U.S. Department of Justice

Antitrust Division

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

March 15, 2004

The Honorable Bob Wise
Governor
State of West Virginia
Office of the Governor
Charleston, West Virginia 25305

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 Governor Wise:

This letter responds to your letter of February 13, 2004, which comments on the terms of 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, *inter alia,* Pechiney's aluminum rolling mill in Ravenswood, West Virginia, which produces all of the brazing sheet sold by Pechiney in North America.

Your letter raises three major issues related to the proposed divestiture of Pechiney's brazing sheet assets. First, you suggest that the Court should not require the defendants to divest the Ravenswood facility because Alcan's acquisition of Pechiney would not substantially diminish competition in the sale of brazing sheet. Second, you contend that even if the proposed acquisition was anticompetitive, the proposed divestiture is excessive because only a small portion of the Ravenswood facility's production is brazing sheet, the relevant product that precipitated our concerns about the transaction. Third – and what we sense is your primary concern – you point out that the Ravenswood facility has been historically unprofitable, a situation largely attributable to the high costs of pension and retiree health care benefit plans (*i.e.*, "legacy" costs). You note that these legacy costs may not only limit the number of potential purchasers of Ravenswood, but also increase the likelihood that, without a major adjustment in these expenses, any new owner may soon find that the Ravenswood facility is not competitively viable and close it, a development that would adversely affect competition for brazing sheet and the income and livelihoods of Ravenswood's current and retired workers.

The procedures for entering a proposed final judgment in a government antitrust civil case are set forth in the Tunney Act, 15 U.S.C. §§ 16(b)-(h). Before entering a proposed decree, the court must conclude that the relief would be in the "public interest." 15 U.S.C. § 16(e). The public interest determination requires a court to carefully examine the relationship between the relief in the proposed Judgment and the allegations of the government's Complaint. The court must enter the Judgment if it concludes that the relief is "within the *reaches* of the public interest," *United States v. Am. Telephone & Telegraph Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (emphasis original; citations omitted), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), even if the remedy is not what the court itself would have fashioned had it stood in the prosecutor's shoes. *United States v. Microsoft*, 56 F.3d 1448, 1460 (D.C. Cir. 1995). *See also United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving consent decree even though the court would have imposed more restrictive terms).

Although public comments on a proposed decree may inform a court's analysis of the proposed relief and its public interest determination, the Tunney Act proceeding is not an open forum for commenters – or the Court – to second-guess the United States's exercise of its broad discretion to file a civil complaint to enforce the nation's antitrust laws. "[T]he Tunney Act cannot be interpreted as an authorization for a district court to assume the role of Attorney General." *United States v. Microsoft Inc.*, 56 F.3d 1448, 1462 (D.C. Cir. 1995). Indeed, because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," "the court is only authorized to review the decree itself," and it has no authority to "effectively redraft the complaint" to inquire into matters that the government might have but did not pursue, *Microsoft Corp.*, 56 F.3d at 1459-60. Nor, for that matter, does the Tunney Act confer upon a court authority to reject a proposed settlement because it provides relief that is "not necessary" or "to which the government might not be strictly entitled," *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981).

Thus, your contention that the divestiture relief in the proposed Judgment is unnecessary because Alcan's acquisition of Pechiney was not anticompetitive is not a basis under the law to reject a proposed Judgment. *See United States v. Archer-Daniels-Midland Co.*, 2003-3 Trade Cas. (CCH) ¶ 74,097 at 96,872 (D.D.C. 2003) ("[C]ourt must accord due respect to the government's prediction as to the effect of the proposed remedies, its perception of the market structure, and its view as to the nature of the case. . . . [T]he court is not to review allegations and issues that were not contained in the government's complaint, . . . nor should it 'base its public interest determination on antitrust concerns in markets other than those alleged in the government's complaint. . . .'") (citations omitted); *United Sates v. Alex Brown & Sons, Inc.*, 169 F.R.D. 532, 541 (S.D.N.Y. 1996) (purpose of Tunney Act is to ascertain whether proposed relief is in public interest, "not to evaluate the strength of the Government's case"). Also, your suggestion that the Court should require the United States to prove the allegations of its antitrust complaint before the Court can assess the appropriateness of the parties' agreed-upon relief is inconsistent with established law. Imposing such a requirement in a Tunney Act proceeding would turn every government antitrust case into a full-blown trial on the merits of the parties'

claims, and seriously undermine the effectiveness of antitrust enforcement by use of consent decrees. *Microsoft Inc.*, 56 F.3d at 1459; *Alex Brown & Sons, Inc.*, 169 F.R.D. at 541.

As to the proposed Judgment submitted in this case, its entry surely would be "within the reaches" of the public interest (*United States v. Bechtel Corp., Inc.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981)). The Judgment would alleviate the United States's serious competitive concerns regarding the defendants' proposal to combine two of North America's three major producers of brazing sheet by requiring defendants promptly to divest Pechiney's Ravenswood rolling mill, which accounts for all of the brazing sheet developed, produced, and sold by Pechiney in North America. The sale of the Ravenswood facility to a viable purchaser would create a new competitor in brazing sheet, and thus leave competition in the North American brazing sheet market no worse off after Alcan's acquisition of Pechiney than before it. In short, "[g]iving due respect to the Justice Department's perception of the market structure and its view of the nature of its case" (*Microsoft Inc.*, 56 F.3d at 1461), the proposed Judgment "responds fully to the anticompetitive concerns raised by the merger because it would maintain the status quo." *Archer-Daniels-Midland Co.*, 2003-2 Trade Cas. (CCH) at 96,874. As such, "it seems reasonable that entering the proposed Final Judgment will eliminate the threats of easier anticompetitive coordination and diminished competition," which would put the proposed relief "well 'within the reaches of the public interest.'" *Id.* (citations omitted).

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, at Ravenswood 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). 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. The Federal Trade Commission, based on a recent empirical study of its own divestiture efforts, observed: "[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* 12 (1999).[1] Thus, to ensure that the ordered divestiture produces a viable and effective competitor, it makes good economic and business sense for the Judgment to require a sale of the entire Ravenswood facility, even though defendants' combination would have created serious competitive problems in only one major product produced by that plant.

Finally, the proposed Judgment addresses your concern that the legacy costs associated with the Ravenswood facility may prevent a potential purchaser from profitably operating the facility. A lynchpin of the proposed decree is its requirement that the Ravenswood facility be

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

divested to a person who, in the United States's judgment, is able to successfully operate it and provide competition for Alcan (*see* Judgment, § IV(J)). 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.[2]

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

[2]Obviously, 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."

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

BOB WISE
GOVERNOR

February 13, 2004

VIA FAX AND OVERNIGHT COURIER

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington, DC 20530

Re: United States v. Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC

United States District Court for the District of Columbia, Case No. 1:03CV02012

Dear Ms. Petrizzi:

As Governor of the State of West Virginia, I object to the proposed Final Judgment in *United States v. Alcan Aluminum Corp.* and ask the United States District Court for the District of Columbia to reject the Final Judgment as currently written and to enter a final judgment that will protect the citizens of West Virginia by allowing Alcan to own the plant of Pechiney Rolled Products. The Final Judgment is flawed and the divestiture it requires is unnecessary and contrary to the public interest.

The planned merger of Alcan and Pechiney is global in scope and involves the integration of facilities and operations all over the world. It is ironic and incredible that the Justice Department somehow sees Jackson County, West Virginia, as the only area of certain danger as a result of this merger. It is wholly unacceptable that West Virginia's economy and hundreds of its citizens may suffer because the Justice Department has chosen to bargain away their rights in exchange for an agreed order to hastily and recklessly resolve a theoretical concern. It is disappointing that the Justice Department apparently has opted for the expedience of an agreed order imposing an artificial remedy and has made West Virginia's jobs and economy a bargaining chip in the process.

West Virginia does not oppose the acquisition of Pechiney, S. A. by Alcan Aluminum Corporation. However, West Virginia is vitally concerned with that part of the proposed Final Judgment that requires Alcan to divest the plant of Pechiney Rolled Products, located at Ravenswood, West Virginia. If new owners of the plant lack the qualifications necessary for success, the plant will fail and close. That would be a disaster for many people and communities in West Virginia. The economic impact of closure of this facility would be devastating for hundreds of employees and retirees of the Ravenswood facility and the economies of Jackson County and the State as a whole.

This letter of opposition is submitted to the Court and the Justice Department under the terms of the Tunney Act, 15 U.S.C. § 16. Under that Act, the Court must determine whether the proposed Final Judgment is in the public interest, and may consider "effects of alternative remedies actually considered" and "the impact of such judgment upon the public generally."

The Final Judgment puts the public interest in serious jeopardy. If it is not implemented in the public interest, many persons are certain to suffer.

The Ravenswood Plant

The Pechiney Rolled Products plant at Ravenswood employs approximately 960 workers, 700 of whom are hourly workers. It currently has approximately 900 retirees.

