



U.S. Department of Justice

Antitrust Division

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

September 20, 2004

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

Re: *Response to Public Comment on Proposed Amended Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:03 CV 02012 (D.D.C., filed May 26, 2004)*

Dear Governor Wise:

This letter responds to your August 13, 2004, comment on the proposed Amended Final Judgment (or "AFJ"), which reiterates concerns you expressed about the initial settlement proposed in this case. The United States's response to your comment on that proposed settlement (69 Fed. Reg. 18930, 18961-65 (Apr. 9, 2004)) fully addressed those concerns.¹ Before turning to 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 proposed Amended Final Judgment requires Alcan to divest either its own or Pechiney's "brazing sheet business."² AFJ, §

¹Through no fault of our own, the Federal Register refused to publish your letter of February 13, 2004, commenting on the initial settlement. It concluded that the copy of your letter that we had received and provided was not clear enough for publication. Your attorneys have since provided us an original, which, as you requested, will be published along with our response to your comment on the amended settlement.

²The 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

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 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.

In your August 13 comment, you maintain that Alcan's divestiture of Pechiney's brazing sheet business would not be in the public interest. As you see it, a viable alternative purchaser for Pechiney's brazing sheet business (and the Ravenswood plant) does not exist. We sense, however, that your major concern is that if the Pechiney brazing sheet business is divested, the new owner may consider altering or reducing the Ravenswood plant's wages or benefits to improve its ability to compete in the production and sale of brazing sheet and other rolled aluminum products.

Your basic argument is that Pechiney's brazing sheet business (and the Ravenswood plant) cannot survive unless owned by Alcan. This is, in effect, a "failing firm" defense. *Citizens Pub. Co. v. United States*, 394 U.S. 131 (1969). To excuse an otherwise anticompetitive transaction on that basis requires a compelling showing that the resources of Pechiney's brazing sheet business are so depleted and its future prospects are so bleak, that the firm cannot be successfully reorganized in a Chapter 11 bankruptcy proceeding, and that every effort has been made to identify and divest Pechiney's brazing sheet business to an alternative purchaser that poses less of a threat to competition. *Citizens Pub. Co.*, 394 U.S. at 131; *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.).

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.

Of course, there is no evidence that Pechiney's brazing sheet business is bankrupt, much less that the business cannot successfully emerge from a Chapter 11 proceeding. Perhaps more important, the terms of the Amended Final Judgment ensure that if Alcan elects to divest Pechiney's brazing sheet business, every reasonable effort will be made to find a purchaser who would continue Pechiney's competition in the market as part of a "viable, ongoing" business enterprise. *See* AFJ, §§ IV(J) and V(B). At this stage, since Alcan has not proposed a purchaser for the Ravenswood plant, much less negotiated any terms of sale, there is no factual basis for concluding that Alcan's (or a trustee's) efforts to divest Pechiney's brazing sheet business will not produce an acceptable, viable new owner capable of continuing Pechiney's competition against Alcan and others in developing, producing, and selling brazing sheet in North America.³ In short, the amended settlement cannot be rejected on the ground that an alternative purchaser does not exist when the reasonable canvass the decree envisions has not been allowed to run its course.

You also suggested in an earlier comment that divestiture of the Pechiney brazing sheet business is unnecessary because Alcan's original acquisition of Pechiney was not anticompetitive. There is, of course, no legal reason why the United States must prove the allegations of its original antitrust complaint before the Court rules on the appropriateness of the parties' agreed-upon relief. Indeed, to impose such a rule would, in effect, turn every settled government antitrust case into a full-blown trial on the merits of the parties' complex claims, and seriously undermine the effectiveness of antitrust enforcement by use of consent decrees.⁴ It

³You have speculated that some prospective purchasers may be reluctant to bid for Pechiney's brazing sheet business because they be required to assume the "legacy" costs (*e.g.*, retiree pensions and health care benefits) associated with the Ravenswood facility. The amended decree broadly provides, however, that the terms under which Pechiney's brazing sheet business is sold must not give 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." 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 not viable. *See* AFJ, § IV(J).

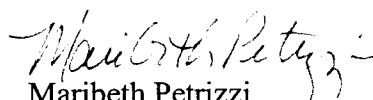
⁴Significantly, the increase in market concentration as a result of Alcan's acquisition of Pechiney would be at least as egregious as that held presumptively unlawful in *FTC v. Cardinal Health Inc.*, 12 F.Supp.2d 34, 53 (D.D.C. 1998) (acquisitions that would raise HHI market concentration above 3000 points "presumed" to have "pose[d] risk to competition;" the HHI in this case would increase over 600 points to over 3600 post-acquisition, Complaint, ¶ 20). The post-merger increase in concentration, however, understates the competitive significance of the transaction. The United States has charged that Alcan's acquisition of Pechiney would essentially create a brazing sheet market duopoly since capacity-constrained smaller rivals would be unable to discipline any unilateral or cooperative post-merger price increase by Alcan and the other major firm. *See* Complaint, ¶¶ 22 and 23; Revised Competitive Impact Statement, pp. 5-6. In these circumstances, the United States's challenge to Alcan's proposal to acquire Pechiney was both principled and appropriate.

would also invite the Court to impermissibly intrude on the law enforcement discretion accorded to the Executive Branch. 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). See generally, *United States v. Microsoft Inc.*, 56 F.3d 1448, 1459 (D.C. Cir. 1995); *United States v. Alex Brown & Sons, Inc.*, 169 F.R.D. 532, 541 (S.D.N.Y. 1996).

