

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALCOA INC., and REYNOLDS METALS
COMPANY,

Defendants.

Civil Action No.:

Filed: **May 3, 2000**

FINAL JUDGMENT

WHEREAS, Plaintiff, the United States of America ("United States"), filed its complaint in this action on May 3, 2000, and Plaintiff and Defendants Alcoa Inc. ("Alcoa") and Reynolds Metals Company ("Reynolds"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, Defendants have agreed to be bound by the provisions of this Final Judgment and the provisions of the Hold Separate Stipulation and Order pending their approval by the Court;

AND WHEREAS, the essence of the Final Judgment is the prompt and certain divestiture of the identified assets 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 Plaintiff that the divestitures ordered herein can and will be made and that Defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

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

II.

DEFINITIONS

As used in this Final Judgment:

- A. "Alcoa" means defendant Alcoa Inc., a Pennsylvania corporation with its headquarters in Pittsburgh, Pennsylvania, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.
- B. "Chemical Grade Alumina" or "CGA" means the alumina product resulting from the refining of bauxite ore in alumina refineries, except that the alumina is removed from the production stream prior to calcining in kilns used to produce SGA. This uncalcined

alumina is known as Chemical Grade Alumina or CGA, and is sold as “wetcake” or is dried and sold as “dry hydrate.” CGA is used in numerous downstream products.

C. "Corpus Christi Assets" means all assets, interests and rights owned by Reynolds at Reynolds' alumina refinery located near Corpus Christi, Texas, which are used or held for use for alumina refining (the "Corpus Christi Refinery", a/k/a the “Sherwin Refinery”), including:

1. all tangible assets, including the alumina refining facility located at the Corpus Christi Refinery and the real property on which the Corpus Christi Refinery is situated; the real property to which the Corpus Christi Refinery is adjacent and that is reasonably necessary to the refining and sale of SGA or CGA from the Corpus Christi Refinery; refining assets relating to the Corpus Christi Refinery, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on-site warehouses or storage facilities, railcars, port facilities, ships, boats, barges and other tangible property or improvements; all licenses, permits and authorizations issued by any governmental organization relating to the Corpus Christi Refinery; all contracts, agreements, leases, commitments and understandings pertaining to the operations of the Corpus Christi Refinery; all supply agreements relating to the Corpus Christi Refinery, including, at the purchaser’s option, all agreements, commitments and understandings for the supply of bauxite to the Corpus Christi Refinery; all customer lists, accounts, and credit records; and other records maintained by Reynolds in connection with the operations of the Corpus Christi Refinery.

2. all intangible assets, including but not limited to all patents, licenses and sublicenses, trademarks, trade names, service marks, service names (except to the extent such trademarks, trade names, service marks and service names contain the trademark REYNOLDS and Knight, Horse and Dragon Design; or the names “Reynolds,” “Reynolds Metals Company,” “Reynolds Aluminum” or any variation thereof, or any trademark containing REYNOLDS, REY, REYNO, or a Knight, Horse and Dragon Design); intellectual property, 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; all research data concerning historic and current research and development efforts relating to the operations of the Corpus Christi Refinery, including design of experiments and the results of unsuccessful designs and experiments; all plans pertaining to output and production of the Corpus Christi Refinery; and all manuals and technical information Reynolds provides to its employees, customers, suppliers, agents or licensees in connection with the operations of the Corpus Christi Refinery.
- D. "Divestiture Assets" means the Worsley Interest and the Corpus Christi Assets.
- E. "Reynolds" means defendant Reynolds Metals Company, a Delaware corporation with its headquarters in Richmond, Virginia, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

- F. "Smelter Grade Alumina" or "SGA" means the alumina product resulting from the refining and calcining of bauxite ore in alumina refineries that is smelted to make aluminum metal.
- G. "Worsley Interest" means all of Reynolds' interest in the Worsley Joint Venture, established by agreement dated February 7, 1980, and subsequently amended; provided, however, that the Worsley Interest does not include the trademarks REYNOLDS and Knight, Horse and Dragon Design; or the names "Reynolds," "Reynolds Metals Company," "Reynolds Aluminum" or any variation thereof; or any trademark containing REYNOLDS, REY, REYNO, or a Knight, Horse, and Dragon Design.

III.

APPLICABILITY

- A. The provisions of this Final Judgment apply to Alcoa and Reynolds, as defined above, and all other persons in active concert or participation with any of them who shall have received 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 the Divestiture Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV.

DIVESTITURE OF ASSETS

- A. Defendants are hereby ordered and directed in accordance with the terms of this Final Judgment, within two hundred seventy (270) days from either the filing of the Complaint in this matter or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Worsley Interest as an interest in a viable, ongoing business. Defendants are further ordered and directed in accordance with the terms of this Final Judgment, within one hundred eighty (180) days from either the filing of the Complaint in this matter or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Corpus Christi Assets as a viable, ongoing business, to a purchaser or purchasers acceptable to the United States in its sole discretion.