The Ravenswood plant is an integrated facility that produces aluminum sheet, aluminum slab, various aluminum specialty products, and brazing sheet. The brazing sheet market is the only one that apparently concerns the Justice Department, but it makes up only a relatively small part of the plant's total output. Pechiney Rolled Products sells about 35 million pounds of brazing sheet per year. Only 28% of the plant's output is brazing sheet. Brazing sheet is a small market, and a small portion of the rolled products sales. Though the plant's larger volume products (principally aluminum plate and sheet) are not the subject of any antitrust concern, the proposed Final Judgment would affect all of the plant's products because the entire plant is to be sold pursuant to its terms.

The plant's dominant product is aluminum plate which is sold as general engineering plate and plate for the aerospace industry. Some aluminum product is produced for transportation manufacturers for railcars, tanker trailers, and wide roofs for freight trailers. The Ravenswood plant also sells rolled aluminum for building products - siding and downspouts. Aerospace customers require product that meets exacting safety standards and they rely on their suppliers for technical support. Pechiney is able to give technical customer support. It has research facilities near Grenoble, France. It has machinery for running trials. It has intellectual property rights, which it will retain after the merger. A buyer of the Ravenswood plant would have to be equally capable of meeting the demands of buyers of these products.

Brazing sheet is not a commodity product. Its production and sale are heavily dependent on technology—for product development and for customer service. There are actually forty different brazing sheet products, some of it "header stock"—the top of the radiator - and "tube stock" - the water carrying tubes that are air-cooled. Competition in the brazing sheet market

is not on price alone, but also on performance, quality, alloy development, product development, service, and long-term relationships.

Defects in the Final Judgment

The Final Judgment is defective because it compels the divestiture of the Ravenswood plant. For reasons discussed in the next section of this comment and objection, Alcan's ownership of the plant would not endanger competition in any market. The fundamental premise of the Final Judgment is erroneous.

The Final Judgment fails to account for the range of products manufactured at Ravenswood. It ignores the products other than brazing sheet. If the search for a successor fails to take the other products into account, there is substantial danger that an ostensible "new owner" found by Alcan under the Final Judgment would lack the necessary experience and technical capability of producing and selling the full range of these products.

The Final Judgment lacks adequate standards for the search for new owners of the Ravenswood plant. It provides no guidance in the event that a qualified buyer with the adequate capital capability is not found by Alcan or the trustee.

Moreover, even if a purchaser is found, it does not have to agree to be bound by the proposed Final Judgment. Consent Final Judgment, ¶¶ II.E and IV.A.

The purchaser must demonstrate only that the acquired assets will be used "as part of a viable, ongoing business, engaged in developing, manufacturing, and *selling brazing sheet* in North America." Consent Final Judgment, ¶ IV.J *This requirement ignores the important fact that brazing sheet is only one of the products (28% of the total production) manufactured at Ravenswood.* In fact, the proposed Final Judgment ignores 72% of the products made by this plant that is to be sold. The plant will not survive unless the purchaser makes a commitment to make and sell *all* of the Ravenswood products.

The Final Judgment does not require the purchaser to make its commitments for any length of time. How long the purchaser must operate the plant is not specified. The purchaser need not give assurance for sustained operation.

If the divestiture process were allowed to proceed and if Alcan is unable to find a purchaser acceptable to the Justice Department within the time allowed (120-180 days after the end of the tender offer), a trustee will be appointed to make the sale. Consent Final Judgment, ¶¶ IV.A and V. Any potential purchaser truly capable of operating the plant effectively will surely be located during the time allowed to Alcan. If the sale falls to the hands of a trustee, the likelihood of finding an effective owner of the plant is virtually nil.

The recent owners of the plant have not been able to operate it profitably. Unprofitable plants are often bought by purchasers who intend to sell off assets and go out of business. New owners might also attempt to avoid pension obligations undertaken by Pechiney, its

predecessor owners, or successors. The Final Judgment does not sufficiently guard against these disastrous possibilities.

Final Judgments like the one proposed in this case often fail to result in successful operations after the divestiture.. A 1999 FTC Divestiture Study[1] found that buyers of divested assets often lack the information necessary to carry on the business successfully. They often do not fully know what assets they need to succeed in the business, or whether the assets offered by the sellers are up to the task.[2] Attempts by Alcan to find purchasers experienced in brazing sheet would identify potential buyers that might not be capable of making and selling Ravenswood's other products.

Under these circumstances, particularly in light of the inadequacy of the Final Judgment, the State of West Virginia fears that the urgency in finding a buyer for Ravenswood will lead to a sale to owners who will not keep the plant open. These real dangers make it necessary for the State of West Virginia to register these objections.[3]

The Effect of the Acquisition on Competition

Divestiture of the Ravenswood plant, part of which includes Pechiney's Brazing Sheet Business, is totally unnecessary. Competition in the brazing sheet market is active now and will remain active after the purchase of Pechiney by Alcan. There is sound reason to believe that intense competition would continue in the brazing sheet market if Alcan retained ownership of Pechiney Rolled Products. The Final Judgment and the Justice Department's Competitive Impact Statement ("CIS") fail to analyze the effect of the acquisition on the markets for the products of Pechiney Rolled Products other than brazing sheet.

Competitors in the brazing sheet market are, in order of market share, Alcoa, Pechiney Rolled Products, Alcan and Corus. Alcoa obtained its position as the market leader when it acquired Alumax, which had brazing sheet production facilities at Lancaster, Pennsylvania. Alcoa has been, until now, the world's largest aluminum producer. The combination of Alcan and Pechiney takes that title away from Alcoa. The competition between Alcoa and Alcan around the world has been intense, and the rivalry would continue after this combination is formed,

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[1] FTC, "A Study of the Commission's Divestiture Process"(1999), *available at* www.ftc.gov/os/1999/9908/index.htm#6.

[2] *See* Richard Parker and David Balto, "The Evolving Approach to Merger Remedies," ANTITRUST REPORT, May 2000 (Matthew Bender), 2, 9.

[3] "One particular complication in selling Ravenswood could be the plant's capacity to produce hard alloy plate for the aerospace industry. Operating a plate mill required the support of a research and development team, according to Lloyd O'Carroll of BB&T Capital Markets, and few companies had that capability. In North America, the only company in the market besides Alcoa and Alcan-Pechiney was Houston-based Kaiser Aluminum Corp., O'Carroll said, but Kaiser was struggling to emerge from Chapter 11 bankruptcy protection and was unlikely to have the cash to finance an acquisition unless it succeeded in selling off some of its alumina assets. Anglo-Dutch steel and aluminum producer Corus Group Plc also produces plate but has said it intends to exit the aluminum business." Online American Metal Market, October 1, 2003, http://www.findarticles.com/cf_dls/m3MKT/39-3_111/108450462/p1/article.jhtml.

especially since Alcoa surely will attempt to regain its standing as the world leader in brazing sheet production.

Purchasers of brazing sheet from the Ravenswood plant and other similar facilities are Tier 1 suppliers to the automotive industry. These are large, sophisticated buyers that are capable of negotiating favorable prices. Furthermore, they must qualify to supply the automobile manufacturers, and they in turn require qualification by those who supply them with materials like brazing sheet. Each Tier 1 supplier chooses suppliers of brazing sheet from whom it will demand qualification. This means that each brazing sheet producer does not compete with all other brazing sheet sellers in seeking the business of a Tier 1 supplier, but at the most one or two of the other sellers. Purchasers want to maintain at least two reliable sources. These circumstances significantly reduce the impact of market share as a factor for analysis of the anti-competitive effects of the proposed merger.

The Justice Department asserts in its CIS that Alcan is a new "maverick" that is using low prices to gain market share in the brazing sheet market. If Alcan owned the Pechiney Rolling Products plant, the Justice Department believes it would gain that market share without price concessions. This would lead it to abandon its low-price strategy, hurting purchasers who now enjoy the benefits of Alcan's low prices. That analysis by the Justice Department is highly questionable. First, as a practical matter, Alcan is unlikely to use a low price strategy any longer than necessary to gain the market share it wants. Once it gains the market share it seeks, the low price strategy will end and purchasers will not have any price benefit. Second, Alcan shares the brazing sheet market with its arch-rival Alcoa, the major seller in the market. Alcan could not raise prices above Alcoa's price, and vice versa. There is price discipline in the market with these two sellers vying with one another. Alcan's low prices are a short-term strategy. It is not worth the risks posed by the consent decree to require divestiture just to get this short term advantage. Indeed, allowing Alcan to retain the Ravenswood facility may very well create a pro-competitive effect in that Alcoa will have to find ways to regain its "world leader" title. Third, the buyers of brazing sheet are large, sophisticated purchasers who are capable of negotiating prices.

