UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, U.S. Department of Justice Antitrust Division 1401 H Street, NW Suite 3000 Washington, DC 20530, *Plaintiff,* v. ALCAN INC., 1188 Sherbrooke Street West Montreal, Quebec, Canada H3A 3G2; ALCAN ALUMINUM CORP., 6060 Parkland Boulevard Cleveland, OH 44124-4185; PECHINEY, S.A., 7, Place Du Chancelier Adenauer CEDEX 16 – 75218 – Paris France; and PECHINEY ROLLED PRODUCTS, LLC, Rural Route 2 Ravenswood, WV 26164-9802, *Defendants.*	Case No. 1:03CV02012 JUDGE: Gladys Kessler DECK TYPE: ANTITRUST DATE: September 29, 2003

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable relief against defendants, and alleges as follows:

1. In early July 2003, Alcan Inc. ("Alcan") launched a $4.6 billion tender offer for Pechiney, S.A. ("Pechiney"), which was later endorsed by Pechiney's board of directors. The United States seeks to enjoin this proposed acquisition, which, if consummated, would result in consumers paying higher prices for brazing sheet, an aluminum alloy used in making heat exchangers for motor vehicles.

2. Alcan, through its United States subsidiary (Alcan Aluminum Corp.), and Pechiney, through its United States subsidiary (Pechiney Rolled Products, LLC), are, respectively, the second and fourth largest producers of brazing sheet in North America. Brazing sheet consists of a class of layered aluminum alloys, each of which has a unique ability to form a uniform, durable, leak-proof bond with other aluminum surfaces. Brazing sheet is widely used in fabricating the major components of heat exchangers for motor vehicles, including engine cooling (*e.g.,* radiators and oil coolers) and climate control (*e.g.,* heaters and air conditioners) systems. A combination of Alcan and Pechiney would command over 40 percent of brazing sheet sales in North America. The combined firm and one other competitor would account for over 80 percent of all brazing sheet sold in North America.

3. The proposed acquisition, if consummated, would combine Alcan, a low cost new entrant and price maverick, with Pechiney, a large industry incumbent, compromising Alcan's incentive to quickly expand its sales by reducing brazing sheet prices, and ending the intense competitive rivalry that currently exists between Alcan and Pechiney in developing, producing, and selling brazing sheet. This competition, which will intensify in the next few years as Alcan completes qualifying its brazing sheet with more customers, already has produced significant improvements in brazing sheet quality, durability, and reliability, and highly competitive prices and terms for this material. By reducing the number of major North American producers of

brazing sheet from four to three, this acquisition would substantially increase the likelihood that the combined firm will unilaterally increase, or that it and the other major competitor will tacitly or explicitly cooperate to increase, prices of brazing sheet to the detriment of consumers.

4. Unless this proposed acquisition is blocked, Alcan's acquisition of Pechiney will substantially lessen competition in the development, production, and sale of brazing sheet and likely result in an increase in 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.

I.

JURISDICTION AND VENUE

5. This Complaint is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

6. Alcan and Pechiney develop, produce, and sell brazing sheet in the flow of interstate commerce. Alcan's and Pechiney's activities in developing, producing, and selling brazing sheet substantially affect interstate commerce. This Court has jurisdiction over the subject matter of this action pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331, 1337(a) and 1345.

7. Alcan, Alcan Aluminum Corp., Pechiney, and Pechiney Rolled Products LLP have consented to personal jurisdiction and venue in this judicial district.

II.

DEFENDANTS

8. Alcan is a Canadian corporation with its headquarters in Montreal, Quebec. Alcan Aluminum, an Alcan subsidiary, is a Delaware corporation with its principal place of business in Cleveland, OH. Alcan is one of the world's largest fully integrated aluminum producers. Alcan mines ore from which primary aluminum is produced, and produces a very wide range of rolled aluminum products, including brazing sheet. In 2002, Alcan reported sales of about $12.5 billion. Alcan projects that its sales of brazing sheet in North America in excess of $30 million in 2003.

9. Pechiney is a French corporation with its main office in Paris, France. A subsidiary, Pechiney Rolled Products, is a Delaware corporation with its principal place of business in Ravenswood, WV. Pechiney is also a leading integrated aluminum producer that makes a wide range of rolled aluminum products. In 2002, Pechiney reported total sales of about $11.3 billion. Its United States operations generate over $100 million in North American sales of brazing sheet.

