Dated: August 3, 2004.

Audrey F. Calhoun,

Superintendent, George Washington Memorial Parkway.

[FR Doc. 04–22041 Filed 9–29–04; 8:45 am]

BILLING CODE 3301–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Oakwood Homes LLC and Niebur Golf, Inc.*, was lodged with the United States District Court for the District of Colorado on September 17, 2004.

This proposed Consent Decree concerns a complaint filed by the United States against Oakwood Homes LLC and Niebur Golf, Inc., pursuant to 33 U.S.C. 1311(a), 1319(b) and (d), and 33 U.S.C. 1344(s)(3), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas, to perform mitigation, and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Stephen D. Taylor, Assistant United States Attorney, 1225 17th Street, Suite 700, Denver, Colorado 80202 and refer to *United States* v. *Oakwood Homes, et al.*, Civil Action No. 04–D–1918 (MJW).

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Colorado, Alfred A. Arrraj United States Courthouse, 901 19th Street, Room A 105, Denver, Colorado 80294. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/open.html*.

John W. Suthers,

United States Attorney.

Stephen D. Taylor,

Assistant U.S. Attorney.

[FR Doc. 04–21871 Filed 9–29–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Responses to Public Comments on Proposed Amended Final Judgment in United States v. Alcan Inc., et al.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes the public comments received on the proposed Amended Final Judgment in *United States* v. *Alcan Inc., Alcan Aluminum Corp., Pechiney, S.A., Pechiney Rolled Products, LLC,* No. 1:030 CV 02012–GK filed in the United States District Court for the District of Columbia, together with the government's responses to the comments.

On September 29, 2003, the United States filed a Complaint that alleged that Alcan Inc.'s proposed acquisition of Pechiney, S.A., would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the sale of brazing sheet in North America. On May 26, 2004, the United States filed a proposed Amended Final Judgment that would require the defendants to divest either Alcan's or Pechiney's brazing sheet business to a purchaser acceptable to the United States.

Public comment was invited within the statutory 60-day comment period. The public comments and the United States's responses thereto are included within the United States's Revised Certificate of Compliance with the Antitrust Procedures and Penalties Act, which appears immediately below. After publication of this Revised Certificate of Compliance in the **Federal Register**, the United States may file a motion with the Court, urging it to conclude that the proposed Amended Final Judgment is in the public interest and to enter the proposed Amended Final Judgment. Copies of the Complaint, Revised Hold Separate Stipulation and Order, proposed Amended Final Judgment, the Revised Competitive Impact Statement, and the United States's Revised Certificate of Compliance with the Antitrust Procedures and Penalties Act are currently available for inspection in Room 200 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 30530 (telephone: (202) 514–2481) and at the Clerk's Office, United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

J. Robert Kramer II,

Director of Operations, Antitrust Division.

BILLING CODE 4410–11–M

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff,* v. ALCAN INC., ALCAN ALUMINUM CORP., PECHINEY, S.A., and PECHINEY ROLLED PRODUCTS, LLC, *Defendants.*	Case No. 1:030 CV 02012-GK Judge Gladys Kessler Deck Type: Antitrust

UNITED STATES'S REVISED CERTIFICATE OF COMPLIANCE
WITH THE ANTITRUST PROCEDURES AND PENALTIES ACT

The United States of America certifies that, as explained below, it has complied with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA"), with respect to the proposed Amended Final Judgment.

1. The Complaint in this case was filed on September 29, 2003. The proposed Amended Final Judgment (or "AFJ"), Revised Competitive Impact Statement, and Revised Hold Separate Stipulation and Order ("Revised Hold Separate Order"), by which the parties agreed to the Court's entry of the Amended Final Judgment following compliance with the APPA, were filed on May 26, 2004.

2. Pursuant to 15 U.S.C. § 16(b), the proposed Amended Final Judgment, Revised Hold Separate Order, and the Revised Competitive Impact Statement were published in the *Federal Register* on June 15, 2004 (69 Fed. Reg. 33406). A copy of the *Federal Register* notice is attached hereto as Exhibit 1.

3. Pursuant to 15 U.S.C. §16(b), the United States furnished copies of the Complaint, Revised Hold Separate Order, proposed Amended Final Judgment, and Revised Competitive Impact Statement to anyone requesting them.

4. Pursuant to 15 U.S.C. § 16(c), a summary of the terms of the proposed Amended Final Judgment, Revised Hold Separate Order, and Revised Competitive Impact Statement was published in *The Washington Post*, a newspaper of general circulation in the District of Columbia, during a seven-day period in June 2004 (June 7th-13th). A copy of the Proof of Publication from *The Washington Post* is attached hereto as Exhibit 2.

5. Defendants will soon serve and file with the Court a declaration that describes their communications with employees of the United States concerning the proposed Amended Final Judgment, as required by 15 U.S.C. § 16(g).

6. The sixty-day public comment period specified in 15 U.S.C. § 16(b) began on June 15, 2004, and ended on August 16, 2004. During that period, the United States received eight comments on the proposed settlement. The United States evaluated and responded to each comment, and caused the comments and the government's responses to be published in the *Federal Register*, pursuant to 15 U.S.C. §§ 16 (b) and (d). The public comments and the United States's responses, attached hereto as Exhibits 3-10, are briefly summarized below.

