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July 13, 1992

The Honorable James F. Rill
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
10th and Constitution Avenue, N.W.
Room 3107
Washington, D.C. 20530

RE: Nickel Users Purchasing Association, Inc.:
Request for Business Review Letter

Dear Mr. Rill:

On behalf of the Nickel Users Purchasing Association, Inc. (hereinafter the Association), we hereby request from the Antitrust Division a business review letter pursuant to the Business Review Procedure of the Department of Justice, 28 C.F.R. §50.6. The Association, which will be operated as a cooperative, wishes to obtain a statement of the Division's present enforcement intention regarding the negotiating, contracting and arranging for the purchase of primary nickel and the ~~stabilization~~ of its price by the Association on behalf of its members.

The Association is being formed, structured and will operate pursuant to certain guidelines set out by the Department of Justice relating to monopsony and collusion. This letter will set forth the background information necessary to analyze these issues, the impact of the Association's proposed activities on domestic and world nickel markets, the potential diversity of the Association's membership and the role of the independent administrator of the Association.

5A. BACKGROUND

The Association was incorporated as a for-profit, stock corporation on June 18, 1992 under the business corporation statute of the State of North Carolina (copies of the Articles, By-laws and a list of members are attached). Pursuant to its duly adopted Articles and By-laws, the purposes of the Association include purchasing, stockpiling, warehousing, selling, and importing certain raw materials, primarily nickel, for use in the members' metal making business. The initial members of the Association combined make up about five percent (5%) of the primary nickel market in the United States. Membership in the Association is expected to grow. The members' goal is to work together to negotiate more advantageous nickel contracts from international nickel producers than they are able to obtain separately.

The Association's membership currently includes three corporations located in the eastern part of the United States, who sell their finished product to customers in the United States and Europe. The various members of the Association use nickel in the manufacture of super alloys which they offer for sale in certain product forms such as sheet, bars, wire, casting, plate and billet. All of the nickel purchased is imported into the United States as currently the United States has no nickel refining capacity.

Membership in the Association is open to any entity that is a consumer of primary nickel as a material in a manufacturing process and any entity that is in the business of melting and processing primary nickel into alloys or that is in the business of metal making. The membership will be composed of a diversified group, as nickel alloys have a multiplicity of end uses. Due to the fact that the nickel producers, which are few in number, control the amount of nickel on the market, the Association has chosen to deny membership to nickel mining companies or primary nickel producers or affiliated entities. These producers do not need a cooperative association to obtain a competitive price for nickel.

The initial funding for the Association will be provided by the initial members through payment of a subscription fee. Any additional members will have to pay the same fee in order to join. The Association will additionally be supported by profits earned from the purchase and resale of the primary nickel to members and non-members. Earnings in excess of the cost of doing business and any necessary reserves will be returned to members as patronage dividends.

As a cooperative association, the Association will provide a supply of nickel to its members. The Association will negotiate, on behalf of its members, with the nickel producers for advantageous contracts and prices commensurate with the combined needs of its members. Additionally, the Association will attempt to open new sources of nickel from refineries not

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currently producing the high quality of nickel required by the Association's members. It will provide its members a means of exchanging opinions, ideas and facts about the nickel market. The Association may also arrange for warehousing, storing, insuring and shipping the nickel it purchases, should its members so request. The Association will, if directed, enter into hedging contracts with brokerage houses in order to achieve some price stabilization for its members. It will keep its members informed about the price of nickel on the London Metal Exchange (LME), as well as plans of the producers that could affect nickel supply and any information as to new sources of nickel.

Management of the Association is currently vested in a three (3) member Board of Directors elected by the general membership. The By-laws permit this number to be increased to seven (7). Each member of the Association has one (1) vote in the general membership meeting.

The Association plans to obtain the services of an independent administrator to negotiate with the nickel producers and to provide the services for daily operations. This independent administrator will report to the Board of Directors. The administrator will have the authority to do all negotiating for the Association.

The Association will not have any part in the pricing, marketing and selling of its members' products. Its only function is to arrange for and provide a supply of nickel to meet its members' needs.

Unless specifically agreeing to such an obligation, members are under no obligation to use Association services and are free to purchase their nickel supply directly from the producer. Members will not be obligated, as a prerequisite to membership, to purchase any specific quantity of nickel. However, members may be requested to make a purchase commitment to the Association to facilitate the obtaining of a brokerage contract.

B. MARKET POWER

As noted, the members of the Association collectively purchase about five percent (5%) of the primary nickel used in the United States. Even with an increase in membership, the Association would make up such a small percentage, that it would never be able to have an appreciable impact on nickel prices. Nickel is an international commodity, its geographic market being worldwide. This Association makes up less than one percent (1%) of the worldwide primary nickel purchases. The Association would not come close to violating the thirty-five percent (35%) threshold set by the Justice Department. Together, the present members of the Association purchase, on average, approximately 12-15 million lbs. of nickel annually. The total amount of nickel units purchased in the form of Class I and Class II in the United States annually is approximately 300 million pounds. No member plans

to purchase all of its nickel requirements from the Association as periodic requirements of each member fluctuate substantially.

