

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Nov 5 1 21 1999

UNITED STATES OF AMERICA,
Department of Justice
Antitrust Division
325 7th Street, N.W., Suite 500
Washington, D.C. 20530,

Plaintiff,

v.

ALCOA INC.,
201 Isabella Street
Pittsburgh, PA 15219,

ACX TECHNOLOGIES, INC.,
16000 Table Mountain Parkway
Golden, Colorado 80403, and

GOLDEN ALUMINUM COMPANY,
14555 Old Corpus Christi Road
San Antonio, Texas 72338,

Defendants.

CASE NUMBER 1:99CV02943

JUDGE: Thomas F. Hogan

DECK TYPE: Antitrust

DATE STAMP: 11/05/1999

Filed:

COMPLAINT

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

1. On August 17, 1999, Alcoa Inc. ("Alcoa") and ACX Technologies, Inc. ("ACX") entered into an agreement under which Alcoa would acquire all of ACX's interest in Golden Aluminum Company ("Golden"). The United States seeks to enjoin this transaction because it

would result in Alcoa increasing its already dominant share of the aluminum food and beverage can lid stock ("lid stock") production business in North America. Lid stock consists of large coils of aluminum sheet that are produced in a rolling mill or in a continuous cast facility. The coils are sold to a can maker that feeds the coils into lid-making machines that stamp out rings and scored circles to form the ends, tabs, and pull-off lids of food and beverage cans.

2. Alcoa is the largest producer of lid stock in North America. Golden is a small, but low cost producer of lid stock. They compete to produce and sell the best quality lid stock at the lowest prices, and to provide the best technological, marketing, and customer support services. Alcoa and ACX have proposed a transaction that will eliminate this competition, further increase concentration in the already highly concentrated lid stock business, and further increase the market power of the dominant firm -- Alcoa.

3. If Alcoa acquires Golden, prices of lid stock to customers are likely to increase and production of lid stock is likely to decrease. As a result, the proposed acquisition violates Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

I.

JURISDICTION AND VENUE

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

5. Both Alcoa and Golden manufacture and sell lid stock. Alcoa and ACX, through its subsidiary, Golden, are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has subject matter jurisdiction over this action and

jurisdiction over the parties pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337.

6. The defendants transact business and are found within the District of Columbia. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II.

THE DEFENDANTS

7. Alcoa is a Pennsylvania corporation, with its principal offices located in Pittsburgh, Pennsylvania. Alcoa is the world's largest integrated aluminum company, engaging in all phases of the aluminum business — from the mining and processing of bauxite to the production of primary aluminum and fabrication of products. In 1998, Alcoa had revenues of over \$15 billion. Alcoa produces lid stock at its rolling mill located in Warrick, Indiana. Alcoa's 1998 sales of lid stock in North America were approximately \$700 million.

8. ACX is a Colorado corporation, headquartered in Golden, Colorado. ACX owns 100% of the stock of Golden, whose primary assets are two continuous cast facilities. At its facility located in Fort Lupton, Colorado, Golden produces lid stock. Golden produces a variety of aluminum sheet products (but not lid stock) at its facility located in San Antonio, Texas. In 1998, ACX reported total sales of about \$988.4 million.

III.

TRADE AND COMMERCE

A. Relevant Product Market

9. Lid stock is a flat rolled aluminum product that is typically manufactured in a rolling mill. A typical rolling mill contains a hot mill, which performs the initial reduction of the

thickness of the ingot, one or more cold mills, which finish the metal to the desired thickness and width, and a variety of ancillary equipment. Lid stock can also be produced in a continuous cast facility. In a continuous cast facility, a thin sheet of molten metal is poured onto a base and pressed between two blocks or belts to achieve the desired thickness and width.

10. Lid stock differs from other aluminum sheet products. Lid stock is made from a harder alloy than other aluminum sheet products, such as the sheet product from which the bodies of beverage cans are made ("can body stock"). Consequently, lid stock requires more powerful mills and more mill time to produce than can body stock and other sheet products. Lid stock is therefore more expensive to produce per pound than other sheet products.

11. Lid stock is sold to can makers in large coils that are fed into lid making machines, which stamp out rings and scored circles to form the ends, tabs, and pull-off lids of food and beverage cans. Because of the metallurgical characteristics of lid stock, can makers cannot use their equipment to produce lids from can body stock or other materials, such as steel.