A. Public Comments on the Proposed Amended Settlement

The United States received five comments from state and local government officials – *viz.*, the governor of West Virginia (Ex. 3), the mayors of Ripley and Ravenswood, West Virginia (Exs. 4 and 5), the president of the Jackson County (WV) Development Authority (Ex. 6), and the Jackson County Commission (Ex. 7) – who represent the interests of residents of towns in West

Virginia in which current or retired employees of the Ravenswood facility live. The United States also received a comment from an individual who represents the interests of retired salaried employees of the Ravenswood facility (Ex. 8).

These comments raised general questions about the necessity and scope of the divestiture relief in the proposed Amended Final Judgment, and, in particular, the possibility that under the terms of the settlement, Alcan could elect to divest Pechiney's brazing sheet business (and the Ravenswood rolling mill) instead of its own brazing sheet business. Several of the commenters asserted that the proposed Amended Final Judgment is unnecessary because Alcan's acquisition of Pechiney did not substantially diminish competition. Others contended that even if Alcan's initial acquisition was unlawful, requiring it to divest Pechiney's brazing sheet business (and the Ravenswood plant) would be excessive because brazing sheet accounts for a fraction of this rolling mill's production. Finally, these commenters asserted that requiring Alcan to divest Pechiney's brazing sheet business may risk the jobs and retirement benefits of the Ravenswood plant's current and retired workers. As they see it, any new owner of Pechiney's brazing sheet business cannot possibly be a vigorous and viable competitor – and thus would be significantly more likely to fail – since it will not have the financial wherewithal or technical expertise to develop, produce, and sell brazing sheet and other rolled aluminum products and may begin operations saddled with the former owners' "legacy costs" (*i.e.*, retiree pension and health insurance benefit obligations).

The United States also received comments from two suppliers to Pechiney's brazing sheet business, Century Aluminum (Ex. 9) and American Electric Power (Ex. 10), who expressed a somewhat different, though parallel concern, *viz.*, that if Alcan chooses to divest that business,

then it must be sold to a purchaser who possess the resources to continue operating the Ravenswood rolling mill as part of a viable, ongoing business enterprise. These commenters also questioned whether a new owner could succeed if it is burdened with the legacy costs of the Ravenswood facility's former owners, Alcan and Pechiney.

B. The United States's Responses to the Public Comments

Responding to the comments, the United States generally explained that the appropriate legal standard for assessing the proposed Amended Final Judgment is whether its entry would be in the "public interest." To make that determination the Court must carefully review the relationship between the relief in the proposed Amended Final Judgment and the allegations of the government's Complaint that initiated the case. Only if the proposed decree is ambiguous, unenforceable, "positively" injurious to others, or makes a "mockery" of judicial power – *e.g.*, by mandating relief that would not alleviate the competitive ills alleged in the complaint – should the Court decline to enter it. *Massachusetts School of Law at Andover, Inc. v. United States,* 118 F.3d 776, 783 (D.C.Cir. 1997). This "narrow," "deferential" standard of judicial review reflects the fact that a Tunney Act proceeding is not an open forum for commenters – or a 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.[1] A proposed settlement cannot, as several commenters have urged, be

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[1] *Id.* at 783. "The 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). "[T]he court is only authorized to review the decree itself" and has no legal authority to "effectively redraft the complaint" to inquire into matters that the government might have but did not pursue. *Id.* at 1459-60. "Such limited review is obviously appropriate for a consent decree entered into before a trial on the merits because 'the court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion in the first place,'" *Commonwealth of Massachusetts v. Microsoft,* 2004 WL 1462298, 302 (D.C.Cir. June 30, 2004) (citation omitted).

rejected simply 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.), *cert. denied,* 454 U.S. 1083 (1981). *See United States 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 the public interest, "not to evaluate the strength of the [g]overnment's case"). Thus, the United States is not required to prove major elements of its antitrust complaint before the Court can evaluate the appropriateness of the parties' agreed-upon relief. *Microsoft Inc.*, 56 F.3d at 1459; *Alex Brown & Sons, Inc.,* 169 F.R.D. at 541.

Applying those principles to this case, the Court's entry of the proposed Amended Final Judgment surely would be "within the reaches" of the public interest (*Bechtel Corp.* 648 F.2d at 666). The proposed Amended Final Judgment would alleviate the serious competitive concerns regarding defendants' proposal to combine two of North America's three major producers of brazing sheet by requiring Alcan promptly to divest either Alcan's or Pechiney's brazing sheet business (and the Ravenswood rolling mill), which produces all of the brazing sheet made and sold by either firm in North America. If Alcan chooses to divest Pechiney's brazing sheet business, its sale to a viable new owner would create another competitor in the North American brazing sheet market and leave competition no worse off after Alcan's acquisition of Pechiney than before it.

As to the commenters' contention that the divestiture relief in the Amended Final Judgment is too broad, the United States noted that the competitive problems created by Alcan's acquisition of Pechiney could not be cured simply by requiring a piecemeal sale or "partial divestiture" of only those portions of the Ravenswood facility devoted to developing, producing,

and selling brazing sheet. The commenters acknowledged that brazing sheet is produced on the same production lines that make many other important rolled aluminum alloy products (*e.g.*, common alloy coil and aerospace sheet) at Pechiney's Ravenswood rolling mill. The United States is unaware of – and no commenter pointed to – any evidence that would suggest that requiring Alcan to dismantle and sell off a few parts of the Ravenswood rolling mill that might be exclusively committed to producing brazing sheet would produce a viable new firm capable of replacing the significant competition that would be lost by Alcan's acquisition of Pechiney. Drawing on its considerable experience with business divestitures under the federal antitrust laws, the United States reasonably concluded that divestiture of Pechiney's entire brazing sheet business (and the Ravenswood rolling mill) as an ongoing business enterprise (AFJ, §§ II (E); IV(A); IV(J); and V(B)) is a critical prerequisite for ensuring the new owner's long-term competitive viability in the brazing sheet business. *See* Federal Trade Commission, A Study of the Commission's Divestiture Process 12 (1999) ("[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.")