III.

THE PROPOSED TRANSACTION

10. In early July 2003, Alcan publicly announced a tender offer for shares of Pechiney, a transaction now valued at over $4.6 billion. The tender offer, recently endorsed by Pechiney's board of directors, is expected to be completed on November 30, 2003, and soon after, Alcan is expected to acquire a majority of the voting shares in Pechiney.

IV.

TRADE AND COMMERCE

A. The Relevant Product Market

11. Brazing sheet comprises a class of custom-engineered aluminum alloys, each of which is composed of a solid metal "core" clad on one or both sides with an alloy whose melting temperature is lower than that of the core material. When brazing sheet is baked at the appropriate temperature, the cladding alloy will melt and form a durable, uniform leak-proof bond between the core and any adjoining aluminum surface, effectively welding the two materials together.

12. Brazing sheet is ideally suited for fabricating the major components of heat exchange systems used in motor vehicles. Heat exchangers include engine cooling systems such as radiators and oil coolers and climate control systems such as heater cores and air conditioning units (*i.e.,* evaporator and condenser cores). By making the basic components of heat exchangers with brazing sheet, a parts maker can avoid the physically tedious and costly task of welding or soldering individual components, many of which have unusually intricate surfaces that form joints deep within the heat exchange unit. A parts maker instead can loosely assemble the brazed components and bake the assembly in a brazing oven. The surfaces of the components will melt, converting the entire loose assembly into a solid, leak-proof heat exchange unit.

13. Today, the major components of all heat exchangers used in motor vehicles are made of brazing sheet. Less expensive, lighter, more durable and formable than materials it replaced, brazing sheet enables vehicle makers simultaneously to reduce vehicle cost, size, and weight; improve gas mileage; and extend engine, climate control system, and drive train life. In

heat exchange applications, no other material matches the combination of strength, light weight, durability, formability, and corrosion resistance of brazing sheet. Because of its unique attributes, brazing sheet is the preferred material for making heat exchangers for motor vehicles.

14. A small but significant and nontransitory increase in prices for brazing sheet would not cause parts makers to switch to other materials for heat exchanger components in volumes sufficient to make such a price increase unprofitable and unsustainable. Accordingly, the development, production, and sale of brazing sheet is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

B. The Relevant Geographic Market

15. Alcan produces brazing sheet in an aluminum hot rolling mill in Oswego, NY, and "slits" or cuts finished roll stock at a cold rolling mill in Fairmont, WV. Pechiney makes brazing sheet in an aluminum hot rolling mill in Ravenswood, WV. The only other large competitor produces brazing sheet in a hot rolling mill in the United States. A much smaller rival produces brazing sheet in hot rolling mills in Canada and in Europe. Additional volumes of brazing sheet are exported to the United States from Europe. Brazing sheet exports to North America, however, account for less than eight percent of total sales. The Canadian and foreign firms, moreover, operate at or near their full production capacity.

16. Domestic parts makers prefer to purchase brazing sheet from North American sources. Foreign brazing sheet typically costs much more than, but does not outperform, brazing sheet produced in North America. Reliance on overseas sources for brazing sheet can be especially risky for domestic parts makers since foreign brazing sheet is more prone to supply interruptions and delays than brazing sheet procured from local, North American sources. Typically, when overseas demand has surged, foreign producers of brazing sheet have cut

shipments to North American customers, resulting in production bottlenecks that have jeopardized North American parts makers' relationships with their customers.

17. For these reasons, North American parts makers generally restrict purchases of foreign brazing sheet imports to unique circumstances, *e.g.,* as an interim measure until one or more domestic producers have been qualified to make brazing sheet for use in an auto maker's vehicle, or for low volume heat exchanger parts for which a foreign auto maker has designated a single foreign supplier as the only qualified source for that brazing sheet material.

18. A small but significant and nontransitory increase in prices for brazing sheet in North America would not cause parts makers to buy so much brazing sheet from sources outside North America that such a price increase would be unprofitable and unsustainable. Accordingly, North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects

19. There are only four significant competitors in the sale of brazing sheet in North America. Pechiney is the second largest producer with over 30 percent of sales; Alcan is the fourth largest with over 10 percent of sales. After the proposed acquisition, the combined firm and the largest U.S. producer of brazing sheet would command over 80 percent of all brazing sheet sales. Total North American sales of brazing sheet exceed $360 million annually.

