



U.S. Department of Justice

Antitrust Division

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

September 20, 2004

The Honorable Ollie M. Harvey  
Mayor  
City of Ripley  
113 South Church Street  
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 Mayor Harvey:

This letter responds to your August 5, 2004, comment on the proposed Amended Final Judgment in this case. That comment is similar to your comment on the initial settlement, which the United States fully addressed and published in the Federal Register (69 Fed. Reg. 18930, 18947-50 (Apr. 9, 2004)). Before turning to your current comment, however, it may be helpful to summarize the major terms of the amended settlement.

The Amended Final Judgment requires Alcan to divest either its own or Pechiney's "brazing sheet business."<sup>1</sup> 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. 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. Prompt divestiture of either brazing sheet business to a viable new competitor would advance the public interest in competitive prices and continuing 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 ensure that the proposed divestiture is expeditiously completed

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

and competition restored, the Amended Final Judgment (§ V(B)) provides that if Alcan does not sell 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.

Alcan already has taken steps to divest its own brazing sheet business by spinning it off to its shareholders along with many of Alcan's other domestic and foreign businesses. There is a possibility, however, that Alcan might choose (or a trustee later may be appointed) to divest the Pechiney brazing sheet business.

Your primary concern is that if Alcan chooses (or a trustee is appointed) to divest the Pechiney brazing sheet business, then that operation must "be owned and operated by a company committed to long-term productions and employment," and that it not be sold to a firm that "lacks the experience and facilities necessary to maintain operations in the future."

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* Amended Final Judgment, §§ 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* Amended Final Judgment, §§ 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 remains in the hands of a dominant aluminum manufacturing concern, such as Alcan.<sup>2</sup>

In any event, 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 capable of continuing the firm's competition against Alcan and

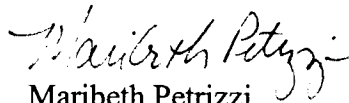
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<sup>2</sup>You implicitly assume Alcan must be allowed to retain Pechiney's brazing sheet business because it would maintain current levels of employment and benefits at Ravenswood. However, a firm that acquires market power will be more likely to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

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 Amended Final Judgment, § 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.”



# City of Ripley

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**Mayor**

*Ollie M. Harvey*

**Recorder**

*William E. Caslo*

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: Pechiney Rolled Products

Dear Ms. Petrizzi:

I write again, following my letter to you of February 9, 2004, concerning the proposed amended consent decree in the settlement of Alcan's acquisition of Pechiney. I understand that the amended decree might result in Alcan's retaining ownership of the Pechiney Rolled Products plant. That would be a very desirable result. However, it is also possible, under the amended decree, that Alcan would divest the plant. The danger that such a divestiture might occur leads me to write again.

I am mayor of Ripley, West Virginia, a town near the plant, where many retirees live. The town has a \$3 million operating budget with a tax base that includes many citizens in the retiree group. The concern of the retirees is that a new owner of the plant will fail to operate the plant successfully, so that retirement benefits will be in jeopardy.

For the protection of the current employees, the retirement group, and the county, the plant must be owned and operated by a company like Pechiney or Alcan that has the capacity to absorb costs of operation when the plant is unprofitable. The retirees observe similar situations where new owners take over plants and shut them down or renounce benefit obligations because the new owners can't afford to do otherwise.

**Common Council**

*Curtis Anderson*

*David Brubaker*

*Don Kenthorne*

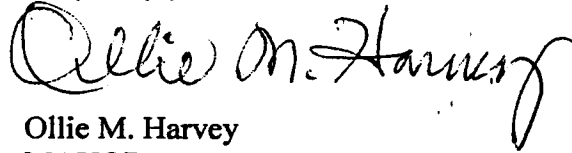
*Russ Vannoy*

*Victor Yoak*

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It is imperative for the life of this community that the Pechiney Plant be owned and operated by a company committed to long-term productions and employment. The plant must not be sold to a company that might have financing and good intentions in the short term but lacks the experience and facilities necessary to maintain operations into the future.

Very truly yours,

A handwritten signature in cursive script that reads "Ollie M. Harvey". The signature is written in black ink and is positioned above the printed name and title.

Ollie M. Harvey  
MAYOR

OMH:isb

Cc: Governor Bob Wise  
Senator Robert Byrd  
Senator Jay Rockefeller

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