazing Sheet Business to have reasonable access to personnel and to make inspections of the physical facilities of Pechiney's Brazing Sheet Business; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer of Pechiney's Brazing Sheet Business that each asset that was operational as of the date of filing of the Complaint in this matter will be operational on the date of divestiture.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of Pechiney's Brazing Sheet Business.

G. Defendants shall not take any action, direct or indirect, that would prevent or discourage in any way any dealer from distributing the products of

Pechiney's Brazing Sheet Business for a period of two years after such divestiture. Nothing in this provision, however, shall prevent defendants from promoting and selling in the ordinary course of business products that compete with those of Pechiney's Brazing Sheet Business.

H. Defendants shall warrant to the Acquirer of Pechiney's Brazing Sheet Business that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of Pechiney's Brazing Sheet Business, and that following the sale of Pechiney's Brazing Sheet Business, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of Pechiney's Brazing Sheet Business.

I. Nothing in this Final Judgment shall be construed to require the Acquirer as a condition of any license granted by or to defendants pursuant Section II (E) and IV to extend to defendants the right to use the Acquirer's improvements to any of Pechiney's Brazing Sheet Business.

J. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Pechiney's Brazing Sheet Business, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that Pechiney's Brazing Sheet Business can and will be used by the Acquirer as part of a viable, ongoing business, engaged in developing, manufacturing, and selling brazing sheet in North America. Divestiture of Pechiney's Brazing Sheet Business may be made to an Acquirer, provided that it is demonstrated to the sole

satisfaction of the United States that Pechiney's Brazing Sheet Business will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

1. Shall be made to an Acquirer that, in the United States's sole judgment, has the managerial, operational, and financial capability to compete effectively in the development, manufacture, and sale of brazing sheet in North America; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee to Effect Divestiture

A. If defendants have not divested Pechiney's Brazing Sheet Business within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of Pechiney's Brazing Sheet Business.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell Pechiney's Brazing Sheet Business. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as plaintiff approves, and shall account for all monies derived from the sale of Pechiney's Brazing Sheet Business and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of Pechiney's

Brazing Sheet Business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to customary confidentiality protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in Pechiney's Brazing Sheet Business and shall describe in detail each contact with any such

person. The trustee shall maintain full records of all efforts made to divest Pechiney's Brazing Sheet Business.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an

interest in or desire to acquire any ownership interest in Pechiney's Brazing Sheet Business, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee if applicable additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(D) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(D), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture order by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in Pechiney's Brazing Sheet Business, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for Pechiney's Brazing Sheet Business, and to provide required information to any prospective Acquirer, including the limitations, if any, on such information. Assuming the

information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on the information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve Pechiney's Brazing Sheet Business and to divest Pechiney's Brazing Sheet Business until one year after such divestiture has been completed.

X. Compliance Inspection

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. access during defendants' office hours to inspect and copy, or at plaintiff's option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any

such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of Pechiney's Brazing Sheet Business during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

_____
United States District Judge