- B. Defendants shall use their best efforts to accomplish the divestitures as expeditiously and timely as possible. The United States, in its sole discretion, may extend the time period for any divestiture by an additional period of time not to exceed sixty (60) calendar days.
- C. In accomplishing the divestitures ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets described in this Final Judgment. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Divestiture Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the Plaintiff at the same time that such information is made available to any other person.
- D. Defendants shall permit prospective purchasers of the Divestiture Assets to have reasonable access to personnel and to make inspection of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information relating to the Divestiture Assets; and access to any and all financial, operational, or other documents and information relating to the Divestiture Assets customarily provided as part of a due diligence process, subject to customary confidentiality assurances.
- E. Defendants shall provide to any purchaser or purchasers of the Divestiture Assets information relating to the Reynolds personnel involved in the refining and sale of SGA and/or CGA in connection with the Worsley Interest and the Corpus Christi Assets to

enable the purchaser or purchasers to make offers of employment. Defendants shall not interfere with any negotiations by any purchaser or purchasers to employ any Reynolds employee who works at the Worsley refinery or the Corpus Christi Refinery, or whose principal responsibility involves the refining and sale of alumina at the Worsley refinery or the Corpus Christi Refinery.

F. Defendants shall warrant to the purchaser or purchasers of the Divestiture Assets that the Divestiture Assets will be operational on the date of the divestiture.

G. Defendants shall warrant to the purchaser of the Divestiture Assets that all necessary environmental, zoning, export and other permits relating to the Divestiture Assets are in order in all material respects. Defendants will not undertake, directly or indirectly, following the divestiture of the Divestiture Assets, any challenges to the environmental, zoning, export or other permits pertaining to the operation of the Divestiture Assets.

H. Defendants shall not take any action, direct or indirect, that will impede in any way the operation of the Divestiture Assets.

I. Unless the United States otherwise consents in writing, the divestitures undertaken pursuant to Section IV or undertaken by a trustee appointed pursuant to Section V of this Final Judgment shall include all of the Divestiture Assets. Prior to divestiture, the Divestiture Assets that are the subject of the Hold Separate Stipulation and Order shall be operated pursuant to such Hold Separate Stipulation and Order entered by the Court. The divestitures shall be accomplished by selling or otherwise conveying the Divestiture Assets to a purchaser or purchasers in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the purchaser or purchasers

as part of a viable, ongoing business or businesses engaged in the refining and sale of SGA or CGA. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser or purchasers with respect to whom it is demonstrated to the United States' sole satisfaction that (a) the purchaser or purchasers have the intent to compete effectively in the refining and sale of SGA or CGA ; and (b) the purchaser or purchasers have the managerial, operational, and financial capability to compete effectively in the refining and sale of SGA or CGA. In addition, none of the terms of any agreement between the purchaser or purchasers and Defendants, including any joint venture, governance, operation or shareholder agreements, shall give Defendants the ability to limit the purchaser's capacity or output, to raise a purchaser's costs, to lower a purchaser's efficiency, or otherwise to interfere in the ability of the purchaser or purchasers to compete effectively.

- J. In connection with the divestiture of the Corpus Christi Assets and the Worsley Interest, whether pursuant to Section IV of this Final Judgment or by a trustee appointed pursuant to Section V, Defendants may negotiate a transitional supply agreement or agreements with the purchaser or purchasers of these divested assets for the supply of SGA to Reynolds' smelters previously supplied by these refineries. Any such agreement shall be on commercially reasonable terms and may have a term of up to three (3) years. Volume requirements during the first year of any such agreement may be up to 100% of the annual volumes supplied by these refineries to such smelters during the year prior to the closing of the merger transaction, up to 75% during the second year and up to 50% during the third year.

- K. In connection with the divestiture of the Worsley Interest, whether pursuant to Section IV of this Final Judgment or by a trustee pursuant to Section V, Defendants shall assign to the purchaser or purchasers of the Worsley Interest Reynolds' existing contractual obligations to supply SGA to Billiton. If Alcoa is unable to obtain any necessary consent of Billiton or is otherwise unable to effect such an assignment, Alcoa shall enter into an agreement with the purchaser or purchasers of the Worsley Interest for the supply of such amount of SGA and on such terms as are called for by the Reynolds/Billiton SGA contract, to be resold by Alcoa to Billiton in fulfillment of that contract.
- L. In connection with the divestiture of the Corpus Christi Assets, whether pursuant to Section IV of this Final Judgment or by a trustee appointed pursuant to Section V, Defendants shall offer the purchaser a contract for a term of at least two (2) years for the supply of bauxite from Reynolds' interest in ABC (Aroaima) Guyana. Such agreement shall be on commercially reasonable terms and for annual volumes substantially similar to the annual volumes supplied by ABC (Aroaima) Guyana to the Corpus Christi Refinery during the year prior to the closing of the transaction.

