U.S. Department of Justice

Antitrust Division

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

March 15, 2004

Mr. Mark Dempsey
West Virginia President
American Electric Power
707 Virginia Street
Suite 1100
P.O. Box 1986
Charleston, West Virginia 25327-1986

Re: *Public Comment on Proposed 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 Sept. 29, 2003)*

Dear Mr. Dempsey:

This letter responds to your letter of February 13, 2004, which comments on the proposed Final Judgment ("Judgment") submitted for entry in this case. The United States's Complaint in this case charged that Alcan's acquisition of Pechiney would substantially lessen North American competition in the sale of brazing sheet, a rolled aluminum alloy widely used in fabricating certain critical components of heat exchange systems (*e.g.*, heaters, air conditioners, and radiators) for all types of motor vehicles. The proposed Judgment would resolve those competitive concerns by requiring the defendants to divest Pechiney's "brazing sheet business," a term defined in the Judgment, § II(E), to include Pechiney's entire aluminum rolling mill in Ravenswood, West Virginia, which, *inter alia*, produces all of the brazing sheet sold by Pechiney in North America.

Your company, American Electric Power, supplies electricity to the Ravenswood facility that would be divested pursuant to the terms of the proposed Judgment. In your letter, you express a concern that the government may have overreached by proposing that the defendants divest the entire Ravenswood facility, when the only competitive problem was in brazing sheet. You also assert that the new owner of Pechiney's brazing sheet assets may not have "the capacity, technology, and experience" to operate the entire Ravenswood plant, and that the new firm will be significantly more likely to fail without these capabilities.

The competitive problems created by Alcan's acquisition of Pechiney could not be cured simply by requiring a "partial divestiture" of only those portions of the Ravenswood facility devoted to developing, producing, and selling brazing sheet. As you point out in your comment, brazing sheet is produced on the same production lines that make many other important rolled aluminum

alloy products (*e.g.,* common alloy coil, aerospace sheet) at Ravenswood. The United States is unaware of any evidence that would support a conclusion that dismantling the Ravenswood facility to sell off a few parts exclusively committed to the production of brazing sheet would produce a viable new firm capable of replacing the competition lost by Alcan's acquisition of Pechiney. An observation by the Federal Trade Commission, based on a recent empirical study of its own divestiture efforts, is particularly apt here: "[D]ivestiture of an ongoing business is more likely to result in a viable operation than divestiture of a more narrowly defined package of assets and provides support for the common sense conclusion that [antitrust enforcement agencies] should prefer the divestiture of an ongoing business." Federal Trade Commission, A Study of the Commission's Divestiture Process 10-12, esp. 12 (1999).[1]

The United States, of course, shares your concern that in order to be an effective competitor, the new owner of Pechiney's brazing sheet assets must be capable of operating the assets successfully. Indeed, a lynchpin of the proposed decree is its requirement that the Ravenswood facility be divested to a person who, in the United States's judgment, is able to operate it successfully in competition with Alcan and others (*see* Judgment, § IV(J)). To that end, the proposed Judgment requires defendants to sell any tangible and intangible assets used in the production and sale of brazing sheet, including the 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* Judgment, §§ II(E)(1)-(3).

Your fear that there may not be an acceptable purchaser of these assets may be premature. Although the defendants have solicited offers for Pechiney's brazing sheet assets, they have not selected a proposed purchaser. In the event the defendants are unable to find an acceptable purchaser on their own, the proposed Judgment permits the Department of Justice to nominate, and the Court to appoint, a trustee responsible for conducting an independent search for an acceptable purchaser and selling Pechiney's brazing sheet assets "at such price and on such terms as are then obtainable upon reasonable effort" (Judgment, § V(B)). At this point in the divestiture process, however, it would be inappropriate to conclude that the defendants' – or if necessary, the trustee's – efforts to sell Pechiney's brazing sheet assets will not produce an acceptable, viable purchaser capable of vigorously competing in the development, production, and sale of brazing sheet in North America.[2]

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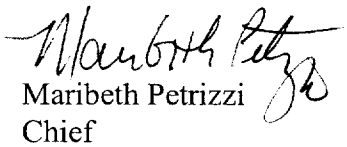
[1]The FTC study is available online at *http://www.ftc.gov/os/1999/08/divestiture.pdf.*

[2]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 unviable. *See* 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."

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,



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Re: Pechiney Rolled Products, Ravenswood, West Virginia

Dear Ms. Petrizzi:

This letter is submitted as a comment on the Final Judgment now before the Federal District Court in Washington concerning the purchase of Pechiney by Alcan. Under that Final Judgment, Alcan must divest the Pechiney Rolled Products plant at Ravenswood, West Virginia. The divestiture is of great concern to American Electric Power (AEP).

The Pechiney Rolled Products plant and the Century Aluminum plant adjacent to it use very large amounts of electricity in their manufacturing processes. In addition to providing electric power to the plants, AEP also supplies power to the communities around the plants, including the plants' employees and their families and the businesses that provide additional products and services to them.

AEP's concern about the pending Final Judgment and the divestiture of the Pechiney Rolled Products plant is that such action might lead to a shut down of the plant. The Final Judgment focuses on the brazing sheet business conducted at the plant, and expresses an intent to keep brazing sheet as a product of the plant, but is silent about the major product of the plant, aluminum sheet. The Final Judgment says nothing about keeping that important business going. If the divestiture should lead to the purchase by an owner who lacks the capacity, technology, and experience to produce all of the plant's products, there is substantial danger that the plant would not survive. Failure of the fabricating plant could itself have an adverse impact on competition in the brazing sheet market and would jeopardize the neighboring aluminum plant and the communities that rely on and support the plants and their employees.

Survival of these plants is essential for the economic health of this region . AEP submits this comment to draw attention to the fact that more issues than competition in the brazing sheet market are at stake. Our customers in the area would suffer substantial hardship, and AEP itself would lose industrial, commercial, and residential business.

It appears to AEP that the best solution would be to allow Alcan to continue to operate the Pechiney Rolled Products plant. Alcan has the needed capacity and experience to operate the plant successfully.

We suggest this solution on the basis of our knowledge of the plants and our concern about their future. The suggestion is in no way prompted by any contact with Alcan.

We ask that the Court be informed of these concerns and our suggested solution.

Very truly yours,

Mark Dempsey
West Virginia President

Cc: John Smolak – Economic Development Manager, AEP