The United States also noted that it shares the commenters' interest in ensuring that if Alcan chooses to divest Pechiney's brazing sheet business, it is sold to an owner that promises to be a viable competitor capable of long-term survival. In fact, a lynchpin of the proposed Amended Final Judgment is the requirement that Pechiney's brazing sheet business (including the Ravenswood rolling mill) must be divested to a person who, in the United States's judgment, is able to successfully operate it as part of a "viable, ongoing" business enterprise in competition

against Alcan and others. *See* AFJ §§ IV(J) and V(B). To that end, the proposed Amended Final Judgment requires Alcan to divest any tangible and intangible assets used in the development, production, or sale of Pechiney's brazing sheet, including the entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop or produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* AFJ, §§ II(E)(1)-(3). Thus, the amended settlement ensures that any new owner of Pechiney's brazing sheet business will obtain every tangible and intangible asset previously used by Pechiney to compete in developing, making, and selling brazing sheet and any other aluminum products sold by the Ravenswood facility (including aerospace grade aluminum plate).

Nor is there any reasonable basis for concluding, at this stage, that that business can only survive if it remains in the hands of a dominant brazing sheet manufacturing concern, such as Alcan.[2] Such a "failing firm" defense to what would otherwise be a severely anticompetitive transaction may be invoked only after there has been a compelling showing that the resources of Pechiney's brazing sheet business are so depleted and its future prospects are so bleak, that it 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. v. United States*, 394 U.S. 131, 137-38 (1969); *FTC v. Harbour Group Investments, LP*, 1990-2 Trade Cas. (CCH) ¶ 69,247 (D.D.C.

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[2]Several commenters implicitly assume Alcan should be permitted to retain Pechiney's brazing sheet business since it would be more likely than any other owner to maintain current levels of employment and benefits at the Ravenswood plant. That assumption runs squarely against economic reality. *Ceteris paribus,* a firm that acquires market power through acquisition will be more prone to raise its prices and reduce output, risking a *reduction* in premerger employment levels.

1990). *See generally*, Horizontal Merger Guidelines ¶ 5.2 (1992 ed.); Areeda, Hovenkamp, and Solow, Antitrust Law ¶ 952 (rev. ed.).

In this case, one cannot conclude 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 when neither Alcan nor a trustee has been allowed to complete its search for, and negotiations with, a prospective purchaser for Pechiney's brazing sheet business.[3] The proposed amended settlement cannot be rejected on the basis of commenters' fears 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.*, 394 U.S. at 138; *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 pursued before anticompetitive acquisition of failing firm may be allowed); *Harbour Group Investments,* 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

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[3]Nor, for that matter, has it been shown that the resources of Pechiney's brazing sheet business are so depleted that it would not survive a Chapter 11 proceeding *(Citizens Pub. Co.*, 394 U.S. at 137-38), which, ironically, could reduce the legacy costs that some assert hinder this firm's ability to succeed as a viable enterprise. Also, one cannot assume, as several commenters have, that defendants' legacy costs will automatically scare off any potential purchasers of the Ravenswood facility. Whether a prospective buyer will assume none, some, or all of the facility's legacy costs is, in our view, a matter of negotiation between the prospective buyer and Alcan (or if need be, the trustee). It should be noted, however, that under the proposed amended decree, an "acceptable purchaser" of Pechiney's brazing sheet business should not be a firm so burdened by its former owners' legacy costs that it would not be viable, ongoing enterprise. *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."

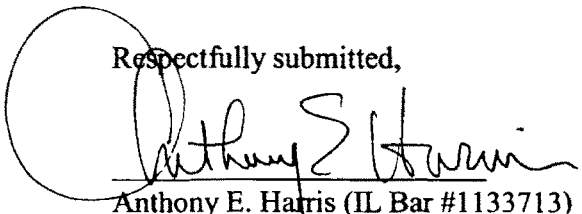
business, the United States noted, then the Court has the power to consider what additional measures should be taken, presumably including whether to relieve Alcan of its obligation to divest the Pechiney brazing sheet business. AFJ, § V(G). *See Dr. Pepper/Seven Up Cos. Inc.*, 991 F.2d at 864-66.

7. The public comments did not persuade the United States to withdraw its consent to entry of the proposed Amended Final Judgment. At this stage, with the United States having published the eight comments (and the government's responses) on the proposed settlement, and the defendants having certified their pre-settlement contacts with government officials, the parties have fulfilled their obligations under the APPA. Pursuant to the terms of the Revised Hold Separate Order and 15 U.S.C. §16(e), this Court may now enter the Amended Final Judgment, if it determines that its entry would be in the public interest.

8. For the reasons set forth in the Revised Competitive Impact Statement and its responses to the public comments, the United States strongly believes that the Amended Final Judgment is in the public interest and urges the Court to enter it promptly upon receipt of defendants' certification of government contacts pursuant to 15 U.S.C. § 16(g).

Dated: September 20, 2004.

Respectfully submitted,



Anthony E. Harris (IL Bar #1133713)
U.S. Department of Justice
Antitrust Division, Litigation II Section
1401 H Street, NW, Suite 3000
Washington, DC 20530
(202) 307-6583
Attorney for Plaintiff

Exhibit 1: Copy of Federal Register Notification –
Omitted, but can be found at 69 Fed. Reg. 33,406 (June 15, 2004)

Exhibit 2: Copy of Certificate of Publication in The Washington Post (Omitted)

Exhibit 3: Comment from and Response to West Va. Gov. Wise

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, §

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[1]Through 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.

