



U.S. Department of Justice

Antitrust Division

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City Center Building  
1401 H Street, NW  
Washington, DC 20530

September 20, 2004

Ms. Marci D. Weyer  
President  
Jackson County Development Authority  
104 Miller Drive  
Ripley, West Virginia 25271

Re: *Public Comment on Proposed Amended Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed May 26, 2004)*

Dear Ms. Weyer:

This letter responds to your August 5, 2004, comment on the proposed Amended Final Judgment (or "AFJ") in this case. That comment is similar to your comment on the initial settlement to which the United States has responded (69 Fed. Reg. 18930, 18938-44 (Apr. 9, 2004)). Before addressing your current comment, however, it may be helpful to briefly review the major terms of the amended settlement.

The Amended Final Judgment ("AFJ"), if entered by the Court, would resolve the United States's serious concerns that Alcan's acquisition of Pechiney would substantially lessen competition in the sale of brazing sheet, an aluminum alloy used by auto parts makers throughout the nation to manufacture radiators, heaters, and air conditioning units for motor vehicles. *See* Complaint, ¶¶ 1-3, 19-24, and 27-30; Revised Competitive Impact Statement, pp. 4-9. The Amended Final Judgment requires Alcan to divest either its own or Pechiney's "brazing sheet business."<sup>1</sup> AFJ, § IV(A). Alcan's brazing sheet business includes Alcan's aluminum rolling mills in Oswego, New York, and Fairmont, West Virginia, which produce the brazing sheet sold by Alcan in North America. AFJ, § II(F). Pechiney's brazing sheet business includes its aluminum rolling mill in Ravenswood, West Virginia, which makes the brazing sheet sold by Pechiney in North America. AFJ, § II(E). Prompt divestiture of either brazing sheet business to a viable new competitor would advance the paramount

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<sup>1</sup>The initial settlement only would have required Alcan (or a court-appointed trustee) to divest Pechiney's brazing sheet business. The amended settlement would also permit Alcan to restore competition by selling (or spinning off) its own brazing sheet operations. Alcan has indicated, however, that it will sell its own brazing sheet operations only as part of a major corporate reorganization, an undertaking driven, at least in part, by business considerations unrelated to Alcan's acquisition of Pechiney. *See* Revised Competitive Impact Statement, n. 3.

public interest in competitive prices and continued high quality and innovation in the brazing sheet market by quickly restoring the rivalry that existed in domestic sales of this crucial material before Alcan's acquisition of Pechiney. To help ensure that the proposed divestiture is expeditiously completed and competition restored, the Amended Final Judgment provides that if Alcan does not complete its sale of either brazing sheet business to an acceptable purchaser by the established deadline, the Court may appoint a trustee to complete the divestiture of Pechiney's brazing sheet business. AFJ, § V(A).

Alcan already has taken steps to divest its own brazing sheet business by arranging to spin it off to the company's shareholders along with many of Alcan's other domestic and foreign businesses. Under the terms of the Amended Final Judgment, however, there is a possibility that Alcan may later decide (or a trustee may be appointed) to divest the Pechiney brazing sheet business.

You expressed a general concern that if Alcan elects (or a trustee is appointed) to divest the Pechiney brazing sheet business, then any new owner of the Ravenswood facility may "lack the capability to operate the plant successfully." You have asked that Alcan be permitted to retain and operate the Ravenswood plant if "no reliable buyer is found."

The United States also strongly believes that if Alcan chooses to divest Pechiney's brazing sheet business, the new owner must be capable of operating the Ravenswood plant as part of an ongoing, viable new enterprise. In fact, a lynchpin of the Amended Final Judgment is the requirement that the Alcan or Pechiney brazing sheet business be divested to a person who, in the United States's judgment, is able to operate it successfully in competition against Alcan and others (*see* AFJ, §§ IV(J) and V(B)). To that end, the Amended Final Judgment requires Alcan to sell any tangible and intangible assets used in the production and sale of brazing sheet, including Pechiney's entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* AFJ, §§ II(E)(1)-(3). Because the amended decree ensures that any new purchaser of Pechiney's brazing sheet business would obtain every tangible and intangible asset previously used by Pechiney to compete in developing, making, and selling brazing sheet and any other aluminum products made by the Ravenswood facility, there is no reason to believe that that business can only survive if it is sold to a dominant aluminum manufacturing concern, such as Alcan.<sup>2</sup>