In spite of the Justice Department's concerns, Alcan would be the best owner of the Ravenswood plant. Among the reasons for this conclusion are these:

1. The divestiture is not necessary because competition in the brazing sheet market without the divestiture would continue to be intense.
2. Alcan, being aggressive in its competition with Alcoa, would maximize the potential of the Ravenswood plant better than any other owner. Contrary to the Justice Department's view that Alcan would not compete aggressively as owner of the Ravenswood plant, industry commentators believe that Alcan "could speed up the 'fixing' of Pechiney's Ravenswood facility now under way."[4]
3. Finding a buyer capable of maximizing the potential of the Ravenswood plant would be very difficult, if not impossible, especially in light of the previous lack of profitability of that plant and its legacy costs.

[4] Online Metal Center News, August 2003.
http://metalcenternews.com/2003/august/mcn0803Merger.htm (viewed 10/6/03)

4. Alcan has the experience and facilities to make and sell all of the products of the Ravenswood plant, not just the brazing sheet upon which the Final Judgment focuses.

Conclusion

West Virginia proposes that the Final Judgment be modified to permit Alcan to retain ownership of the Pechiney Brazing Sheet Business and the other operations of Pechiney Rolled Products at Ravenswood. In the alternative, West Virginia proposes that no buyer be accepted for the Ravenswood plant that has fewer capabilities that those of Alcan, and that if the buyer fails to keep the plant in operation, the plant should revert to Alcan.

The current economic climate demands that the State of West Virginia expend every effort to ensure that no jobs are lost as the result of the Alcan/Pechiney transaction. The proposed Final Order, however, severely threatens our economy and places at severe risk the jobs of hundreds of Ravenswood plant employees and the future welfare of hundreds of its retirees. The State of West Virginia cannot stand idly by and allow its economy and citizens to be jeopardized. The public interest requires that Alcan retain ownership of the plant, or, in the alternative, that the highest priority in this divestiture be given to finding a buyer that is at least as capable as Alcan to operate the plant. If such a buyer cannot be found, Alcan should be permitted to own and operate the plant.

Very truly yours,

Governor Bob Wise

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

BOB WISE
GOVERNOR

Fax Transmission Cover Sheet

Please deliver this and the following 6 **page(s) to:**

Name: Maribeth Petrizzi

US Dept. of Justice

Company: Antitrust Division **Fax #:** 202-514-9033

From: Gov. Bob Wise

Date: 02-13-04

If you do not receive all pages, please call Sherri **at** 304-558-5407.

Comments:

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U.S. Department of Justice

Antitrust Division

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

March 15, 2004

The Honorable Clair Roseberry
Mayor
City of Ravenswood
212 Walnut Street
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 Mayor Roseberry:

This letter responds to your letter of February 4, 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.

In your letter, you expressed a belief, elaborated upon in the accompanying city council resolution, that in order to safeguard competition and preserve local employment, the Ravenswood facility must be divested to a firm that is, above everything else, competitively viable. 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 divest 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).

Concern 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 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

[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."

2003 - 2005

City of Ravenswood

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January 4, 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 Plant, Ravenswood, West Virginia

Dear Ms. Petrizzi:

Attached is a resolution adopted by the Common Council of the City of Ravenswood expressing the concerns of council of the possible sale of the Pechiney Rolled Products Plant under the terms of a consent decree now pending before the United States District Court in Washington.

We request that the concerns highlighted in the attached resolution be considered and trust that it will assist you in your deliberations.

Respectfully yours,

Clair Roseberry

Clair Roseberry
Mayor

Attachment:
Pechiney Rolled Products Plant, Ravenswood, WV Resolution

PECHINEY ROLLED PRODUCTS PLANT
RAVENWOOOD, WEST VIRGINIA
RESOLUTION

Whereas, the City of Ravenswood is a City of approximately 4100 people with the Pechiney Rolled Products Plant located 6 miles south of the City.

Whereas, the purpose of this resolution is to express the Common Council of the City of Ravenswood's concern over the sale of the Pechiney Rolled Products plant at Ravenswood under the terms of a consent decree now pending before the United States District Court House in Washington.

Whereas, many of the employees of the plant live in the city and the surrounding area thus the well-being of the city is linked to the successful operation of the plant because many of its citizens work there and also because about one-third of the families in the city are retirees, many being former workers at the Pechiney plant. The average age in the city's population is 42. If the plant were to close, many families and retirees in the area as well as the City's revenues would be directly affected.

Whereas, it is vital that any purchaser of the Pechiney plant have the capability and commitment necessary to operate the plant into the future. We are concerned that a buyer will be found to satisfy the requirement of divestiture, but the buyer will lack the resources to keep the plant in operation in the long term.

Therefore, the Common Council of the City of Ravenswood urge those in control of this process-the Court, the parties to the consent decree, and any trustee who might be appointed in the future-to accept as potential buyers only those companies that will clearly be successful. If such a clearly successful buyer cannot be found, we urge that Alcan be allowed to keep the plant. Alcan is clearly capable of keeping the plant going into the future. Its continued ownership of the plant would be in the public interest of our community.

Let it be resolved that on the 3rd day of February 2004, the Common Council of the City of Ravenswood by a majority vote of the body in attendance adopted and authorized the Honorable Clair Roseberry, the Mayor of the City of Ravenswood, to sign the foregoing resolution.

Clair Roseberry
Clair Roseberry
Mayor

Attest:

Lucy J. Harbert
Lucy J. Harbert
Recorder

U.S. Department of Justice

Antitrust Division

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

March 15, 2004

Ms. Marci D. Weyer
President
Jackson County Development Authority
104 Miller Drive
Ripley, West Virginia 25271

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 Ms. Weyer:

This letter responds to your February 2004 letter, 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, *inter alia*, Pechiney's aluminum rolling mill in Ravenswood, West Virginia, which produces all of the brazing sheet sold by Pechiney in North America.

In your letter, you express a general concern, reflected in a resolution adopted by the Jackson County Development Authority, that a new owner of the Ravenswood facility may not be able to operate the plant profitably and may close it, a development that would adversely affect competition for brazing sheet and the income and livelihoods of Ravenswood's current and former employees. You have urged the Court to permit Alcan to retain and operate the plant if "no reliable buyer is found."

Your concern that there will not be an acceptable purchaser for the Ravenswood facility may be premature. 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)). Although the defendants have solicited offers for Pechiney's brazing sheet business, 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

[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."

JC Development Authority
Jackson County DA

Mark A. Kassing, Executive Director
104 Miller Drive • Ripley, WV 25271
(304) 372-1151 • Fax: (304) 372-1153
E-Mail info@jcda.org

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington, DC 20530

Re: Alcan Acquisition of Pechiney

Dear: Ms. Petrizzi:

It is with great concern that I write to you concerning the acquisition of Pechiney by Alcan. I am president of the Development Authority of Jackson County, West Virginia, where Pechiney has a major plant, Pechiney Rolled products. Under the pending consent decree Alcan is required to divest that plant.

The Jackson County Development Authority adopted the following resolution of February 3, 2004 to express its concern about the long term continuation of the Pechiney Rolled Products plant as an employer and taxpayer in the county:

WHEREAS, the Jackson County Development Authority is a body politic created by act of the Jackson County Commission; and

WHEREAS, Pechiney Rolled Products is a major employer and taxpaying business in Jackson County, West Virginia; and

WHEREAS, under a consent decree permitting the acquisition of Pechiney by Alcan, the purchaser is required to divest that plant by selling it to an owner who would continue to produce brazing sheet at the plant; and

WHEREAS, this Authority is concerned that a new owner would lack the capability to operate the plant successfully in light of the plant's lack of profitability and the necessity of integrating it into allied operations of the owner; and

WHEREAS, a shutdown at the plant would be devastating to the people of Jackson County; and

WHEREAS, continued operation of the plant by Alcan, a qualified owner, would avert the danger of a shutdown of the plant; therefore

IT IS RESOLVED, that the foregoing concerns of the Jackson County Development Authority should be made known to the Court considering the consent decree, so that the public interest may be served and the Court might, if no reliable buyer is found for the plant, reconsider the advisability of terminating the requirement of divestiture and permit Alcan to own and operate the plant.

I understand that comments made to you will be conveyed to the parties to the consent decree and to the court.

Very truly yours,

Marci D. Weyer
President
Jackson County Development Authority

JC Development Authority
Jackson County DA

Mark A. Kassing, Executive Director
104 Miller Drive • Ripley, WV 25271
(304) 372-1151 • Fax: (304) 372-1153
E-Mail info@jcda.org

RESOLUTION

WHEREAS, the Jackson County Development Authority is a body politic created by act of the Jackson County Commission; and

WHEREAS, Pechiney Rolled Products is a major employer and taxpaying business in Jackson County, West Virginia; and

WHEREAS, under a consent decree permitting the acquisition of Pechiney by Alcan, the purchaser is required to divest that plant by selling it to an owner who would continue to produce brazing sheet at the plant; and

WHEREAS, this Authority is concerned that a new owner would lack the capability to operate the plant successfully in light of the plant's lack of profitability and the necessity of integrating it into allied operations of the owner; and

WHEREAS, a shutdown at the plant would be devastating to the people of Jackson County; and

WHEREAS, continued operation of the plant by Alcan, a qualified owner, would avert the danger of a shutdown of the plant; therefore

IT IS RESOLVED, that the foregoing concerns of the Jackson County Development Authority should be made known to the Court considering the consent decree, so that the public interest may be served and the Court might, if no reliable buyer is found for the plant, reconsider the advisability of terminating the requirement of divestiture and permit Alcan to own and operate the plant.