12. Can makers sell lids to food and beverage companies which use them to seal their beer, soft drink, and food cans. The food and beverage companies cannot use other types of lids to seal their cans.

13. As a result, a small but significant increase in lid stock prices would not cause a significant number of customers to substitute other products for lid stock.

14. The manufacture and sale of lid stock is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

B. Relevant Geographic Market

15. Lid stock is sold throughout North America, and manufacturers of lid stock

compete for sales to customers located throughout North America. North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects and Entry

16. There are only six producers of lid stock in North America --- Alcoa is the largest producer in the market with approximately 56% of 1998 shipments. Golden is the smallest firm with about 3% of 1998 shipments. North American sales of lid stock in 1998 were approximately \$1.6 billion.

17. The lid stock market would become substantially more concentrated if Alcoa acquires Golden. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI") (defined and explained in Appendix A), the proposed transaction will increase the HHI in the lid stock market by nearly 366 points to a post acquisition level of 4047.

18. The proposed transaction would eliminate independent low cost competition from Golden. Golden is the only lid stock producer to operate a continuous cast facility. Typically, continuous cast facilities have lower operating costs than does a traditional rolling mill. Because of its low costs, Golden has been a significant competitor that sells lid stock at low prices. The proposed transaction will make it more likely that the few remaining lid stock producers will engage in anticompetitive coordination to increase prices, reduce quality, and decrease production of lid stock.

19. Successful entry into the manufacture and sale of lid stock is difficult, time-consuming, and costly. To build an efficient lid stock facility would cost in excess of \$100 million, and would take as long as two years from the time of site selection to production of commercial quantities of lid stock.

20. A new entrant into the lid stock business must "qualify" its product with customers before it will be accepted. A new entrant must establish a reputation for good quality product and for reliability in fulfilling customer orders.

21. New entry or expansion by existing firms would not be likely, timely, or sufficient to thwart an anticompetitive price increase.

IV.

VIOLATION ALLEGED

22. The effect of Alcoa's proposed acquisition of Golden will be to lessen competition substantially and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

23. Unless restrained, the transaction will likely have the following effects, among others:

- a. actual and potential competition between Alcoa and Golden will be eliminated;
- b. competition generally in the manufacture and sale of lid stock will be lessened substantially;
- c. prices for lid stock are likely to increase; and
- d. the quality and amount of lid stock produced are likely to decrease.

IV.

REQUESTED RELIEF

WHEREFORE, Plaintiff requests:

1. That the proposed acquisition by Alcoa of ACX's interest in Golden be adjudged to violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;

2. That the defendants be permanently enjoined from and restrained from carrying out the Agreement dated August 17, 1999, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to combine the businesses or assets of Alcoa and Golden;


3. That plaintiff be awarded its costs of this action; and

4. That plaintiff have such other relief as the Court may deem just and proper.

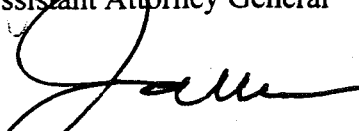
Dated this 5th day of November, 1999.

Respectfully submitted,


FOR PLAINTIFF UNITED STATES




Joel I. Klein
Assistant Attorney General



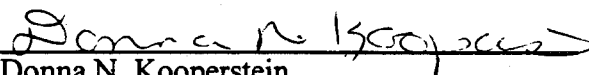
John M. Nannes
Deputy Assistant Attorney General



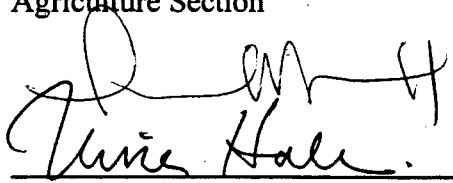
Constance K. Robinson
Director of Operations and Merger
Enforcement



Roger W. Fones
Chief, Transportation Energy & Agriculture
Section



Donna N. Kooperstein
Assistant Chief, Transportation, Energy &
Agriculture Section



Nina B. Hale
Washington State Bar # 18776
Laura M. Scott
Attorneys
U.S. Department of Justice
Antitrust Division
325 7th Street, N.W. Suite 500
Washington, D.C. 20530
(202) 307-0892

APPENDIX A DEFINITION OF "HHI"

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI 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 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. 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 are considered to be moderately concentrated, and markets 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 significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.