U.S. Department of Justice

Antitrust Division

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

March 15, 2004

Mr. L. D. Whitman
Route 1
Box 79A
Ravenswood, West Virginia 26164

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. Whitman:

This letter responds to your letter commenting 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.

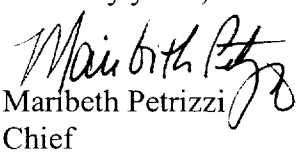
In your letter, you expressed a concern that to safeguard competition and preserve local employment opportunities, the Ravenswood facility must be divested to a new owner that is capable of operating the plant as part of a viable ongoing business enterprise. The United States, of course, shares this concern, for 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, including R&D for aluminum plate used in military and aerospace applications. *See* Judgment, §§ II(E)(1)-(3).

Your concern that there will 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 decree 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.[1]

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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[1]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."

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Maribeth Petrizzi
Chief, Litigation II Section
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United States Department of Justice
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Suite 3000
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Re: US v. Alcan et al., Case No. 1:03CV02012
in the United States District Court for the District of Columbia

Dear Ms. Petrizzi:

I am writing to comment on the potential effects of the consent decree now before the Court in connection with the purchase of Pechiney by Alcan. My concern is particularly about the divestiture of Pechiney Rolled Products which is required by that consent decree.

The plant of Pechiney Rolled Products is located at Ravenswood, West Virginia. I was at one time plant manager there, and I am now chairman of the retiree group of former employees of the plant. I live not far from the plant.

My chief concern is that the divestiture of the plant might result in its being sold to new owners who will not operate the plant successfully and will cause its shutdown. A shutdown of that plant would be devastating to the entire community, and particularly to the thousands of employees and retirees who would be left without work or the means to live decent lives.

I know that efforts are being made to locate a buyer who would commit itself to operating the plant into the future. However, my knowledge of the plant and its history leads me to worry about the ability of a new owner to fulfill that commitment. It would not be enough for a buyer simply to have the capital to acquire the plant and take on the legacy costs associated with it. The new owner must have a high level of technical capability. It must be able to do the testing necessary to satisfy the safety requirements and to test new alloys for the plant's products, aluminum plate and brazing sheet. Because aluminum plate is used for military purposes and by the

aerospace industry, intense safety testing is needed on the products. The present owner, Pechiney, has facilities in France where technological work can be done. Alcan also has the technological capability required to operate the plant. A new owner would have to possess the same high level of technological capability. Very few potential buyers would qualify.

If the plant should close because a new owner lacks the necessary experience or technological backup, the retirees whom I represent would be in life threatening circumstances. I regularly receive calls from retired people or their families who tell me how little they have to live on, particularly in light of the medical bills they must pay to maintain themselves. If the medical benefits they now receive were to be shut off because of plant closing or the owner's bankruptcy or the inability of the owner to meet pension obligations, these people would have nothing to show for lives of hard work and they would be left in desperate circumstances.

If no buyer can be found as capable as Alcan to operate the Ravenswood plant, I suggest that Alcan be allowed to retain the plant.

Very truly yours,

L. D. Whitman