As we have observed (Revised Competitive Impact Statement, pp. 14-16), in a proceeding to decide whether a proposed settlement should be entered by the Court under the Tunney Act, the United States need only show that the proposed relief lies 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). That requires the Court to review the relationship between the relief in the Amended Final Judgment and the allegations of the government’s original Complaint. In this case, the amended settlement falls well “within the reaches” of the public interest, for it would alleviate competitive concerns generated by Alcan’s proposal to combine two of the three major sellers of brazing sheet in North America by requiring Alcan promptly to divest one of its brazing sheet businesses, replacing competition that would have been lost through the acquisition. A general concern that a new owner may seek to alter the divested business’s labor agreements or employee benefits is no justification for concluding that entry of the Amended Final Judgment would not be in public interest, *United States v. Stroh Brewery Co.*, 1982-2 Trade Cas. (CCH) ¶ 64,782, 71,829-30, 1982 W.L. 1852 at 2-3 (D.D.C. 1982), especially where, as here, allowing the acquisition to proceed would risk an increase in prices, and a reduction in quality and innovation for domestic auto parts makers who buy brazing sheet, and hence jeopardize the jobs and financial well being of their customers and employees.

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



STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

August 13, 2004

BOB WISE
GOVERNOR

Maribeth Petrizzi
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Antitrust Division
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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 am writing to you to reiterate the vital public concerns associated with the potential divestiture of the Pechiney plant in Ravenswood, West Virginia, which concerns were originally expressed in my letter to you of February 13, 2004. That letter described the harmful effects which would result on the citizens of the State of West Virginia if the original Proposed Final Judgment was implemented. The Amended Final Judgment, filed with the Court on May 26, 2004, presents the same problems as the original proposal.

The parties have sought a modification of the Final Judgment, which would allow Alcan to sell either its own brazing sheet business or Pechiney's brazing sheet business, including the Ravenswood, West Virginia plant. Because of the continued exposure of the Ravenswood plant to divestiture, potential ownership by an inexperienced owner, and ultimate closure, the State of West Virginia has concerns and interests as great as those connected with the original Proposed Final Judgment.

The Competitive Impact Statement filed by the Department of Justice explains the background for the amendment. Alcan has proposed a plan to reorganize and, as part of that plan, to sell its own brazing sheet business, consisting of aluminum rolling mills in Oswego, New York, and Fairmont, West Virginia.¹ It would sell these plants, in combination with an

¹ At this point in time, the shareholders of Alcan have not voted on the reorganization plan.

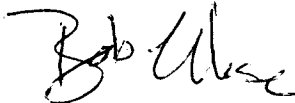
Ms. Maribeth Petrizzi
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aluminum smelter and an aluminum hot rolling mill in Europe, to a newly created entity to be owned by Alcan shareholders. The European Commission conditioned its approval of Alcan's acquisition of Pechiney on the divestiture of these European plants. If Alcan were to sell its United States brazing sheet business, the Amended Final Judgment would permit it to own the Ravenswood plant.

West Virginia welcomes Alcan's reorganization plan because it contemplates retention of the Ravenswood plant by Alcan. We support the plan, even though it calls for the sale of another West Virginia plant, the Alcan plant at Fairmont. The sale of the Fairmont plant does not present the same dangers because the purchaser would be a financially sound entity, newly created, with a strong position in the rolled products markets. Its managers would be former Alcan managers. There is no reason to believe that it would be sold to another buyer or would discontinue operations. The Justice Department is apparently satisfied that this new entity will be sufficiently removed from Alcan control to prevent any competitive problems in the brazing sheet market.

However, if Alcan's reorganization plan does not come to fruition, it would have to divest the Ravenswood plant. All of the concerns expressed in my letter to you of February 13, 2004 (which should have been, but was not, published in the Federal Register) would be again applicable. Because of that potential, I am submitting this letter to express those concerns again. I ask that you publish the previous letter of February 13, 2004, along with this letter, as required by the Tunney Act, 15 U.S.C. § 16. A copy of the letter of February 13, 2004 is enclosed.

Very truly yours,



Bob Wise
Governor

BW:jb



STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

February 13, 2004

BOB WISE
GOVERNOR

VIA FAX AND OVERNIGHT COURIER

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
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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 Study¹ 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,

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," ANTI-TRUST 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 than 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,

A handwritten signature in black ink, appearing to read "Bob Wise", written in a cursive style.

Governor Bob Wise