[2]The 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.).

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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

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[3]You 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).

[4]Significantly, 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 Sates 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

BOB WISE
GOVERNOR

August 13, 2004

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 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.

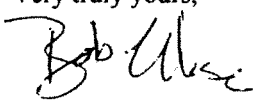
Ms. Maribeth Petrizzi
Page 2
August 13, 2004

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

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 Penciney'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)

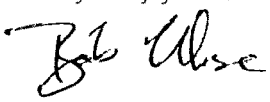
4. Alcan has the experience and facilities to make and sell all of the products of the Ravenswood plant, not just the brazing sheet upon which the Final Judgment focuses.

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

Exhibit 4: Comment from and Response to Ripley, WVA Mayor Harvey

U.S. Department of Justice

Antitrust Division

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

September 20, 2004

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

Re: *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. 1:030 CV 02012 (D.D.C., filed May 26, 2004)*

Dear Mayor Harvey:

This letter responds to your August 5, 2004, comment on the proposed Amended Final Judgment in this case. That comment is similar to your comment on the initial settlement, which the United States fully addressed and published in the Federal Register (69 Fed. Reg. 18930, 18947-50 (Apr. 9, 2004)). Before turning to your current comment, however, it may be helpful to summarize the major terms of the amended settlement.

The Amended Final Judgment requires Alcan to divest either its own or Pechiney's "brazing sheet business."[1] 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. 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. Prompt divestiture of either brazing sheet business to a viable new competitor would advance the public interest in competitive prices and continuing 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 ensure that the proposed divestiture is expeditiously completed

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

and competition restored, the Amended Final Judgment (§ V(B)) provides that if Alcan does not sell 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.

Alcan already has taken steps to divest its own brazing sheet business by spinning it off to its shareholders along with many of Alcan's other domestic and foreign businesses. There is a possibility, however, that Alcan might choose (or a trustee later may be appointed) to divest the Pechiney brazing sheet business.

Your primary concern is that if Alcan chooses (or a trustee is appointed) to divest the Pechiney brazing sheet business, then that operation must "be owned and operated by a company committed to long-term productions and employment," and that it not be sold to a firm that "lacks the experience and facilities necessary to maintain operations in the future."

The United States also strongly believes that if Alcan chooses to divest Pechiney's brazing sheet business, the new owner must be capable of operating the Ravenswood plant as part of an ongoing, viable new enterprise. In fact, a 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* Amended Final Judgment, §§ IV(J) and 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* Amended Final Judgment, §§ II(E)(1)-(3). Because the amended decree ensures that any new purchaser of Pechiney's brazing sheet business would obtain every tangible and intangible asset previously used by Pechiney to compete in developing, making, and selling brazing sheet and any other aluminum products made by the Ravenswood facility, there is no reason to believe that that business can only survive if it remains in the hands of a dominant aluminum manufacturing concern, such as Alcan.[2]

In any event, at this stage, since Alcan has not proposed a buyer 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

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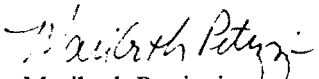
[2]You implicitly assume Alcan must be allowed to retain Pechiney's brazing sheet business because it would maintain current levels of employment and benefits at Ravenswood. However, a firm that acquires market power will be more likely to raise its prices and reduce output, leading to a *reduction* in premerger employment levels.

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

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[3]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* Amended Final 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."

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

August 5, 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

Dear Ms. Petrizzi:

I write again, following my letter to you of February 9, 2004, concerning the proposed amended consent decree in the settlement of Alcan's acquisition of Pechiney. I understand that the amended decree might result in Alcan's retaining ownership of the Pechiney Rolled Products plant. That would be a very desirable result. However, it is also possible, under the amended decree, that Alcan would divest the plant. The danger that such a divestiture might occur leads me to write again.

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.

For the protection of the current employees, the retirement group, and the county, 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

Page 2

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

Exhibit 5: Comment from and Response to Ravenswood, WVA Mayor Roseberry

U.S. Department of Justice

Antitrust Division

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

September 20, 2004

The Honorable Clair Roseberry
Mayor
City of Ravenswood
212 Walnut Street
Ravenswood, West Virginia 26164

Re: *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. 1:030 CV 02012 (D.D.C., filed May 26, 2004)*

Dear Mayor Roseberry:

This letter responds to your August 5, 2004, comment on the proposed Amended Final Judgment in this case. That comment is similar to your comment on the initial settlement to which the United States previously responded (69 Fed. Reg. 18930, 18938-42 (Apr. 9, 2004)). Before addressing your current comment, however, it may be helpful to summarize the major terms of the amended settlement.

The Amended Final Judgment requires Alcan to divest either its own or Pechiney's "brazing sheet business."[1] 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. 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. Prompt divestiture of either brazing sheet business to a viable new competitor would advance the public interest in competitive prices and continuing 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 ensure that the proposed divestiture is expeditiously completed

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

and competition restored, the Amended Final Judgment (§ V(B)) provides that if Alcan does not sell 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.

Alcan already has taken steps to divest its own brazing sheet business by spinning it off to its shareholders along with many of Alcan's other domestic and foreign businesses. There is a possibility, however, that Alcan might choose (or a trustee later may be appointed) to divest the Pechiney brazing sheet business.