At this stage, since Alcan has not proposed a buyer for Pechiney's Ravenswood plant, much less negotiated any terms of sale, there is no reasonable basis for concluding that *any* effort to divest Pechiney's brazing sheet business will fail to produce an acceptable, viable new owner

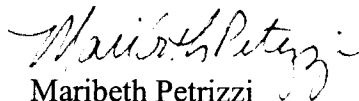
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<sup>2</sup>You implicitly assume Alcan must be allowed to retain Pechiney's brazing sheet business because it would maintain current levels of employment and benefits at Ravenswood. However, a firm that acquires market power will be more likely to raise its prices and reduce its output, leading to a *reduction* in premerger employment levels.

capable of continuing the firm's competition against Alcan and others in developing, producing, and selling brazing sheet in North America.<sup>3</sup> It would clearly be an error to reject the amended settlement on speculation that an alternative purchaser will not turn up when the reasonable canvass the parties envisioned has not been allowed to run its course. *Citizens Pub. Co. v. United States*, 394 U.S. 131 (1969); *Dr. Pepper/Seven Up Cos. Inc. v. FTC*, 991 F.2d 859, 864-66 (D.C. Cir. 1993) ("good faith attempt to locate an alternative buyer" must be made before anticompetitive acquisition of failing firm may be allowed); *FTC v. Harbour Group Investments, LP*, 1990-2 Trade Cas. (CCH) ¶ 69,247 (D.D.C. 1990). See generally, Horizontal Merger Guidelines ¶ 5.2 (1990 ed.); Areeda, Hovenkamp, and Solow, *Antitrust Law* ¶ 952 (rev. ed.). If neither Alcan nor the trustee can find an acceptable buyer for Pechiney's brazing sheet business, then the Court has the power to consider what additional measures should be taken, presumably including whether to relieve Alcan of its divestiture obligation. AFJ, §V(G). See generally, *Dr. Pepper/Seven Up Cos. Inc.*, 991 F.2d at 864-66.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,



Maribeth Petrizzi

Chief

Litigation II Section

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<sup>3</sup>An "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is not viable. See AFJ, § IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

August 5, 2004

Maribeth Petrizzi  
Chief, Litigation II Section  
Antitrust Division  
United States Department of Justice  
1401 H Street, NW  
Suite 3000  
Washington, DC 20530

Re: Alcan Acquisition of Pechiney

Dear Ms. Petrizzi:

I am president of the Development Authority of Jackson County, West Virginia, where Pechiney has a major plant, Pechiney Rolled Products. I wrote to you in February 2004 to convey a resolution of the Development Authority, dated February 3, 2004, expressing strong concern about the then pending consent decree requiring Alcan to divest that plant.

Under an amended proposed consent decree, Alcan still has the option of divesting the Ravenswood plant. Therefore, the concerns expressed in the Authority's resolution remain relevant. The danger of divestiture is still posed by the amended decree presented to the Court. I repeat the resolution as follows:

Whereas, Pechiney Rolled Products is a major employer and taxpaying business in Jackson County, West Virginia, and

Whereas, under a consent decree permitting the acquisition of Pechiney by Alcan, the purchaser is required to divest that plant by selling it to an owner who would continue to produce brazing sheet at the plant, and

Whereas, this Authority is concerned that a new owner would lack the capability to operate the plant successfully in light of the plant's lack of profitability and the necessity of integrating it into allied operations of the owner, and

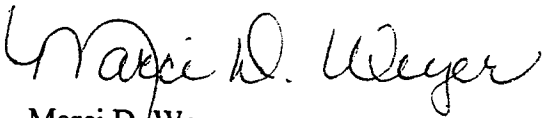
Whereas, a shutdown at the plant would be devastating to the people of Jackson County, and

Whereas, continued operation of the plant by Alcan, a qualified owner, would avert the danger of a shutdown of the plant,

IT IS RESOLVED THAT the foregoing concerns of the Jackson County Development Authority should be made known to the Court considering the consent decree, so that the public interest may be served and the Court might, if no reliable buyer is found for the plant, reconsider the advisability of terminating the requirement of divestiture and permit Alcan to own and operate the plant.

I understand that comments made to you will be conveyed to the parties to the consent decree and to the Court.

Very truly yours,

A handwritten signature in cursive script that reads "Marci D. Weyer".

Marci D. Weyer  
President

Jackson County Development Authority