U.S. Department of Justice

Antitrust Division

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

March 15, 2004

The Honorable Ollie M. Harvey
Mayor
City of Ripley
113 South Church Street
Ripley, West Virginia 25271

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 Mayor Harvey:

This letter responds to your letter of February 9, 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.

In your letter, submitted on behalf of Ripley's Common Council, you noted that, in order to preserve local employment opportunities and retiree benefits, the Ravenswood facility must be divested to a firm that is, above everything else, competitively viable. 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. *See* Judgment, § II(E)(1)-(3).

Concern 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 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.

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

City of Ripley
113 SOUTH CHURCH STREET
RIPLEY, WV 25271
Phone: (304) 372-3482
Fax: (304) 372-6693

Mayor
Ollie M. Harvey
Recorder
William E. Casto

February 9, 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/288322-00004

Dear Ms. Petrizzi:

On behalf of the Common Council we are concerned about the proposed divestiture of Pechiney Rolled Products under a consent decree provision in the settlement of Alcan's acquisition of Pechiney. This divestiture is causing concern among retirees who depend upon the continued operation of the Pechiney Rolled Products plant for payment of medical benefits.

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. Three of our council members are plant retirees, and, one is employed by Pechiney.

My husband, Don, is a retired employee of the Ravenswood Works with forty-two (42) years of service as a metallurgical engineer. Are we worried about the sale of the facility to a qualified owner who can successfully keep the plant operating - - **very definitely.**

For the protection of the current employees and the retirement group, 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 Henthorne
Russ Vannoy Victor Yoak

It is imperative for the life of this community that the Pechiney plant be owned and operated by a company committed to long-term production 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,

Ollie M. Harvey
MAYOR

OMH:isb

Cc: Governor Bob Wise
Senator Robert Byrd
Senator Jay Rockefeller

U.S. Department of Justice

Antitrust Division

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

March 15, 2004

Mr. L. D. Whitman
Chairman
Ravenswood Aluminum Retired Salary
Association Committee
809 Cypress Street
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 of October 29, 2003, 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).

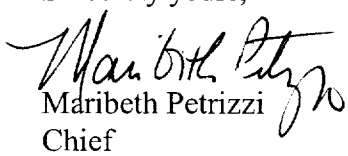
You have noted that the Ravenswood facility is currently unprofitable, and you suggested that the defendants, Alcan and Pechiney, must retain responsibility for the costs of current retiree

pension, health care, and life insurance benefit plans of retirees in order to ensure the competitive viability of any new owner of the Ravenswood facility.

Because the defendants are still soliciting and evaluating offers for Pechiney's brazing sheet assets, it is too early for us to comment on particular terms of any potential divestiture agreement. Even if 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" (*see* Judgment, § V(B)). What we can say, however, is that it is certainly inappropriate to conclude at this time 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."

(13) 477448

ATR

October, 29, 2003

809 Cypress Street
Ravenswood, WV 26164

John Ashcroft
U.S. Dept. of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Regarding: Sale of Ravenswood, West Virginia Rolling Mill

Dear Mr. Ashcroft

The Ravenswood Aluminum Plants' Salaried Retiree Organization is writing this letter to express our concern about the current events as they relate to the Alcan purchase of Pechiney Aluminum.

We understand that the U.S. Justice Department has approved the purchase but Alcan must divest themselves of the Ravenswood Rolling Mill.

It is our understanding that Pechiney purchased the Plant in September 1999 to better compete with Aloca in the critical Aerospace Market. Pechiney has spent in excess of $125 million to improve the Plant's capacity and capability for this Market. The forced sale of Ravenswood will certainly enhance Alcoa's plate position in the world market with a smaller producer's ownership of Ravenswood.

According to the previous and current management, this Plant has not been profitable since it was sold by Kaiser Aluminum in 1989. It is therefore, our desire that Alcan/Pechiney retain the legacy cost, i.e. Pensions, Medical, and Life Insurance for the existing Retirees.

This legacy cost must be addressed to allow this Plant to be profitable. If not, it will in all probability go the way of the Steel Mills and severely impact our State and Community.

As an organization we are willing to have one or more of our Retirees assist the Trustees of the Plant during its transition.

Your immediate attention to this matter is requested!

Sincerely,

L.D. Whitman

L.D. Whitman
Retired Plant Manager
Chairman Ravenswood Aluminum Retired Salary Association Committee.

U.S. Department of Justice

Antitrust Division

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

March 15, 2004

Mr. David R. Jury
Assistant General Counsel
United Steelworkers of America
Five Gateway Venter
Pittsburgh, Pennsylvania 15222

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. Jury:

This letter responds to your letter of February 13, 2004, 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.

Your union, United Steelworkers of America, represents hourly employees and retirees of the Ravenswood facility. In your letter, you expressed support for Governor Bob Wise's previous comment in which he urged modifying the proposed Judgment either to permit Alcan to retain Ravenswood facility (irrespective of the competitive harm the acquisition would cause in the brazing sheet market), or to allow the Ravenswood facility to "revert" to Alcan in the event a new buyer is unable "to keep the plant open." You also expressed a willingness to work constructively with any purchaser willing "to build a relationship" with your union and negotiate "an appropriate labor agreement that protects active members and retirees."

The United States believes that, in order to be an effective competitor, the new owner of Pechiney's brazing sheet business must be capable of operating the assets successfully (*see* Judgment, § IV (J)). 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 the defendants to divest 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).

Any concern that there may not be an acceptable purchaser of these assets may well 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

[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."

United Steelworkers of America

AFL-CIO·CLC

Five Gateway Center
Pittsburgh, PA 15222

412-562-2400 • 412-562-2484 (Fax)

Writer's Direct Dial (412) 562-1164
Writer's Facsimile (412) 562-2429

February 13, 2004

VIA UPS NEXT DAY DELIVERY
1Z 263 055 22 1022 944 4

Ms. Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, N.W.
Suite 3000
Washington, DC 20530

Re: United States v. Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC

United States District Court for the District of Columbia, Case No. 1:03CV02012

Dear Ms. Petrizzi:

I write on behalf of the United Steelworkers of America, AFL-CIO·CLC ("USWA"), the exclusive bargaining representative of the hourly production and maintenance employees employed by Pechiney Rolled Products ("Pechiney") at its Ravenswood, West Virginia facility. This letter is submitted under the terms of the Tunney Act, 15 U.S.C. §16, and relates to the Final Judgment that has been proposed in this matter.

It is our understanding that West Virginia Governor Bob Wise has submitted to you a letter in which he proposes that the Final Judgment be modified either to permit Alcan Aluminum Corporation ("Alcan") to retain the brazing sheet business and other operations at the Ravenswood facility (thus obviating the need for the marketing and sale of the plant) or provide that the facility "revert" to Alcan in the event that the buyer of the plant is unable to keep the plant in operation. Governor Wise clearly has acted out of his concern about the future of aluminum making at Ravenswood, a future that is now uncertain as no purchaser for the plant has been identified.

As the representative of the hourly employees and retirees of the Ravenswood plant, it goes without saying that the USWA shares that concern. The USWA is prepared

to work constructively with all parties-in-interest relating to the sale of the facility and to engage with any prospective purchaser that wishes to build a relationship with the USWA and negotiate an appropriate labor agreement that protects both our active members and retirees. Nevertheless, because the results of any sale process cannot be predicted today, the USWA would support modifying the Final Judgment generally in the manner that Governor Wise has suggested, provided, of course, that Alcan consents to such treatment.

Respectfully submitted,

David R. Jury
Assistant General Counsel

DRJ/dd
cc: Leo Gerard, International President
Andrew Palm, International Vice President
Lawrence McBrearty, Canadian National Director
Ernest R. Thompson, Director
Tim Dean, Sub-District Director

U.S. Department of Justice

Antitrust Division

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

March 15, 2004

Ms. Renee Martin-Nagle
Vice President and General Counsel
Airbus North America Holdings, Inc.
198 Van Buren Street
Suite 300
Herndon, Virginia 20170-5335

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 Ms. Martin-Nagle:

This letter responds to your letter of November 21, 2003, 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, Airbus North America Holdings, Inc., purchases various rolled aluminum products from the Ravenswood facility that would be divested pursuant to the terms of the proposed Judgment. Airbus is concerned that any new owner of Pechiney's brazing sheet assets must have "the technical, financial, and managerial qualifications necessary to operate the plant effectively in extremely competitive global markets." You have requested an opportunity to comment on the qualifications of a prospective buyer before the United States exercises its "sole discretion" and concludes that that firm is an acceptable purchaser of the assets pursuant to the terms of the Judgment, § IV(J).