Your primary concern is that if Alcan chooses (or a trustee is appointed) to divest the Pechiney brazing sheet business, then the new owner must "have the capability[,] . . . commitment [, and resources] necessary to operate the plant [well] into the future."

The United States also strongly believes that if Alcan chooses to divest Pechiney's brazing sheet business, the new owner must be capable of operating the Ravenswood plant as part of an ongoing, viable new enterprise. In fact, a 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* Amended Final Judgment, §§ IV(J) and 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* Amended Final Judgment, §§ II(E)(1)-(3). Because the proposed amended decree ensures that any new purchaser of Pechiney's brazing sheet business would obtain every tangible and intangible asset previously used by Pechiney to compete in developing, making, and selling brazing sheet and any other aluminum products made by the Ravenswood facility, there is no reason to believe that that business can only survive if it remains in the hands of a dominant aluminum manufacturing concern, such as Alcan.[2]

In any event, at this stage, since Alcan has not proposed a buyer 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

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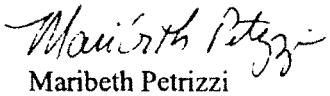
[2]You implicitly assume Alcan must be allowed to retain Pechiney's brazing sheet business because it would maintain current levels of employment and benefits at Ravenswood. However, a firm that acquires market power will be more likely to raise its prices and reduce its output, leading to a *reduction* in premerger employment levels.

[3]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* Amended Final Judgment,

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. Amended Final Judgment, § 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

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§ 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

212 Walnut Street
Ravenswood, West Virginia 26164
Telephone (304) 273-2621
Fax (304) 273-2603
http://ravenswoodwv.org

maycrroseberry@kvinet.com

Mayor
Clair Roseberry

Recorder
Lucy J. Harbert

Clerk Treas.
Joan Turner

Council Members
Lee Corder
Robert L. Dittmar
Jack Greene
Gary Lawson
Judy K. Wiseman

August 5, 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:

I am the mayor of the City of Ravenswood, West Virginia. On February 4, 2004 I sent you a Resolution adopted on February 3, 2004 by the Common Council of the City of Ravenswood expressing our concern over the sale of the Pechiney Rolled Products plant at Ravenswood under the terms of a consent decree pending before the United States District Court in Washington. I write again because, though the proposed consent decree has been amended, the potential for a sale of the plant still exists.

As the Resolution stated, the well-being of the city is linked to the successful operation of the plant because many of our 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, all of the people of this area would be affected.

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, if Alcan does not retain the plant, 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.

The importance of this plant to our community cannot be over-estimated. The public interest requires that the plant be owned and operated by Alcan or by some buyer at least as capable as Alcan, with resources and support capabilities as extensive as Alcan's.

Respectfully yours,

Clair Roseberry

Clair Roseberry
Mayor

Cc:
Common Council

Exhibit 6: Comment from and Response to Jackson Co. Dev. Authority President Weyer

U.S. Department of Justice

Antitrust Division

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

September 20, 2004

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

Re: *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. 1:030 CV 02012 (D.D.C., filed May 26, 2004)*

Dear Ms. Weyer:

This letter responds to your August 5, 2004, comment on the proposed Amended Final Judgment (or "AFJ") in this case. That comment is similar to your comment on the initial settlement to which the United States has responded (69 Fed. Reg. 18930, 18938-44 (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 ("AFJ"), 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 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

[1]The 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.

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.

You expressed a general concern that if Alcan elects (or a trustee is appointed) to divest the Pechiney brazing sheet business, then any new owner of the Ravenswood facility may "lack the capability to operate the plant successfully." You have asked that Alcan be permitted to retain and operate the Ravenswood plant if "no reliable buyer is found."

The United States also strongly believes that if Alcan chooses to divest Pechiney's brazing sheet business, the new owner must be capable of operating the Ravenswood plant as part of an ongoing, viable new enterprise. In fact, a 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) and 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). Because the amended decree ensures that any new purchaser of Pechiney's brazing sheet business would obtain every tangible and intangible asset previously used by Pechiney to compete in developing, making, and selling brazing sheet and any other aluminum products made by the Ravenswood facility, there is no reason to believe that that business can only survive if it is sold to a dominant aluminum manufacturing concern, such as Alcan.[2]

At this stage, since Alcan has not proposed a buyer 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

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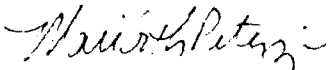
[2]You implicitly assume Alcan must be allowed to retain Pechiney's brazing sheet business because it would maintain current levels of employment and benefits at Ravenswood. However, a firm that acquires market power will be more likely to raise its prices and reduce its output, leading to a *reduction* in premerger employment levels.

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

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[3]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): 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."

Mark W. Whitley, Executive Director
104 Miller Drive • Ripley, WV 25271
(304) 372-1151 • Fax: (304) 372-1153
E-Mail director@jcda.org
www.jcda.org

August 5, 2004

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:

I am president of the Development Authority of Jackson County, West Virginia, where Pechiney has a major plant, Pechiney Rolled Products. I wrote to you in February 2004 to convey a resolution of the Development Authority, dated February 3, 2004, expressing strong concern about the then pending consent decree requiring Alcan to divest that plant.