V.

APPOINTMENT OF TRUSTEE

- A. In the event that Defendants have not divested any of the Divestiture Assets within the time period specified for that asset in Section IV.A of this Final Judgment and for which the time period has not been extended pursuant to Section IV.B, the Court shall appoint, on application of the United States, a trustee selected by the United States and approved by the Court to effect the divestiture of that Divestiture Asset.
- B. After the appointment of a trustee becomes effective, only the trustee shall have the right to divest the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestitures at the best price then obtainable upon a 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 the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States in its sole discretion. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to Plaintiff and the trustee within ten (10) days after the trustee has provided the notice required under Section VI of this Final Judgment.

- C. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the Plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee 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 such trustee and of professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished, but timeliness is paramount.
- D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures, including their best efforts to effect all necessary regulatory approvals. 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 businesses to be divested, and Defendants shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Defendants shall permit prospective acquirers of the Divestiture Assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestitures.

- E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided however, that 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 the businesses to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the businesses to be divested.
- F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth: (1) the trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (3) the trustee's recommendations; provided, however, that to the extent such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the Plaintiff, the Court and to Defendants. Plaintiff and Defendants shall each have the right to be heard and to make additional recommendations consistent with the purpose of this Final Judgment. The Court shall enter thereafter such orders as it shall deem appropriate in order 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.

NOTIFICATION

- A. Within two (2) business days following execution of a definitive agreement Defendants or the trustee, whichever is then responsible for effecting the divestitures, shall notify Plaintiff of the proposed divestitures. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same.
- B. Within fifteen (15) calendar days of receipt by Plaintiff of such notice, the United States, in its sole discretion, may request from Defendants, the trustee, the proposed purchaser or purchasers, or any other third party additional information concerning the proposed divestitures, the proposed purchaser or purchasers, and any other potential purchaser. Defendants and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the Plaintiff has been provided the additional information requested from Defendants, the trustee, the proposed purchaser or purchasers, or any third party, 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

divestitures. If the United States provides written notice to Defendants and the trustee that it does not object, then the divestitures may be consummated, subject only to Defendants' limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or purchasers 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 the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII.

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 divestitures have been completed, whether pursuant to Section IV or Section V of this Final Judgment, Defendants shall deliver to Plaintiff an affidavit as to the fact and manner of compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, 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 the business to be divested, 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 that Defendants have taken to solicit a purchaser or purchasers for the Divestiture Assets and to provide required information to prospective purchasers.

- B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to Plaintiff an affidavit which describes in detail all actions Defendants have taken and all steps Defendants have implemented on an on-going basis to preserve the Divestiture Assets pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Defendants' efforts to maintain and operate the Divestiture Assets as active competitors, maintain the management, staffing, research and development activities, sales, marketing, and pricing of the Divestiture Assets, and to maintain the Divestiture Assets in operable condition at current capacity configurations. Defendants shall deliver to Plaintiff an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavit(s) filed pursuant to this Section VII(B) within fifteen (15) calendar days after the change is implemented.
- C. Until one year after such divestitures have been completed, Defendants shall preserve all records of all efforts made to preserve the businesses to be divested and effect the divestitures.

VIII.

HOLD SEPARATE ORDER

Until the divestitures required by the Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court and to preserve in all material respects the Divestiture Assets. Defendants shall take no action that would jeopardize the divestiture of the Divestiture Assets.

IX.

FINANCING

Defendants are ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment.

X.

COMPLIANCE INSPECTION

For the 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:

A. Duly authorized representatives of the United States Department of Justice, 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, shall be permitted:

1. Access during office hours of Defendants to inspect and copy, or at Plaintiff's option demand Defendants provide copies of, all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendants, who may have counsel present, relating to any matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and
2. To interview, either informally or on the record, their officers, employees, and agents, who may have their individual counsel present, regarding any such matters. The interviews shall be subject to the interviewee's reasonable convenience and without restraint or interference from the Defendants.

- B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division Defendants shall submit written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment and the Hold Separate Stipulation and Order.
- C. No information nor any documents obtained by the means provided in Sections VII or X of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly 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 Plaintiff, Defendants represent and identify in writing the material in any such information or documents for 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 Plaintiff shall give ten (10) days notice to Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendants are not a party.

XI.

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be

necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII.

TERMINATION

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated _____

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

United States District Judge