The United States shares your concern that, to be an effective competitor, the new owner of Pechiney's brazing sheet business must be capable of operating the assets successfully. For that reason, a lynchpin of the proposed decree is its requirement that the Ravenswood facility be divested to a person who, in the United States's sole discretion, 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)).

Although the United States reserves "sole discretion" as to whether a prospective buyer of Pechiney's brazing sheet business may be a viable and effective competitor (*see* Judgment, § IV(J)), it will consider your company's view before making a final decision on that question.

In any event, the divestiture process is continuing and has yet to produce any proposed purchaser. Although the defendants have solicited offers for Pechiney's brazing sheet assets, they have not proposed a purchaser for the divested assets. If 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)). In short, at this point, we cannot 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.

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

cc: Richard Liebeskind, Esquire

AIRBUS

November 21, 2003

Anthony Harris, Esq.
U.S. Department of Justice
Litigation II Section, Suite 3000
1401 H Street, NW
Washington, DC 20530

Re: U.S. v. Alcan, Inc.

Dear Mr. Harris:

On behalf of Airbus SAS. and Airbus North America Holdings, Inc., I hereby request that Airbus be advised about each potential purchaser of the Ravenswood, West Virginia facility that is considered by the Department of Justice pursuant to the consent decree in the above-captioned case. Specifically, Airbus asks that you provide it with the opportunity to comment in a timely and effective way on the qualifications of any such purchaser. You may send all information to Airbus by addressing it to me at the address below. In addition, I ask that you also send a copy Martyn Brown at Airbus UK, Ltd., B3 New Tech Center, Golf Course Lane, Filton, Bristol, UK BS99 7AR.

As you know, Airbus purchases significant amounts of highly specialized aluminum products from the Ravenswood plant and is very concerned that Ravenswood be owned by a company with the technical, financial, and managerial qualifications necessary to operate the plant effectively in extremely competitive global markets. Further, the sale of the Ravenswood facility has the potential to cause damage to our commercial competitiveness by raising prices for specialized aluminum.

Thank you in advance for your consideration. Please feel free to call me at (703) 834-3545 should you have any questions or concerns.

Sincerely,

Renée Martin-Nagle
Vice-President & General Counsel

cc Martyn Brown
Richard Liebeskid

AN EADS JOINT COMPANY
WITH BAE SYSTEMS

AIRBUS NORTH AMERICA
HOLDINGS, INC.

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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,

Maribeth Petrizzi
Chief
Litigation II Section

AMERICAN®
ELECTRIC
POWER

American Electric Power
707 Virginia Street, E., Suite 1100
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Mark E. Dempsey
West Virginia President

304-348-4120
medempsey@aep.com

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, 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

U.S. Department of Justice

Antitrust Division

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

March 15, 2004

Mr. Ron Thompson
Vice President of Operations
Century Aluminum of West Virginia, Inc.
Ravenswood Operations
Post Office Box 98
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. Thompson:

This letter responds to your February 12, 2004 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.

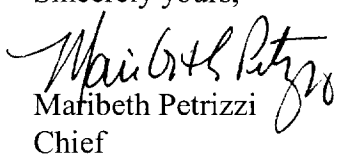
Your company, Century Aluminum, is a major customer of the Ravenswood facility that would be divested pursuant to the terms of the proposed Judgment, selling the facility between 275 and 325 million pounds of primary aluminum annually. In your letter, you expressed a concern that in order to meet your company's credit standards, the Ravenswood facility must be sold to a firm with the necessary financial, technical, and marketing resources that would enable it to operate the Ravenswood facility 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).

However, at this stage of the divestiture process, it is premature to speculate as to whether such a purchaser currently exists. 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, it would be speculative 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."

Century ALUMINUM

Ravenswood Operations

February 12, 2004

Ms. 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 Plant, Ravenswood, West Virginia

Dear Ms. Petrizzi:

I am the manager of the Century Aluminum primary aluminum plant at Ravenswood, West Virginia. The plant is located adjacent to the Pechiney Rolled Products plant which is to be divested by Alcan under a pending consent decree. The two plants operated as an integrated entity from the late 1950s, when they were constructed by Kaiser Aluminum, until 1999 when Century sold the rolling mill portion to Pechiney. Our plant has 700 employees and has pension and health benefits obligations to 300 retirees.

The rolling mill is the major customer for our plant. It contractually purchases between 275 million and 325 million pounds of primary aluminum a year out of our total yearly production of about 375 million pounds. The metal is delivered in molten or liquid form as it comes out of Century's electrolytic cells. This eliminates the need for the metal to be cast by Century and then re-melted by the mill for casting into shapes suitable for rolling. This arrangement and the close proximity of the plants produce savings that are shared by the parties.

Century Aluminum's principal concern with the divestiture process is that prospective new owners may not meet our company's credit standards. Century typically holds as much as $30.0 million in accounts receiveable each month under the existing contract – a significant liability for a company our size. Consequently we would require that a new owner possess a credit rating approximating that of Pechiney/Alcan.

Century Aluminum of West Virginia, Inc.
Post Office Box 98
Ravenswood, WV 26164

(304) 273-6000 Phone

A Century Aluminum Company

The anti-trust implications of Alcan's ownership and operation of the mill – specifically with respect to the rolling of brazing sheet – are not for our company to judge. From first-hand experience in operating the mill, we are able to say with authority, however, that operation of the mill requires substantial financial, technical and marketing resources. Under new ownership, the Ravenswood mill would compete directly against large producers of premium rolled products, including Alcan and Alcoa, the world's two largest aluminum manufacturers.

I hope we have provided you with a fuller understanding of the inter-related manufacturing processes between our reduction plant and the rolling mill. We hope that the mill will continue to operate under the management of an owner with all of the resources required to assure its economic success.

We are available to provide any additional information you may require.

Sincerely,

Ron Thompson

Ron Thompson
Vice President of Operations
Century Aluminum of West Virginia, Inc.

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

[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."

Route 1
Box 79A
Ravenswood, WV 26164

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington , DC 20530

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

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 10, 2004

The Honorable Robert C. Byrd
United States Senate
Washington, DC 20510

Dear Senator Byrd:

This responds to your fax to the Department of Justice forwarding concerns of Governor Wise regarding the proposed final judgment in *United States v. Alcan Inc.* The proposed final judgment requires that, to resolve the Department's concern that Alcan's acquisition of Pechiney would harm competition in the production and sale of brazing sheet in North America, the parties divest Pechiney's aluminum rolling mill in Ravenswood, West Virginia.

Governor Wise recommends that Alcan be allowed to keep Pechiney's Ravenswood plant, or that a purchaser for the plant be chosen who possesses the same operational capabilities as Alcan. The Department appreciates having the benefit of Governor Wise's perspective.

The proposed consent decree requires that the Ravenswood plant be sold to someone able to successfully operate it and provide competition for Alcan. This ability to compete effectively is a cornerstone of the decree. Closing the plant or selling the plant to an entity that is not able to compete would not address the competitive problem. Alcan and Pechiney have hired an investment banking firm to identify prospective purchasers and help arrange the purchase, and the Department has no reason to believe that these efforts will not be successful. Furthermore, even if the parties do not find a purchaser acceptable to the Department on their own, the Department would appoint a trustee to conduct an independent search for an appropriate purchaser.

Please be assured that the Antitrust Division will take Governor Wise's comments and all other public comments into consideration before asking the court in this case to consider whether entry of the consent decree is in the public interest. If we can be of further assistance on this or any other matter, please do not hesitate to contact this office.

Sincerely,

William E. Moschella

William E. Moschella
Assistant Attorney General

DEPARTMENT OF JUSTICE
Antitrust Division

R. HEWITT PATE
Assistant Attorney General

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(202) 514-2401 / (202) 616-2645 (Fax)
E-mail: antitrust@usdoj.gov
Web site: http://www.usdoj.gov/atr

FEB 25 2004

The Honorable Robert C. Byrd
United States Senate
Washington, DC 20510

Dear Senator Byrd:

This responds to your letter to the Department of Justice, which forwarded concerns of your constituent, L.D. Whitman, Chairman of the Ravenswood Aluminum Retired Salary Association Committee, regarding the proposed consent decree in *United States v. Alcan Inc.* The proposed decree requires that to resolve the Department's concern that Alcan's acquisition of Pechiney would harm competition in the production and sale of brazing sheet in North America, the parties must divest Pechiney's aluminum rolling mill in Ravenswood, West Virginia. Mr. Whitman, a former manager of the Ravenswood rolling mill, expresses his concern that in order for Ravenswood's new owner to compete effectively, Alcan and Pechiney must agree to retain this facility's substantial legacy costs (*i.e.*, pension, medical, and life insurance benefits for current retirees) – expenses, which, in Mr. Whitman's view, have been a major impediment to the continued profitability and viability of Ravenswood.