Under an amended proposed consent decree, Alcan still has the option of divesting the Ravenswood plant. Therefore, the concerns expressed in the Authority's resolution remain relevant. The danger of divestiture is still posed by the amended decree presented to the Court. I repeat the resolution as follows:

> 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,

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

Marci D. Weyer
President
Jackson County Development Authority

Exhibit 7: Comment from and Response to Jackson County, WVA Commission

U.S. Department of Justice

Antitrust Division

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

September 20, 2004

James L. Waybright, President
Virginia J. Starcher, Commissioner
Donald G. Stephens, Commissioner
Jackson County Commission
Jackson County Courthouse
Ripley, West Virginia 25271

Re: *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. 1:030 CV 02012 (D.D.C., filed May 26, 2004)*

Dear President Waybright and Commissioners Starcher and Stephens:

This letter responds to your August 11, 2004, comment on the proposed Amended Final Judgment (or "AFJ") in this case. The proposed 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 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

[1]The 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.

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.

Your concern is that if Alcan chooses to divest the Pechiney brazing sheet business, that operation "might be sold to a buyer who will not operate the [Ravenswood] plant successfully and will shut it down in a short period of time," which could cause widespread unemployment in the Ravenswood community. As you see it, for this reason, the Amended Final Judgment should be modified so that "Alcan would not have the option of divesting this plant."

The United States also strongly believes that if Alcan chooses to divest Pechiney's brazing sheet business, the new owner must be capable of operating the Ravenswood plant as part of an ongoing, viable new enterprise. In fact, a 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) and 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). Because the amended decree ensures that any new purchaser of Pechiney's brazing sheet business would obtain every tangible and intangible asset previously used by Pechiney to compete in developing, making, and selling brazing sheet and any other aluminum products made by the Ravenswood facility, there is no reason to believe that that business can only survive if it is sold to a dominant aluminum manufacturing concern, such as Alcan.[2]

In any event, at this stage, since Alcan has not proposed a buyer for Pechiney's Ravenswood plant, much less negotiated any terms of sale, the United States sees no 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

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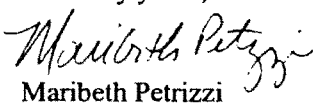
[2]You implicitly assume Alcan must be allowed to retain Pechiney's brazing sheet business because it would maintain current levels of employment and benefits at Ravenswood. However, a firm that acquires market power will be more likely to raise its prices and reduce its output, leading to a *reduction* in premerger employment levels.

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 does not exist 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); *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.).

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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[3]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* Amended Final 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."

The Jackson County Commission

Jackson County Courthouse
Ripley, West Virginia 25271
Phone (304) 372-2011
TDD# (304) 372-2000

Commissioner
Virginia J. Starcher

Commissioner
James L. Waybright

Commissioner
Donald Stephens

August 11, 2004

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

Re: Ravenswood, West Virginia - Pechiney Plant

Dear Ms. Petrizzi:

We, the County Commissioners of Jackson County, West Virginia, wrote to you on February 2, 2004 to express our great concern about the planned divestiture of the Pechiney Rolled Products plant in our County. We were commenting then on a proposed final judgment that had been submitted to the District Court in Washington.

We have learned that an amended final judgment has been filed with the Court and is now under review. That amended final judgment allows for the divestiture of the Pechiney plant, in the event that Alcan decides to sell that plant rather than selling its own brazing sheet plant. Because the amended final judgment could lead to the sale of the Pechiney plant, all of the concerns expressed in our earlier letter are still very relevant.

As we said in our earlier letter, our concern is that in the divestiture the plant might be sold to a buyer who will not operate the plant successfully and will shut it down in a short period of time. That outcome would be a disaster for our County.

Jackson County has a population of 28,000. There are approximately 12,000 in the labor force. The Pechiney plant employs 1000. Those employees, their families and dependents, together with the plant's retirees, make up a substantial portion of the County's population. The Pechiney Rolled Products plant is the single largest source of tax revenue in the County. Eighty percent of tax revenues go to the school district.

If the plant were to close, the community could not absorb the laid off workers and they would be added to the already excessive group of unemployed. The retirees who depend on employer sponsored benefit plans would lose their medical benefits and pensions. The County and school district would lose a central pillar of their tax base. The economic burden on the county would be more than it could sustain.

These facts demonstrate the serious basis of the our concern. We fear that a new owner would fail to operate the plant successfully and would end up liquidating the plant's assets over time or shutting down. Jobs, retirement benefits, and government services are at stake. The plant has had a difficult history and is not profitable. A new buyer who lacks resources and experience in the operation of a rolling mill, with the particular technical requirements of this plant, will not succeed.

Though the amended final judgment says that a buyer must be found who could operate the plant successfully, we are doubtful that this can be achieved unless the buyer is a major aluminum producer. The only companies who could take over the plant successfully are likely to be in the brazing sheet market already, and they would therefore be disqualified from purchasing the plant.

The problem for Jackson County would be solved if Alcan to continue to own the plant. We ask that the final judgment be amended so that Alcan would not have the option of selling the Pechiney plant.

Very truly yours,

THE JACKSON COUNTY COMMISSION

James L. Waybright, President

Donald G. Stephens, Commissioner

Virginia J. Starcher, Commissioner

Exhibit 8: Comment from and Response to Mr. L.D. Whitman

U.S. Department of Justice

Antitrust Division

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

September 20, 2004

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

Re: *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. 1:030 CV 02012 (D.D.C., filed May 26, 2003)*

Dear Mr. Whitman:

This letter responds to your August 5, 2004, comment on the proposed Amended Final Judgment (or "AFJ") in this case. That comment is similar to your comment on the initial settlement to which the United States responded and published in the Federal Register (69 Fed. Reg. 18930, 18970-73 (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 requires Alcan to divest either its own or Pechiney's "brazing sheet business."[1] 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. 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. Prompt divestiture of either brazing sheet business to a viable new competitor would advance the public interest in competitive prices and continuing 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 ensure that the proposed divestiture is expeditiously completed and competition restored, the Amended Final Judgment (§ V(B)) provides that if Alcan does not sell

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

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.

