Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Aluminium Limited, Alcan Aluminum Corporation and National Distillers and Chemical Corporation., U.S. District Court, D. New Jersey, 1966 Trade Cases ¶71,895, (Nov. 4, 1966)

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United States v. Aluminium Limited, Alcan Aluminum Corporation and National Distillers and Chemical Corporation.

1966 Trade Cases ¶71,895. U.S. District Court, D. New Jersey. Civ. No. 1174-64. Entered November 4, 1966. Case No. 1841 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquisitions—Aluminum Company—Consent Judgment.—An aluminum company was required under the terms of a consent judgment to offer for sale the assets of one of two divisions within a nine-month period. If the company is unable to sell one of the divisions within the nine-month period, it may apply to the court for a determination that it has made a good faith effort to find a purchaser and has been unable to do so and, on such determination by the court, it will no longer be required by the judgment to divest itself of either unit.

For the plaintiff: Donald F. Turner, Assistant Attorney General, William D. Kilgore, Jr., Charles D. Mahaffie, Jr., J. E. Waters, Gerald A. Connell, and Robert N. Kaplan, Attorneys, Department of Justice.

For the defendants: Pitney, Hardin & Kipp, for Aluminum Ltd. and Alcan Aluminum Corp. William E. Jackson, of Counsel, for Aluminium Ltd. and Alcan Aluminum Corp.

Final Judgment

COOLAHAN, District Judge: Plaintiff, United States of America, having filed its complaint herein on December 30, 1964, and defendants having filed their answers to such complaint, denying the substantive allegations thereof; and plaintiff and defendants Aluminium Limited and Alcan Aluminum Corporation, by their respective attorneys, having each consented to the making and 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 or admission by any party hereto with respect to any such issue;

Now, therefore, before the taking of any testimony, 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

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Act of Congress of October 15, 1914, as amended (15 U. S. C. § 18), commonly known as the Clayton Act.

II

As used in this Final Judgment:

(A)"Alcancorp" means defendant Alcan Aluminum Corporation, a corporation organized and existing under the laws of the State of New York with its principal office at Cleveland, Ohio;

(B)"Eligible purchaser" means any person approved by plaintiff, but shall not include defendant Alcan Aluminum Limited (formerly known and sued herein as Aluminium Limited), or any of the subsidiaries, successors, assigns, directors, officers or agents of Alcancorp or of Alcan Aluminium Limited, or any person engaged or which prior to the date of entry of this Final Judgment has announced plans to engage in producing, directly or indirectly, primary aluminum ingot or which has primary aluminum ingot produced for it under a tolling agreement;

(C)“Person” means any individual, partnership, firm, corporation, association, trustee or other business or legal entity;

(D)“Flexalum Division Assets” means those assets acquired by Alcancorp from defendant National Distillers and Chemical Corporation (“National”) pursuant to an agreement dated October 8, 1964 (including any changes, additions or improvements thereto made by Alcancorp prior to any disposition thereof pursuant hereto) relating to the manufacture at the Riverside Plant and the sale under the Flexalum trademarks of components for aluminum Venetian blinds, components for aluminum awnings, and aluminum residential siding, including all buildings, machinery, equipment, vehicles, tools and other tangible personal property located at the Riverside Plant and used exclusively in connection with the manufacture of the above-mentioned products, inventories of end-products and related raw materials wherever located, accounts receivable relating to the sale of such products, the Flexalum trademarks, patents and copyrights, machinery in the possession of franchised Flexalum dealers, the franchise agreements, warehouses used in the distribution of the above-mentioned products, and the so called Design Center (except records relating to products other than those mentioned above); said assets to be such as will permit a purchaser to operate with them as a going business concern.

(E)“Riverside Plant” means the Flexalum Division Assets and the plant in Riverside, California acquired by Alcancorp from National pursuant to the aforesaid agreement dated October 8, 1964, and all interests therein, and all real property and fixtures, machinery, equipment, vehicles, tools, furniture, leasehold improvements and other tangible personal property incident to the use and operation of the Plant, inventories of raw materials, work in progress, finished goods, containers, supplies and fuel, and all improvements or additions thereto made from the date of filing of the complaint herein until the date of any disposition of the Plant pursuant hereto;

(F)“Revere Building” means the land and building which are part of the Riverside Plant and were acquired from Revere Copper and Brass, Inc. by National on December 21, 1962; and

(G)“Flexalum trademarks, patents and copyrights” means all trademarks, patents and copyrights relating to Flexalum Division Assets in existence at the time of divestiture pursuant to this decree.

III

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant and its parents, subsidiaries, successors and assigns and to each of their respective agents, officers and directors; and to all persons in active concert or participation with each such defendant who receives actual notice of this Final Judgment by personal service or otherwise. None of the provisions of this Final Judgment shall apply to any person or persons who acquire any of the assets which may be disposed of pursuant to this Final Judgment.

IV

(A) Alcancorp is ordered and directed, within nine months from the date of entry of this Final Judgment, to sell either the Flexalum Division Assets or the Riverside Plant to an eligible purchaser; provided, however, that during the initial six months of such period Alcancorp may condition its acceptance of any offer for the purchase of the Riverside Plant on its inability, within the said six month period, to sell the Flexalum Division Assets pursuant to and in accordance with this paragraph IV; and provided further, that any sale of the Riverside Plant shall be made only to an eligible purchaser which represents that it intends to operate the Plant as an operating business in competition with other firms engaged in the manufacture, production and sale of components for aluminum Venetian blinds, components for aluminum awnings, and aluminum residential siding. Any sale pursuant to this paragraph IV shall be on terms and conditions which are reasonable under the circumstances of this suit. Any sale of the Riverside Plant pursuant to the terms of this Judgment shall be subject to the approval of the Department of Defense.