The requirement in the proposed consent decree is that the Ravenswood rolling mill be sold to someone who will be able to successfully operate the facility and provide competition for Alcan, Alcoa, and others; this is a cornerstone of the decree. Alcan and Pechiney have recently retained an investment banking firm to identify prospective purchasers and help arrange the purchase, and the Antitrust Division has no reason to believe that these efforts will not be successful. Please be assured that the Antitrust Division will take Mr. Whitman's comments and all other public comments into consideration before asking the court in this case to consider whether entry of the consent decree is in the public interest.

If we can be of further assistance on this or any other matter, please contact this office.

Yours sincerely,

R. Hewitt Pate

TED STEVENS, ALASKA, CHAIRMAN

THAD COCHRAN, MISSISSIPPI
ARLEN SPECTER, PENNSYLVANIA
PETE V. DOMENICI, NEW MEXICO
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
MITCH McCONNELL, KENTUCKY
CONRAD BURNS, MONTANA
RICHARD C. SHELBY, ALABAMA
JUDD GREGG, NEW HAMPSHIRE
ROBERT F. BENNETT, UTAH
BEN NIGHTHORSE CAMPBELL, COLORADO
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TOM HARKIN, IOWA
BARBARA A. MIKULSKI, MARYLAND
HARRY REID, NEVADA
HERB KOHL, WISCONSIN
PATTY MURRAY, WASHINGTON
BYRON DORGAN, NORTH DAKOTA
BARBARA BOXER, CALIFORNIA

STEVEN J. CORTESE, STAFF DIRECTOR
JAMES H. ENGLISH, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

December 30, 2003

Mr. William Moschella
Assistant Attorney General for Office of Legislative Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 1145
Washington, D.C. 20530

Dear Mr. Moschella:

The enclosed communication is respectfully referred for your consideration, since it concerns a matter within the jurisdiction of your office.

I would appreciate your looking into the matter referenced in the accompanying letter, and providing me with your views on the concerns raised by my constituent.

With kind regards, I am

Sincerely yours,

Robert C. Byrd

Robert C. Byrd

RCB: kh
Enclosures

October, 29, 2003

809 Cypress Street
Ravenswood, WV 26164

Senator Robert C. Byrd
311 Hart Senate Office Building
Washington D.C., 20510

Regarding: Sale of Ravenswood, West Virginia Rolling Mill

Dear Senator Byrd,

The Ravenswood Aluminum Plants' Salaried Retiree Organization is writing this letter to express our concern about the current events as they relate to the Alcan purchase of Pechiney Aluminum.

We understand that the U.S. Justice Department has approved the purchase but Alcan must divest themselves of the Ravenswood Rolling Mill.

It is our understanding that Pechiney purchased the Plant in September 1999 to better compete with Aloca in the critical Aerospace Market. Pechiney has spent in excess of $125 million to improve the Plant's capacity and capability for this Market. The forced sale of Ravenswood will certainly enhance Alcoa's plate position in the world market with a smaller producer's ownership of Ravenswood.

According to the previous and current management, this Plant has not been profitable since it was sold by Kaiser Aluminum in 1989. It is therefore, our desire that Alcan/Pechiney retain the legacy cost, i.e. Pensions, Medical, and Life Insurance for the existing Retirees.

This legacy cost must be addressed to allow this Plant to be profitable. If not, it will in all probability go the way of the Steel Mills and severely impact our State and Community.

As an organization we are willing to have one or more of our Retirees assist the Trustees of the Plant during its transition.

Your immediate attention to this matter is requested!

Sincerely,

L.D. Whitman

L.D. Whitman
Retired Plant Manager
Chairman Ravenswood Aluminum Retired Salary Association Committee.

DEPARTMENT OF JUSTICE
Antitrust Division

R. HEWITT PATE
Assistant Attorney General

Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
(202) 514-2401 / (202) 616-2645 (Fax)
E-mail: antitrust@usdoj.gov
Web site: http://www.usdoj.gov/atr

FEB 25 2004

The Honorable Robert C. Byrd
United States Senate
Washington, DC 20510

Dear Senator Byrd:

This responds to your letter to the Department of Justice forwarding concerns of your constituent Toni Burks regarding the proposed consent decree in *United States v. Alcan Inc.* The proposed decree requires that, to resolve the Department's concern that Alcan's acquisition of Pechiney would harm competition in the production and sale of brazing sheet in North America, the parties divest Pechiney's aluminum rolling mill in Ravenswood, West Virginia. Ms. Burks is concerned that if there is no attractive buyer for the facility, Alcan might decide to close it.

The decree requires that the Ravenswood plant be sold to someone able to successfully operate it and provide competition for Alcan; this is a cornerstone of the decree. Simply closing the plant would not address the competitive problem. Alcan and Pechiney have hired an investment banking firm to identify prospective purchasers and help arrange the purchase, and the Department has no reason to believe that these efforts will not be successful. Furthermore, even if the parties do not find a purchaser acceptable to the Department on their own, the Department would appoint a trustee to conduct an independent search for a purchaser.

Please be assured that the Antitrust Division will take Ms. Burks's comments and all other public comments into consideration before asking the court in this case to consider whether entry of the consent decree is in the public interest. If we can be of further assistance on this or any other matter, please do not hesitate to contact this office.

Yours sincerely,

R. Hewitt Pate

DEPARTMENT OF JUSTICE
Antitrust Division

R. HEWITT PATE
Assistant Attorney General

Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
(202) 514-2401 / (202) 616-2645 (Fax)
E-mail: antitrust@usdoj.gov
Web site: http://www.usdoj.gov/atr

NOV 20 2003

The Honorable Shelley Moore Capito
U.S. House of Representatives
Washington, DC 20515

Dear Congresswoman Capito:

This responds to the e-mail you forwarded from your constituent Toni Burks regarding the proposed consent decree in *United States v. Alcan Inc.* The proposed decree requires that, to resolve the Department of Justice's concern that Alcan's acquisition of Pechiney would harm competition in the production and sale of brazing sheet in North America, the parties divest Pechiney's aluminum rolling mill in Ravenswood, West Virginia. Ms. Burks expresses concern that if there is no buyer for this facility, Alcan might retain it and later decide to close it.

The requirement that the Ravenswood plant be sold to someone who will be able to successfully operate the facility and provide competition for Alcan is a cornerstone of the proposed consent decree. Alcan and Pechiney have recently retained an investment banking firm to identify prospective purchasers and help arrange the purchase, and the Antitrust Division has no reason to believe that these efforts will not be successful. Please be assured that the Antitrust Division will take Ms. Burks's and all other public comments into consideration before asking the court in this case to consider whether entry of the consent decree is in the public interest.

If we can be of further assistance on this or any other matter, please do not hesitate to contact this office.

Yours sincerely,

R. Hewitt Pate
Assistant Attorney General

cc: Toni Burks

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United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

December 30, 2003

Mr. William Moschella
Assistant Attorney General for Office of Legislative Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 1145
Washington, D.C. 20530

Dear Mr. Moschella:

The enclosed communication is respectfully referred for your consideration, since it concerns a matter within the jurisdiction of your office.

I would appreciate your looking into the matter referenced in the accompanying e-mail, and providing me with your views on the concerns raised by my constituent.

With kind regards, I am

Sincerely yours,

Robert C. Byrd

RCB: kh
Enclosures

Snapshot Report: Incoming Constituent Message

Imported through Webrespond Daemon

Report Date: 9/30/2003

Assign Staff:	email				
Address To:	General				
Name:	**Mrs.**	**Toni**		**Burks**	
Address:	705 Chambers Drive				
	Ravenswood	WV	26164	USA	
Email Addr:	burkst@charter.net				**URL:**
Home Phone:	(304) 273-9680		**Cell Phone:**		
Work Phone:			**Fax:**		
Salutation:	Dear Mrs. Burks:		**In Type:**		**Reply Ltr:**
Interest Code:	W-BUSINESS		**Org Name:**		**Assign Ltr:**
Classification:			**P. Code:**		**Category 1:**
Ref. Number:			**Grp Id:**	W030930	**Category 2:**
			Title:		**Category 3:**

Message Body:

Subject Desc: Business

Date Received: 9/29/2003 10:01:27 PM

Dear Senator Byrd,

We have just heard the Justice Department has approved the Alcan purchase of Pechiney subject to the divestiture of the Ravenswood Aluminum operations.

Those of us in Ravenswood have also heard there is very likely no buyer and that Pechiney will be shutting the plant down "if that's what it takes to seal the deal." The closure may be rumor, but sounds plausible.

Jobs in West Virginia are so precious and few, is there anything you can do?