Alcan already has taken steps to divest its own brazing sheet business by spinning it off to its shareholders along with many of Alcan's other domestic and foreign businesses. There is a possibility, however, that Alcan might choose (or a trustee later may be appointed) to divest the Pechiney brazing sheet business.

Your primary concern is that if Alcan chooses (or a trustee is appointed) to divest the Pechiney brazing sheet business, the new owner must have the resources to continue that firm's competition in marketplace.

The United States also strongly believes that if Alcan chooses to divest Pechiney's brazing sheet business, the new owner must be capable of operating the Ravenswood plant as part of an ongoing, viable new enterprise. In fact, a 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) and 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). Because the proposed amended decree ensures that any new purchaser of Pechiney's brazing sheet business would obtain every tangible and intangible asset previously used by Pechiney to compete in developing, making, and selling brazing sheet and any other aluminum products sold by the Ravenswood facility (*e.g.*, aerospace grade aluminum plate), there is no reason to believe that that business can only survive if it remains in the hands of a dominant aluminum manufacturing concern, such as Alcan.[2]

In any event, at this stage, since Alcan has not proposed a buyer 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

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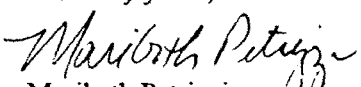
[2]You implicitly assume Alcan must be allowed to retain Pechiney's brazing sheet business because it would maintain current levels of employment and benefits at Ravenswood. However, a firm that acquires market power will be more likely to raise its prices and reduce its output, leading to a *reduction* in premerger employment levels.

[3]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): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to

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

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lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

Route 1
Box 79A
Ravenswood, WV 26164

August 5, 2004

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 wrote to you in February concerning the potential effects of the consent decree before the Court in connection with the purchase of Pechiney by Alcan. I was concerned particularly about the divestiture of Pechiney Rolled Products required by the consent decree. There is now a revised consent decree before the Court, but that decree also could result in the divestiture of the Pechiney plant. The concerns I expressed in February are still valid now.

I was at one time plant manager at the Pechiney Rolled Products plant, and I am now chairman of the retiree group of former employees of the plant.

My chief concern and that of the other retirees is that a 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, especially to the thousands of employees and retirees who would be left without work or the means to live decent lives.

I know that the amended decree *could* make it possible for Alcan to continue to own the plant. This would be a great relief to the community here. We doubt that any owner other than Alcan could operate the plant successfully. However, the decree also opens the possibility that Alcan might divest the plant. As I stated in my previous letter, history leads me to worry about the ability of a new owner to perform as well as Alcan. 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. Also, developing new alloys and products for these markets require a tremendous amount of research and development. To be successful long term, it's critical that they are equivalent too or have a technological advantage over it's competitor which is Alcoa.

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. Many retirees are dependent of benefits, especially payment of medical bills. 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, along with its own brazing sheet business.

Very truly yours,

L.D. Whitman

Exhibit 9: Comment from and Response to Mr. R. Thompson, Century Aluminum

U.S. Department of Justice

Antitrust Division

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

September 20, 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 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. Thompson:

This letter responds to your August 9, 2004, comment on the proposed Amended Final Judgment (or "AFJ") in this case. That comment is virtually identical to your comment on the initial settlement. The United States's response to your earlier comment, which fully addressed the concern you expressed, was previously published in the Federal Register (69 Fed. Reg. 18930, 18966-69 (Apr. 9, 2004)). Before addressing your current comment, however, it may be helpful to summarize 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, §

[1]The 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.

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.

Century Aluminum is a customer of the Pechiney brazing sheet business that could be divested pursuant to the terms of the Amended Final Judgment. Your major concern is that any new owner of the Ravenswood facility must be a financially viable, ongoing enterprise, fully capable of paying for any aluminum that it purchases from your firm.

The United States also strongly believes that if Alcan chooses to divest Pechiney's brazing sheet business, the new owner must be capable of operating the Ravenswood plant as part of an ongoing, viable new enterprise. In fact, a 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) and V(B)). To that end, the Amended Final Judgment requires Alcan to sell any tangible and intangible assets used in the development, 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). Because the amended decree ensures that any new purchaser of Pechiney's brazing sheet business would obtain every tangible and intangible asset previously used by Pechiney to compete in developing, making, and selling brazing sheet and any other aluminum products made by the Ravenswood facility, there is no reason to believe that that business can only survive if it is sold to a dominant aluminum manufacturing concern, such as Alcan.[2]

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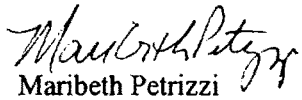
[2]You argue that Alcan should be allowed to retain the Pechiney brazing sheet business because it would maintain current employment levels at Ravenswood. A firm that acquires market power, however, will be more likely to raise price and reduce output, and as a consequence, would be more, not less, likely to reduce employment levels.

In any event, at this stage, since Alcan has not proposed a buyer for Pechiney's Ravenswood plant, much less negotiated any terms of sale, the United States sees no 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); *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.).

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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[3]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* Amended Final 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

August 9, 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 adjacent to the Pechiney Rolled Products plant that was to be divested by Alcan as a divestiture obligation as part of its acquisition of Pechiney.

