



U.S. Department of Justice

Antitrust Division

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

September 20, 2004

Mr. Dana Waldo
President and COO
Appalachian Power Co.
American Electric Power
P.O. Box 1986
Charleston, West Virginia 25327-1986

Re: *Response to Comment on the Proposed Amended Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed May 26, 2004)*

Dear Mr. Waldo:

This letter responds to your August 5, 2004, comment on the pending Amended Final Judgment (or "AFJ"), which "reaffirm[s]" concerns expressed by another company executive, Mark Dempsey, in an earlier comment on the initial settlement proposed in this case. Both that comment and the United States's response were previously published in the Federal Register. 69 Fed. Reg. 18930, 18961-65 (Apr. 9, 2004). Before addressing your current comment, however, it may be helpful to briefly review the major terms of the amended settlement.

The Amended Final Judgment, if entered by the Court, would resolve the United States's serious concerns that Alcan's acquisition of Pechiney would substantially lessen competition in the sale of brazing sheet, an aluminum alloy used by auto parts makers throughout the nation to manufacture radiators, heaters, and air conditioning units for motor vehicles. *See* Complaint, ¶¶ 1-3, 19-24, and 27-30; Revised Competitive Impact Statement, pp. 4-9. The Amended Final Judgment requires Alcan to divest either its own or Pechiney's "brazing sheet business."¹ AFJ, § IV(A). Alcan's brazing sheet business includes Alcan's aluminum rolling mills in Oswego, New York, and Fairmont, West Virginia, which produce the brazing sheet sold by Alcan in North America. AFJ, § II(F). Pechiney's brazing sheet business includes its aluminum rolling mill in Ravenswood, West

¹The initial settlement only would have required Alcan (or a court-appointed trustee) to divest Pechiney's brazing sheet business. The amended settlement would also permit Alcan to restore competition by selling (or spinning off) its own brazing sheet operations. Alcan has indicated, however, that it will sell its own brazing sheet operations only as part of a major corporate reorganization, an undertaking driven, at least in part, by business considerations unrelated to Alcan's acquisition of Pechiney. *See* Revised Competitive Impact Statement, n. 3.

Virginia, which makes the brazing sheet sold by Pechiney in North America. AFJ, § II(E). Prompt divestiture of either brazing sheet business to a viable new competitor would advance the paramount public interest in competitive prices and continued high quality and innovation in the brazing sheet market by quickly restoring the rivalry that existed in domestic sales of this crucial material before Alcan's acquisition of Pechiney. To help ensure that the proposed divestiture is expeditiously completed and competition restored, the Amended Final Judgment provides that if Alcan does not complete its sale of either brazing sheet business to an acceptable purchaser by the established deadline, the Court may appoint a trustee to complete the divestiture of Pechiney's brazing sheet business. AFJ, § V(A).

Alcan already has taken steps to divest its own brazing sheet business by arranging to spin it off to the company's shareholders along with many of Alcan's other domestic and foreign businesses. Under the terms of the Amended Final Judgment, however, there is a possibility that Alcan may later decide (or a trustee may be appointed) to divest the Pechiney brazing sheet business.

Mr. Dempsey made two arguments as to why Alcan should not be required to divest Pechiney's brazing sheet business, which you have adopted. First, he contended that the United States may have asked for too much relief. The amended settlement may require Alcan to divest Pechiney's brazing sheet business, including the entire Ravenswood rolling mill, although the major competitive problem created by the acquisition is in domestic sales of brazing sheet. Second, he asserted that any new owner of Pechiney's brazing sheet business may not have "the capacity, technology, and experience" to successfully operate the Ravenswood plant as a viable, vigorous new competitor.

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 plant that are exclusively devoted to developing, producing, and selling brazing sheet. As you may know, 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, and no one has produced, any evidence that suggests that dismantling Pechiney's Ravenswood rolling mill and selling off a few parts that are exclusively used to make brazing sheet will likely produce a viable new firm capable of replacing the vigorous competition that would be lost by Alcan's acquisition of Pechiney. Indeed, the amended settlement fully comports current antitrust divestiture practice: "[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).²

²This FTC study is available online at <http://www.ftc.gov/os/1999/08/divestiture.pdf>.

The United States also strongly believes that in order to be an effective competitor, the new owner of Pechiney's brazing sheet business must be capable of operating those assets as part of an ongoing, viable new enterprise. Indeed, the lynchpin of the Amended Final Judgment is the requirement that the Alcan or Pechiney brazing sheet business be divested to a person who, in the United States's judgment, is able to operate it successfully in competition against Alcan and others (*see* AFJ, §§ IV(J), V(B)). To that end, the Amended Final Judgment requires Alcan to sell any tangible and intangible assets used in the production and sale of brazing sheet, including Pechiney's entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* AFJ, §§ II(E)(1)-(3).

At this stage, however, since Alcan has not proposed a purchaser for Pechiney's Ravenswood plant, much less negotiated any terms of sale, there is no reasonable basis for concluding that *any* effort to divest Pechiney's brazing sheet business will fail to produce an acceptable, viable new owner capable of continuing the firm's competition against Alcan and others in developing, producing, and selling brazing sheet in North America.³ It would clearly be an error to reject the amended settlement on speculation that an alternative purchaser will not turn up when the reasonable canvass the parties envisioned has not been allowed to run its course. *Citizens Pub. Co. v. United States*, 394 U.S. 131 (1969); *Dr. Pepper/Seven Up Cos. Inc. v. FTC*, 991 F.2d 859, 864-66 (D.C. Cir. 1993) (“good faith attempt to locate an alternative buyer” must be made before anticompetitive acquisition of failing firm may be allowed); *FTC v. Harbour Group Investments, LP*, 1990-2 Trade Cas. (CCH) ¶ 69,247 (D.D.C. 1990). *See generally*, Horizontal Merger Guidelines ¶ 5.2 (1990 ed.); Areeda, Hovenkamp, and Solow, *Antitrust Law* ¶ 952 (rev. ed.). If neither Alcan nor the trustee can find an acceptable buyer for Pechiney's brazing sheet business, then the Court has the power to consider what additional measures should be taken, presumably including whether to relieve Alcan of its divestiture obligation. AFJ, §V(G). *See generally*, *Dr. Pepper/Seven Up Cos. Inc.*, 991 F.2d at 864-66.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi
Chief
Litigation II Section

³An “acceptable purchaser” of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is not viable. *See* AFJ, § 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.”



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

August 5, 2004

Re: Pechiney Rolled Products, Ravenswood, West Virginia

Dear Ms. Petrizzi:

American Electric Power respectfully submits this letter as further comment on the Final Judgment now before the Federal District Court in Washington, DC concerning the purchase of Pechiney.

We reaffirm our concerns expressed in the Enclosed February 13, 2004 letter by Mark Dempsey.

Also, our recommendation to allow Alcan to continue operating this facility still stands. This suggestion is in no way prompted by any contact with Alcan.

We ask the Court be informed of our concerns expressed in our letter of February 13, 2004 and our suggested solution.

Sincerely,

A handwritten signature in black ink that reads 'D Waldo'.

Dana Waldo
President and COO
Appalachian Power Company
A Unit of American Electric Power

Enclosure



**AMERICAN[®]
ELECTRIC
POWER**

American Electric Power
707 Virginia Street, E., Suite 1100
P O Box 1986
Charleston, WV 25327-1986
www.aep.com

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