Thank you,

Toni Burks
Ravenswood, WV

SHELLEY MOORE CAPITO
2ND DISTRICT, WEST VIRGINIA

COMMITTEES:
TRANSPORTATION & INFRASTRUCTURE
FINANCIAL SERVICES
SMALL BUSINESS

461921

Congress of the United States
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Washington, DC 20515-4802

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MARTINSBURG, W.V. 25401
304-264-8810

WWW.HOUSE.GOV/CAPITO

October 3, 2003

Christopher Rizzuto
Director of Congressional and Public Affairs
U.S. Department of Justice
810 Seventh Street, N.W. 6th Floor
Washington, DC 20531

Dear Director:

Recently a constituent of mine, Toni Burks, contacted my office with concerns about a recent Justice Department ruling. After reviewing the request, I have forwarded the letter to you so that the matter can be more directly handled.

Thank you for your time and effort. Please send any response directly to the constituent.

Sincerely,

Shelley

Shelley Moore Capito, M.C.

PRINTED ON RECYCLED PAPER

View e:\emailobj\200309\2\929220203.txt

From: Write your representative <writerep@www6.house.gov>
Date: 9/29/2003 10:01:56 PM
To: wv02wyr@housemail.house.gov
Subject: WriteRep Responses

We have just heard the justice department has approved the Alcan purchase of Pechiney subject to the divestiture of the Ravenswood Aluminum operations. Those of us in Ravenswood have also heard there is very likely no buyer and that Pechiney will be shutting the plant down "if that's what it takes to seal the deal." The closure may be rumor, but sounds plausible.
Jobs in West Virginia are so precious and few, is there anything you can do?
Thank you,

Toni Burks
Ravenswood, WV

==== Original Formatted Message Starts Here ====

DATE: September 29, 2003 8:19 PM
NAME: Toni Burks
ADDR1: 705 Chambers Drive
ADDR2:
ADDR3:
CITY: Ravenswood
STATE: West Virginia
ZIP: 26164-1305
PHONE: 304-273-9680
EMAIL: burkst@charter.net
msg:

We have just heard the justice department has approved the Alcan purchase of Pechiney subject to the divestiture of the Ravenswood Aluminum operations. Those of us in Ravenswood have also heard there is very likely no buyer and that Pechiney will be shutting the plant down "if that's what it takes to seal the deal." The closure may be rumor, but sounds plausible.
Jobs in West Virginia are so precious and few, is there anything you can do?
Thank you,

Toni Burks
Ravenswood, WV

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 10, 2004

The Honorable Robert C. Byrd
United States Senate
Washington, DC 20510

Dear Senator Byrd:

This responds to your fax to the Department of Justice forwarding concerns of Governor Wise regarding the proposed final judgment in *United States v. Alcan Inc.* The proposed final judgment requires that, to resolve the Department's concern that Alcan's acquisition of Pechiney would harm competition in the production and sale of brazing sheet in North America, the parties divest Pechiney's aluminum rolling mill in Ravenswood, West Virginia.

Governor Wise recommends that Alcan be allowed to keep Pechiney's Ravenswood plant, or that a purchaser for the plant be chosen who possesses the same operational capabilities as Alcan. The Department appreciates having the benefit of Governor Wise's perspective.

The proposed consent decree requires that the Ravenswood plant be sold to someone able to successfully operate it and provide competition for Alcan. This ability to compete effectively is a cornerstone of the decree. Closing the plant or selling the plant to an entity that is not able to compete would not address the competitive problem. Alcan and Pechiney have hired an investment banking firm to identify prospective purchasers and help arrange the purchase, and the Department has no reason to believe that these efforts will not be successful. Furthermore, even if the parties do not find a purchaser acceptable to the Department on their own, the Department would appoint a trustee to conduct an independent search for an appropriate purchaser.

Please be assured that the Antitrust Division will take Governor Wise's comments and all other public comments into consideration before asking the court in this case to consider whether entry of the consent decree is in the public interest. If we can be of further assistance on this or any other matter, please do not hesitate to contact this office.

Sincerely,

William E. Moschella

William E. Moschella
Assistant Attorney General

Saundra

FROM THE OFFICE OF U.S. SENATOR ROBERT C. BYRD

FAX COVER SHEET

DATE 2/20/04 SENDER'S INITIALS KHH

TIME 3:05 pm

PAGES (INCLUDING COVER SHEET) 2

PLEASE DELIVER TO:

ORGANIZATION: DOJ

ATTENTION: William Moschella, Esq.

TELEPHONE NUMBER: (202) 514-2141

FAX NUMBER: (202) 514-5821

COMMENTS: Thank you for taking my call. Attached is the Governor's letter, which Senator Byrd asked me to send to you by mail on February 17, 2004.

U.S. SENATOR ROBERT C. BYRD
311 HART SENATE OFFICE BUILDING
WASHINGTON, D.C. 20510

FROM: Kathleen Hartnett, Esq.

TELEPHONE NUMBER (202) 224-3360

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

Bob Wise
GOVERNOR

February 13, 2004

VIA FAX AND OVERNIGHT COURIER

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington, DC 20530

Re: United States v. Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC

United States District Court for the District of Columbia, Case No. 1:03CV02012

Dear Ms. Petrizzi:

As Governor of the State of West Virginia, I object to the proposed Final Judgment in *United States v. Alcan Aluminum Corp.* and ask the United States District Court for the District of Columbia to reject the Final Judgment as currently written and to enter a final judgment that will protect the citizens of West Virginia by allowing Alcan to own the plant of Pechiney Rolled Products. The Final Judgment is flawed and the divestiture it requires is unnecessary and contrary to the public interest.

The planned merger of Alcan and Pechiney is global in scope and involves the integration of facilities and operations all over the world. It is ironic and incredible that the Justice Department somehow sees Jackson County, West Virginia, as the only area of certain danger as a result of this merger. It is wholly unacceptable that West Virginia's economy and hundreds of its citizens may suffer because the Justice Department has chosen to bargain away their rights in exchange for an agreed order to hastily and recklessly resolve a theoretical concern. It is disappointing that the Justice Department apparently has opted for the expedience of an agreed order imposing an artificial remedy and has made West Virginia's jobs and economy a bargaining chip in the process.

West Virginia does not oppose the acquisition of Pechiney, S. A. by Alcan Aluminum Corporation. However, West Virginia is vitally concerned with that part of the proposed Final Judgment that requires Alcan to divest the plant of Pechiney Rolled Products, located at Ravenswood, West Virginia. If new owners of the plant lack the qualifications necessary for success, the plant will fail and close. That would be a disaster for many people and communities in West Virginia. The economic impact of closure of this facility would be devastating for hundreds of employees and retirees of the Ravenswood facility and the economies of Jackson County and the State as a whole.

This letter of opposition is submitted to the Court and the Justice Department under the terms of the Tunney Act, 15 U.S.C. § 16. Under that Act, the Court must determine whether the proposed Final Judgment is in the public interest, and may consider "effects of alternative remedies actually considered" and "the impact of such judgment upon the public generally."

The Final Judgment puts the public interest in serious jeopardy. If it is not implemented in the public interest, many persons are certain to suffer.

The Ravenswood Plant

The Pechiney Rolled Products plant at Ravenswood employs approximately 960 workers, 700 of whom are hourly workers. It currently has approximately 900 retirees.

The Ravenswood plant is an integrated facility that produces aluminum sheet, aluminum slab, various aluminum specialty products, and brazing sheet. The brazing sheet market is the only one that apparently concerns the Justice Department, but it makes up only a relatively small part of the plant's total output. Pechiney Rolled Products sells about 35 million pounds of brazing sheet per year. Only 28% of the plant's output is brazing sheet. Brazing sheet is a small market, and a small portion of the rolled products sales. Though the plant's larger volume products (principally aluminum plate and sheet) are not the subject of any antitrust concern, the proposed Final Judgment would affect all of the plant's products because the entire plant is to be sold pursuant to its terms.

The plant's dominant product is aluminum plate which is sold as general engineering plate and plate for the aerospace industry. Some aluminum product is produced for transportation manufacturers for railcars, tanker trailers, and wide roofs for freight trailers. The Ravenswood plant also sells rolled aluminum for building products – siding and downspouts. Aerospace customers require product that meets exacting safety standards and they rely on their suppliers for technical support. Pechiney is able to give technical customer support. It has research facilities near Grenoble, France. It has machinery for running trials. It has intellectual property rights, which it will retain after the merger. A buyer of the Ravenswood plant would have to be equally capable of meeting the demands of buyers of these products.

Brazing sheet is not a commodity product. Its production and sale are heavily dependent on technology—for product development and for customer service. There are actually forty different brazing sheet products, some of it "header stock"—the top of the radiator – and "tube stock" – the water carrying tubes that are air-cooled. Competition in the brazing sheet market

is not on price alone, but also on performance, quality, alloy development, product development, service, and long-term relationships.

Defects in the Final Judgment

The Final Judgment is defective because it compels the divestiture of the Ravenswood plant. For reasons discussed in the next section of this comment and objection, Alcan's ownership of the plant would not endanger competition in any market. The fundamental premise of the Final Judgment is erroneous.