This obligation was lifted in May 2004 when Alcan and the Department of Justice executed and filed with the United States District Court in Washington, DC an Amended Final Judgment that recognizes Alcan's spinoff of its original rolling assets, including its mill for rolling brazing sheet, as an alternative remedy to divestiture of the Ravenswood mill. The comments below represent a restatement of Century's position with respect to ownership of the rolling mill.

The two plants operated as an integrated entity from the late 1950s, when Kaiser Aluminum constructed them, until 1999 when Century sold the rolling mill to Pechiney. 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 much of 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. The savings are important to the economic viability of our plant and to the jobs of our 700 employees and the pension and health benefits enjoyed by our 300 retirees.

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

(304) 273-6000 Phone

A Century Aluminum Company

Ms. Maribeth Petrizzi
August 9, 2004
Page -2-

Century Aluminum's principal concern with ownership of the mill is that prospective new owners must meet our company's credit standards. Century typically holds as much as $30.0 million in accounts receivable each month under the existing contract which is a significant liability for a company of our size. Alcan's size, favorable reputation and credit worthiness satisfy this concern. If Alcan were to sell the plant to a third party, we would require that the new owner possess a credit rating approximating that of Pechiney/Alcan.

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 financial, technical and marketing 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.

Exhibit 10: Comment from and Response to Mr. D. Waldo, Appalachican Power Co.

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

[1]The 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]

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[2]This 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

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[3]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): 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."

American Electric Power
PO Box 1986
Charleston, WV 25327-1986

AEP
AMERICAN ELECTRIC POWER

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,

DEWaldo

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.

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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

Doc #226216.v1 Date: 2/13/2004 2:55 PM

CERTIFICATE OF SERVICE

I, Anthony E. Harris, hereby certify that on September 20, 2004, I caused copies of the foregoing United States's Revised Certificate of Compliance with the Antitrust Procedures and Penalties Act to be served by mail by sending them first-class, postage prepaid, to duly authorized legal representatives of the parties, as follows:

Counsel for Defendants Alcan Inc., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC

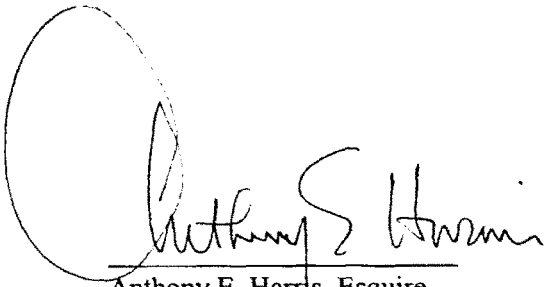
Michael B. Miller, Esquire
New York Bar # MM1154
Sullivan & Cromwell
125 Broad Street
New York, NY 10004-2498

Peter B. Gronvall, Esquire
Sullivan & Cromwell
1701 Pennsylvania Avenue, NW
Suite 800
Washington, DC 20006

Counsel for Intervenor State of West Virginia

Andrew G. Fusco, Esq.
West Virginia Bar # 1317
Special Assistant Attorney General
Eckert Seamans Cherin & Mellot, PPLC
2400 Cranberry Square
Morgantown, WV 26508-9209

Edward J. Longosz, II, Esq.
DC Bar # 368932
Eckert Seamans Cherin & Mellot, LLC
1747 Pennsylvania Avenue, NW
Suite 1200
Washington, DC 20006



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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 18, 2004, and published in the **Federal Register** on June 3, 2004, (69 FR 31409–31410), Accustandard Inc., 125 Market Street, New Haven, Connecticut 06513, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N, N-Dimethylamphetamine (1480)	I
Fenethylline (1503)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590)	I
Gamma hydroxybutyric acid (2010)	I
Methaqualione (2565)	I
Mecloqualone (2572)	I
Alpha-Ethyltryptamine (7249)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390)	I
4-Bromo-2, 5-dimethoxyamphetamine (7391)	I
4-Bromo-2, 5-dimethoxyamphetamine (7392)	I
4-Methyl-2, 5-dimethoxyamphetamine (7395)	I
2, 5-Dimethoxyamphetamine (7396)	I
2, 5-Dimethoxy-4-ethylamphetamine (7399)	I
3,4-Methylenedioxyamphetamine (7400)	I
5-Methoxy-3, 4-methylenedioxyamphetamine (7401)	I
N-Hydroxy-3, 4-methylenedioxyamphetamine (7402)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455)	I
1-(1-Phenylcyclohexyl) pyrrolidine (PCPY) (7458)	I
Thiophene Analog of Phencyclidine (7470)	I
1-(1-(2-Thienly) Cyclohexyl) Pyrrolidine (7473)	I
N-Ethyl-3-Piperidyl Benzilate (7482)	I
N-Methyl-3-Piperidyl Benzilate (7484)	I
Acetyldihydrocodeine (9051)	I
Benzylmorphine (9052)	I
Codeine-N-Oxide (9053)	I
Cyprenorphine (9054)	I
Desomorphine (9055)	I
Etorphine (except Hydrochloride salt) (9056)	I
Codeine Methylbromide (9070)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Heroin (9200)	I
Hydromorphinol (9301)	I
Methyldesorphine (9302)	I
Methyldihydromorphine (9304)	I
Morphine Methybromide (9305)	I
Morphine Methylsulfonate (9306)	I
Morphine-N-Oxide (9307)	I
Myrophine (9308)	I
Nicocodeine (9309)	I
Nicomorphine (9312)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Thebacon (9315)	I
Acetorphine (9319)	I
Drotebanol (9335)	I
Acetylmethadol (9601)	I
Allylprodine (9602)	I