(B) Alcancorp shall make known the availability of the Flexalum Division Assets and the Riverside Plant for sale by ordinary and usual means for a sale of a business. Alcancorp shall furnish to bona fide prospective eligible purchasers all necessary information, including *pro forma* statements, regarding the Flexalum Division Assets and the Riverside Plant and the operation thereof, and shall permit them to make such inspections as may be reasonably necessary for the above purpose.

(C) Any purchaser of the Flexalum Division Assets or the Riverside Plant, as the case may be, shall agree to continue all applicable employee benefit plans, collective bargaining agreements, and other conditions of employment, upon terms not substantially less favorable than those provided by Alcancorp.

(D) Alcancorp shall agree as a condition of the sale of the Flexalum Division Assets to segregate the Flexalum Division Assets from its other aluminum fabricating facilities and to relocate the physical assets located at the Riverside Plant relating exclusively to the manufacture of components for aluminum Venetian blinds and awnings to the Revere Building at its expense, or, at the purchaser's expense, to relocate any or all of the Flexalum Division Assets to any other location specified by the purchaser. In the event that any such purchaser elects to have such assets relocated to the Revere Building, Alcancorp shall agree to include the Revere Building among the assets sold to such purchaser. At the option of any such purchaser, Alcancorp shall agree to exclude from the assets sold to the purchaser those which relate exclusively to the manufacture and sale of aluminum residential siding.

(E) As a part of the offer to sell the Flexalum Division Assets or the Riverside Plant pursuant to subparagraph (A) of this paragraph IV, Alcancorp shall agree, at the option of the purchaser:

(i) For a period of six months following the date of sale not to compete with the purchaser in the manufacture or sale of components for aluminum Venetian blinds and aluminum awnings;

(ii) For a period of twelve months following the date of sale not to knowingly solicit the patronage of any customers of the purchaser of the Flexalum Division Assets insofar as such patronage relates to the purchase of components for aluminum Venetian blinds and aluminum awnings; and

(iii) To enter into a contract, for not more than five years, to supply, on standard terms and conditions, the purchaser's requirements for aluminum used in the operation of the acquired assets; provided, that said contract need not obligate Alcancorp to furnish aluminum in an aggregate annual amount exceeding that consumed in the operation of the divested assets during the twelve calendar months immediately preceding sale.

(F) Pending any sale pursuant to the terms of this Final Judgment Alcancorp shall continue the normal operations of the Flexalum Division Assets and of the Riverside Plant and shall take no affirmative action with respect to personnel employed in the operation of those assets which could impair the sale thereof as a going business.

(G) The sale by Alcancorp within the nine-month period provided in subparagraph (A) of this paragraph IV of either the Flexalum Division Assets or the Riverside Plant shall constitute the divestiture ordered and directed by this Final Judgment. If Alcancorp is unable to sell the Flexalum Division Assets or the Riverside Plant in accordance herewith within such nine-month period, it shall have the right to apply to the Court, on notice to plaintiff, for a determination that it has made a bona fide effort to find a purchaser for either the Flexalum Division Assets or the Riverside Plant and has been unable so to do and is not then engaged in negotiations with any prospective purchaser, and on such determination by the Court, Alcancorp shall no longer be required by any provision of this Final Judgment to divest itself of any of the Flexalum Division Assets or the Riverside Plant.

(H) The divestiture ordered and directed by this Final Judgment, when made, shall be made in good faith and shall be absolute and unqualified; provided, however, that Alcancorp may accept and enforce any bona fide lien, mortgage, deed of trust or other form of security on all or any portion of the divested assets given for the purpose of securing to Alcancorp payment of any unpaid portion of the purchase price thereof or performance of the sale transaction and may also enforce any other terms and conditions of the sale transaction as therein provided or as provided by law. In the event that Alcancorp, as a result of the enforcement of any bona fide lien, mortgage, deed of trust or other form of security reacquires possession of the divested assets, then it shall be obliged to offer such assets for sale in accordance with the terms of this Final Judgment.

(I) Following the entry of this Final Judgment and continuing until the divestiture of the Flexalum Division Assets or the Riverside Plant, or failing such divestiture, until the end of the nine-month period provided in subparagraph (A) of this paragraph IV Alcancorp shall

(i) Render monthly reports to the Assistant Attorney General in charge of the Antitrust Division outlining in detail the efforts made by it to dispose of the Flexalum Division Assets or the Riverside Plant. The first such report shall be rendered within thirty (30) days after the date of entry of this Final Judgment; and

(ii) Report promptly to plaintiff the name of any person making inquiry whom Alcancorp does not believe to be a bona fide prospective eligible purchaser as contemplated by subparagraph (B) above.

V

(A)For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Alcancorp at its principal office, be permitted:

(1) Reasonable access, during office hours of Alcancorp, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Alcancorp relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of Alcancorp and without restraint or interference from it, to interview officers or employees of Alcancorp, who may have counsel present, regarding any such matters.

(B)For the purpose of securing compliance with this Final Judgment, Alcancorp, upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, shall submit such reasonable reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may, from time to time, be requested. No information obtained by the means provided in this paragraph V shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of court proceedings to which plaintiff is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VI

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 or termination of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.