The Final Judgment fails to account for the range of products manufactured at Ravenswood. It ignores the products other than brazing sheet. If the search for a successor fails to take the other products into account, there is substantial danger that an ostensible "new owner" found by Alcan under the Final Judgment would lack the necessary experience and technical capability of producing and selling the full range of these products.

The Final Judgment lacks adequate standards for the search for new owners of the Ravenswood plant. It provides no guidance in the event that a qualified buyer with the adequate capital capability is not found by Alcan or the trustee.

Moreover, even if a purchaser is found, it does not have to agree to be bound by the proposed Final Judgment. Consent Final Judgment, ¶¶ II.E and IV.A.

The purchaser must demonstrate only that the acquired assets will be used "as part of a viable, ongoing business, engaged in developing, manufacturing, and *selling brazing sheet* in North America." Consent Final Judgment, ¶ IV.J *This requirement ignores the important fact that brazing sheet is only one of the products (28% of the total production) manufactured at Ravenswood.* In fact, the proposed Final Judgment ignores 72% of the products made by this plant that is to be sold. The plant will not survive unless the purchaser makes a commitment to make and sell *all* of the Ravenswood products.

The Final Judgment does not require the purchaser to make its commitments for any length of time. How long the purchaser must operate the plant is not specified. The purchaser need not give assurance for sustained operation.

If the divestiture process were allowed to proceed and if Alcan is unable to find a purchaser acceptable to the Justice Department within the time allowed (120-180 days after the end of the tender offer), a trustee will be appointed to make the sale. Consent Final Judgment, ¶¶ IV.A and V. Any potential purchaser truly capable of operating the plant effectively will surely be located during the time allowed to Alcan. If the sale falls to the hands of a trustee, the likelihood of finding an effective owner of the plant is virtually nil.

The recent owners of the plant have not been able to operate it profitably. Unprofitable plants are often bought by purchasers who intend to sell off assets and go out of business. New owners might also attempt to avoid pension obligations undertaken by Pechiney, its

predecessor owners, or successors. The Final Judgment does not sufficiently guard against these disastrous possibilities.

Final Judgments like the one proposed in this case often fail to result in successful operations after the divestiture. A 1999 FTC Divestiture Study[1] found that buyers of divested assets often lack the information necessary to carry on the business successfully. They often do not fully know what assets they need to succeed in the business, or whether the assets offered by the sellers are up to the task.[2] Attempts by Alcan to find purchasers experienced in brazing sheet would identify potential buyers that might not be capable of making and selling Ravenswood's other products.

Under these circumstances, particularly in light of the inadequacy of the Final Judgment, the State of West Virginia fears that the urgency in finding a buyer for Ravenswood will lead to a sale to owners who will not keep the plant open. These real dangers make it necessary for the State of West Virginia to register these objections.[3]

The Effect of the Acquisition on Competition

Divestiture of the Ravenswood plant, part of which includes Pechiney's Brazing Sheet Business, is totally unnecessary. Competition in the brazing sheet market is active now and will remain active after the purchase of Pechiney by Alcan. There is sound reason to believe that intense competition would continue in the brazing sheet market if Alcan retained ownership of Pechiney Rolled Products. The Final Judgment and the Justice Department's Competitive Impact Statement ("CIS") fail to analyze the effect of the acquisition on the markets for the products of Pechiney Rolled Products other than brazing sheet.

Competitors in the brazing sheet market are, in order of market share, Alcoa, Pechiney Rolled Products, Alcan and Corus. Alcoa obtained its position as the market leader when it acquired Alumax, which had brazing sheet production facilities at Lancaster, Pennsylvania. Alcoa has been, until now, the world's largest aluminum producer. The combination of Alcan and Pechiney takes that title away from Alcoa. The competition between Alcoa and Alcan around the world has been intense, and the rivalry would continue after this combination is formed,

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[1] FTC, "A Study of the Commission's Divestiture Process" (1999), *available at* www.ftc.gov/os/1999/9908/index.htm#6.

[2] See Richard Parker and David Balto, "The Evolving Approach to Merger Remedies," ANTITRUST REPORT, May 2000 (Matthew Bender), 2, 9.

[3] "One particular complication in selling Ravenswood could be the plant's capacity to produce hard alloy plate for the aerospace industry. Operating a plate mill required the support of a research and development team, according to Lloyd O'Carroll of BB&T Capital Markets, and few companies had that capability. In North America, the only company in the market besides Alcoa and Alcan-Pechiney was Houston-based Kaiser Aluminum Corp., O'Carroll said, but Kaiser was struggling to emerge from Chapter 11 bankruptcy protection and was unlikely to have the cash to finance an acquisition unless it succeeded in selling off some of its alumina assets. Anglo-Dutch steel and aluminum producer Corus Group Plc also produces plate but has said it intends to exit the aluminum business." Online American Metal Market, October 1, 2003, http://www.findarticles.com/cf_dls/m3MKT/39-3_111/108450462/p1/article.jhtml.

especially since Alcoa surely will attempt to regain its standing as the world leader in brazing sheet production.

Purchasers of brazing sheet from the Ravenswood plant and other similar facilities are Tier 1 suppliers to the automotive industry. These are large, sophisticated buyers that are capable of negotiating favorable prices. Furthermore, they must qualify to supply the automobile manufacturers, and they in turn require qualification by those who supply them with materials like brazing sheet. Each Tier 1 supplier chooses suppliers of brazing sheet from whom it will demand qualification. This means that each brazing sheet producer does not compete with all other brazing sheet sellers in seeking the business of a Tier 1 supplier, but at the most one or two of the other sellers. Purchasers want to maintain at least two reliable sources. These circumstances significantly reduce the impact of market share as a factor for analysis of the anti-competitive effects of the proposed merger.

The Justice Department asserts in its CIS that Alcan is a new "maverick" that is using low prices to gain market share in the brazing sheet market. If Alcan owned the Pechiney Rolling Products plant, the Justice Department believes it would gain that market share without price concessions. This would lead it to abandon its low-price strategy, hurting purchasers who now enjoy the benefits of Alcan's low prices. That analysis by the Justice Department is highly questionable. First, as a practical matter, Alcan is unlikely to use a low price strategy any longer than necessary to gain the market share it wants. Once it gains the market share it seeks, the low price strategy will end and purchasers will not have any price benefit. Second, Alcan shares the brazing sheet market with its arch-rival Alcoa, the major seller in the market. Alcan could not raise prices above Alcoa's price, and vice versa. There is price discipline in the market with these two sellers vying with one another. Alcan's low prices are a short-term strategy. It is not worth the risks posed by the consent decree to require divestiture just to get this short term advantage. Indeed, allowing Alcan to retain the Ravenswood facility may very well create a pro-competitive effect in that Alcoa will have to find ways to regain its "world leader" title. Third, the buyers of brazing sheet are large, sophisticated purchasers who are capable of negotiating prices.

In spite of the Justice Department's concerns, Alcan would be the best owner of the Ravenswood plant. Among the reasons for this conclusion are these:

1. The divestiture is not necessary because competition in the brazing sheet market without the divestiture would continue to be intense.
2. Alcan, being aggressive in its competition with Alcoa, would maximize the potential of the Ravenswood plant better than any other owner. Contrary to the Justice Department's view that Alcan would not compete aggressively as owner of the Ravenswood plant, industry commentators believe that Alcan "could speed up the 'fixing' of Pechiney's Ravenswood facility now under way."[4]
3. Finding a buyer capable of maximizing the potential of the Ravenswood plant would be very difficult, if not impossible, especially in light of the previous lack of profitability of that plant and its legacy costs.

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[4] Online Metal Center News, August 2003.
http://metalcenternews.com/2003/august/mcn0803Merger.htm (viewed 10/6/03)

4. Alcan has the experience and facilities to make and sell all of the products of the Ravenswood plant, not just the brazing sheet upon which the Final Judgment focuses.

Conclusion

West Virginia proposes that the Final Judgment be modified to permit Alcan to retain ownership of the Pechiney Brazing Sheet Business and the other operations of Pechiney Rolled Products at Ravenswood. In the alternative, West Virginia proposes that no buyer be accepted for the Ravenswood plant that has fewer capabilities that those of Alcan, and that if the buyer fails to keep the plant in operation, the plant should revert to Alcan.

The current economic climate demands that the State of West Virginia expend every effort to ensure that no jobs are lost as the result of the Alcan/Pechiney transaction. The proposed Final Order, however, severely threatens our economy and places at severe risk the jobs of hundreds of Ravenswood plant employees and the future welfare of hundreds of its retirees. The State of West Virginia cannot stand idly by and allow its economy and citizens to be jeopardized. The public interest requires that Alcan retain ownership of the plant, or, in the alternative, that the highest priority in this divestiture be given to finding a buyer that is at least as capable as Alcan to operate the plant. If such a buyer cannot be found, Alcan should be permitted to own and operate the plant.

Very truly yours,

Governor Bob Wise