The members operate within a mineral resource extractive industry in which very few supply sources exist worldwide. We noted no supply sources exist in the United States, yet the members are competing for nickel on a worldwide basis. There is a high concentration of market power in the hands of a few producers. The largest western world producer is The International Nickel Company (INCO), located in Canada. The second largest western world producer is Falconbridge, also located in Canada and third is LeNickel located in New Caledonia. Combined, they produced approximately one-half of the western world's nickel in 1988. The United States and the prospective Association members obtain the majority of their nickel supply from the two largest Canadian suppliers. Most of the remainder is imported from France, Finland, Australia, Africa and Latin America.

Nickel is used by the members as an alloy agent (raw material) to manufacture a certain end-product. The largest single use of nickel is as a raw material for various types of alloys in order to enhance elevated temperature properties. The choice of nickel addition agent by a manufacturer depends on product quality requirements, degree of refining possible in the manufacturing process, individual metal makers' preferences and experience, and availability. Nickel is obtained from either sulfite ore or laterite ore. There are two groups of nickel: Class I nickel which is commercially pure, unwrought nickel and Class II nickel which includes less pure metallic forms, oxides, and ferro nickel. Over eighty percent (80%) of United States nickel imports are Class II. The purest nickel, Class I, is used in super alloys and metals for nuclear and aerospace applications. Class II nickel is used mainly in stainless steel. The consumers of Class I nickel are generally concentrated in these industries:

- resistance heating
- automotive specialty
- aerospace
- nuclear

In order to put a relative commercial value on nickel, it is necessary to identify it by grade, particularly in relation to its nickel content and associated pertinent impurities.

The price of nickel is effectively set by the London Metal Exchange (LME); nickel is thus treated as a commodity. However, this has caused an instability in nickel pricing which has not afforded an appropriate level of efficiency to the nickel users. The nickel producers have undergone a basic change in their marketing strategy over the past five years, i.e. from a producer-set price to an LME-related price. Products were easy to price

because the producer price was stable and tended to be firm for a year or more. Presently, the LME is producing volatile pricing patterns for nickel and thus creating difficulties for the nickel user in pricing their product with any consistency of margins. A substantial contributor to this volatility is the thinness of the market in terms of volume and the willingness of non-users to speculate in the market. Such speculation has no relation to the actual demand for the metal.

C. STRUCTURAL BARRIERS TO COLLUSION

The Association members use nickel to produce in various product forms. These include casting, billet, bar, plate, sheet, wire, rod, ribbon and strip. Not all of these product forms are made by all of the members. Additionally, the product forms vary by grade of nickel used. Not all of the members use the same grades of nickel. However, certain safeguards are being established to prevent potential abuses or forms of collusion by the members who do directly compete. The Association's structure conforms precisely to the guidelines set out in prior Business Review Letters.

1. Negotiations on behalf of the Association will be conducted by an independent negotiator who will not be an employee of any member of the Association. Any negotiated contract will be subject to final approval by the Board of Directors.
2. Negotiations will be conducted on a strictly confidential basis, and individual members will not be allowed to participate directly in these negotiations. The Association by-laws prohibit direct negotiations by individual members on behalf of the Association and prohibit any form of collective price setting or discussions of pricing information among its members.
3. "Company specific" or competitively sensitive information (i.e., the amount of and grade of nickel ordered by each member pursuant to an association negotiated contract) will be kept strictly confidential. Additionally, negotiations will be kept strictly confidential as will all communications relating to members' needs and purchasing intentions. The Association will not disclose the amount or grade of nickel purchased by individual members under a particular contract. Further, all discussions between the Association and any individual member will be confidential. All information pertaining to pricing of products, quantities and grades of nickel used in products, and the technological role of nickel in the manufacturing process will be confidential between each member and the Association. Negotiations and/or contract commitments between the Association and producers will only disclose the cumulative volume of members as a whole.

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4. The Association will safeguard the integrity of any and all meetings, forums, and other membership and council discussions from any form of exchange involving "company specific" or competitively sensitive information. Confidential information will not be exchanged at meetings of the members. Minutes of the meetings will be maintained. Legal counsel will be present at all meetings of the members.
5. The Association will be adopting antitrust compliance guidelines that will be followed in the meetings. These guidelines will provide that, among other things, members shall not discuss at meetings prices, company specific business strategies, or any other proprietary or confidential business information.

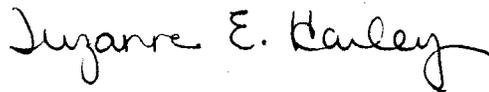
D. CONCLUSION

The safeguards and structure of the Association are designed to address the objectives of the members: to obtain lower and more stable nickel prices from nickel miners and producers, while being assured that "competitive" information is not transferred to other Association members. In the Association's case, collective negotiation on price has the potential to create efficiencies that will result in lower product costs.

We would be pleased to provide you with any further information you deem necessary. Thank you for your attention to this matter.

Very truly yours,

RUFF, BOND, COBB, WADE & MCNAIR



Suzanne E. Harley

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Enclosures

cc: Teledyne Allvac
Harrison Alloys, Inc.
Special Metals Corporation