20. The brazing sheet market would become substantially more concentrated if Alcan acquires Pechiney. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI") (defined and explained in Appendix A), the post-acquisition HHI would increase by at least 600 points, resulting in a post-merger HHI of about 3600, well in excess of levels that ordinarily would raise significant antitrust concerns.

21. The proposed transaction would combine Alcan with Pechiney, and remove a low cost, aggressive, and disruptive competitor in the North American brazing sheet market. Before the announced acquisition, Alcan recently had undertaken to significantly increase its sales of brazing sheet in North America. In 2001, Alcan moved its brazing sheet operations from England to Oswego, NY, then developed new, highly proprietary aluminum rolling technology that would make a low cost producer of brazing sheet in North America. Alcan also recently has completed qualifying to provide brazing sheet to several major domestic parts makers.

22. The proposed transaction will make it more likely that the few remaining brazing sheet producers will engage in anticompetitive coordination to increase prices, reduce quality and innovation, and decrease production of brazing sheet. After the acquisition, the combined firm and its largest North American rival would share market leadership and a common incentive to pursue strategies that emphasize accommodation and do not risk provocation. The acquisition also would substantially increase the likelihood that the combined firm will unilaterally increase prices of brazing sheet to the detriment of customers for whom Pechiney and Alcan are the only firms now qualified to provide brazing sheet for those customers' requirements. The other competitors in brazing sheet sales in North America do not have the incentive or ability, individually or collectively, to effectively constrain a unilateral or cooperative exercise of market power after the acquisition.

23. Purchasers of brazing sheet have benefitted from competition between Alcan and Pechiney through lower prices and improved products. Alcan's acquisition of Pechiney would eliminate substantial competition and lead to an increase in prices and reduction in innovation and quality of brazing sheet.

24. The proposed transaction, if consummated, would eliminate a significant competitor and facilitate unilateral or coordinated increases in prices, or a reduction in levels of quality and innovation, for brazing sheet.

D. Entry Unlikely to Deter a Post Acquisition Exercise of Market Power

25. Successful entry into the brazing sheet market would not be timely, likely or sufficient to deter any unilateral or coordinated exercise of market power as a result of the transaction.

26. Significant barriers prevent de novo or lateral entry into the development, production, and sale of brazing sheet in North America. To produce this material, not only must a firm possess an aluminum hot rolling mill (which costs at least $80 million to construct), but also the technology and expertise to create custom-engineered aluminum alloys that perform well in the demanding operating conditions prevalent in the small heat exchangers used in motor vehicles. Even firms with the physical and technological assets to produce brazing sheet must, in order to have a significant impact, "qualify" with customers, *i.e.,* demonstrate that it would be a reliable producer of consistently high quality brazing sheet material. Qualification can be acquired only after the new firm has made a substantial investment in expensive alloy technology, successfully completed a series of time-consuming tests of its materials and components, and acquired actual experience producing brazing sheet that meets the exacting specifications of risk-averse parts makers. It took Alcan over two years from when it moved its brazing sheet operations to Oswego, New York to qualify with enough customers to make a significant sales impact.

V.

VIOLATIONS ALLEGED

27. The effect of Alcan's proposed acquisition of Pechiney may be to substantially lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

28. The transaction will likely have the following anticompetitive effects, among others:

a. Competition generally in the development, production, and sale of brazing sheet in North America would be substantially lessened;

b. Actual and potential competition between Alcan and Pechiney in the development, production, and sale of brazing sheet in North America would be eliminated; and

c. Prices for brazing sheet sold in North America would likely increase and the levels of quality and innovation would likely decline.

29. Unless prevented, the acquisition of Pechiney by Alcan would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

VI.

REQUESTED RELIEF

30. Plaintiff requests:

a. That the proposed acquisition of Pechiney by Alcan be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;

b. That defendants and all persons acting on their behalf be permanently enjoined and restrained from carrying out any contract, agreement, understanding or plan, the effect of which would be to combine Pechiney with the operations of Alcan;

c. That plaintiff recover the costs of this action; and

d. That plaintiff receive such other and further relief as the case requires and this Court may deem proper.

Dated: September 29, 2003.

Respectfully submitted,

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APPENDIX A

HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* §1.51.