violation of section 337, and is/are the parties upon which the complaint is to be served:

Roku Inc., 150 Winchester Circle, Los Gatos, CA 95032

TCL Electronics Holdings Limited, f/k/a, TCL Multimedia Holdings Limited, 7th Floor, Bulding 22E, 22 Science Park East Avenue, Hong Kong Science Park, Shatin, New Territories, Hong Kong

Shenzhen TCL New Technology Company Limited, 5 Shekou Industrial Avenue Shenzhen, 518067, P.R. China

TCL King Electrical Appliances, (Huizhou) Company Limited, 78 Zhongkai Development Zone, Huizhou, 516006, P.R. China

TTE Technology Inc. d/b/a/TCL USA and TCL North America, 555 South Promenade Avenue, Suite 103, Corona, CA 92879

TCL Corp., TCL Technology Building, 17 Huifeng 3rd Road, Zhongkai Hi-Tech Development District, Huizhou City, Guangdong Province, P.R. China

TCL Moka, Int'l Ltd., 13/F, TCL Tower, 8 Tai Chung Road Tsuen Wan, New Territories, Hong Kong

TCL Overseas Marketing Ltd., 13/F, TCL Tower, 8 Tai Chung Road Tsuen Wan, New Territories, Hong Kong

TCL Industries Holdings Co., Ltd., 13/F, TCL Tower, 8 Tai Chung Road Tsuen Wan, New Territories Hong Kong

TCL Smart Device (Vietnam) Company, Ltd., No. 26 VSIP II–A, Street 32, Vietnam Singapore Industrial Park II–A, Tan Binh Commune, Bac Tan Uyen District, Binh Duong Province, Vietnam

Hisense Co. Ltd., Hisense Tower, No. 17 Donghai West Road, South District, Qingdao, Shandong Provence 266071, P.R. China

Hisense Electronics Manufacturing Company of America Corporation d/b/a Hisense USA, 7310 McGinnis Ferry Road, Suwanee, Georgia 20024

Hisense Import & Export Co. Ltd., Hisense Tower, No. 17 Donghai West Road, South District, Qingdao, Shandong Provence 266071, P.R. China

Qingdao Hisense Electric Co., Ltd., 218 Qianwangang Road, Economic Technology Development Zone, Qingdao, Shandong Province 266555, P.R. China

Hisense International (HK) Co., Ltd., Room 3101–5, Singga Coml Ctr, 148 Connaught Road West, Sheng Wan Hong Kong (SAR)

Funai Electric Co., Ltd., 7–7–1 Nakagaito, Daito city, Osaka 574–0013, Japan

Funai Corporation Inc., 201 Route 17 North, Suite 903, Rutherford, NJ 07070

Funai (Thailand) Co., Ltd., 835 Moo 18, Pakchong-Lumsompung Road, Tambon Chantuek, Amphur Pakchong, Nakhon Ratchasima, Thailand, 30130

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this Investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 18, 2020

**William Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2020–11026 Filed 5–21–20; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. Novelis Inc., et al., No. 1:10–cv–02033 (CAB); Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Ohio in *United States of America* v. *Novelis Inc., et al.,* Civil Action No. 1:19–cv–02033 (CAB). On September 4, 2019, the United States filed a Complaint alleging that Novelis Inc.'s proposed acquisition of Aleris Corporation's North American aluminum automotive body sheet (''ABS'') business would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on May 12, 2020, requires Novelis Inc. to divest Aleris Corporation's North American aluminum ABS operations in their entirety. The divestiture includes two facilities: One production facility in Lewisport, Kentucky, and one technical service center located in Madison Heights, Michigan; and all other tangible and intangible assets related to or used in connection with the Lewisport, Kentucky facility.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the Northern District of Ohio. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Katrina Rouse, Chief, Defense, Industrials and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite

8700, Washington, DC 20530 (telephone: 202–598–2459).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics.*

**United States District Court for the Northern District of Ohio**

*United States of America*, Plaintiff, v. *Novelis Inc.* and *Aleris Corporation, Defendants.*

Case No.: 1:19–cv–02033–CAB

**Complaint**

The United States of America brings this civil antitrust action pursuant to Section 7 of the Clayton Act, 15 U.S.C. 18, to enjoin Novelis Inc.'s (''Novelis'') proposed acquisition of its new and disruptive rival, Aleris Corporation (''Aleris''). The United States alleges as follows:

**I. Introduction**

1. Automakers are turning to aluminum to make vehicles lighter, so they can satisfy consumer demand for larger vehicles while enhancing fuel efficiency, safety, and performance. As a result, demand for rolled aluminum sheet for automotive applications (commonly referred to as ''automotive body sheet'' or ''ABS'') is growing.

2. Novelis and Aleris are two of only four aluminum ABS suppliers in North America. If permitted to proceed, the transaction would concentrate approximately 60 percent of total production capacity and the majority of uncommitted (open) capacity with Novelis. Novelis has long been one of only a few aluminum ABS suppliers in North America, while Aleris is a relatively new competitor that—in Novelis's own words—is ''poised for transformational growth.'' By acquiring Aleris, Novelis would lock up a large share of available aluminum ABS capacity for the foreseeable future, which would immediately and negatively impact competition in this market. Novelis's own deal documents reveal an anticompetitive motivation behind this acquisition: Preventing rivals from acquiring a disruptive competitor, Aleris, so that Novelis can maintain its current high prices.

3. The transaction likely would lessen competition substantially in the market for aluminum ABS sold to North American customers in violation of Section 7 of the Clayton Act and, unless enjoined, automakers and American consumers will be harmed through higher prices, reduced innovation, and less favorable terms of service.

**II. Industry Overview**

*A. Background on Aluminum ABS*

4. The North American automotive industry is a vital sector of the American economy. The industry represents the single largest manufacturing sector in the United States, accounting for about three percent of gross domestic product. In 2017, over 11 million vehicles were produced in the United States. For decades, automakers used flat-rolled steel almost exclusively in the construction of automotive bodies.

5. Growing consumer demand for larger vehicles loaded with safety and performance features has led automakers to pursue light-weight designs. Automakers have turned to aluminum ABS, which is 30 to 40 percent lighter than traditional steel, as the material of choice for light-weighting the next generation of vehicles.

6. Although aluminum is substantially more expensive than steel, aluminum has distinct and superior physical properties. Vehicles made with aluminum are lighter and more fuel-efficient. Aluminum ABS is also safer and more durable, absorbing substantially more energy than traditional steel upon impact. Light-weight vehicles also have significant performance advantages including faster acceleration, better handling, shorter braking distance, and increased payload and towing capabilities. In addition to aluminum ABS's significant light-weighting advantages, aluminum ABS is also highly formable, resists breaking, and provides more styling options for automobile designers than traditional steel.

7. Automakers recognize that aluminum ABS offers light-weighting, physical, and performance benefits over traditional steel such that the two materials are not close substitutes for many important design and engineering features, even though traditional steel still comprises the majority of the material used in cars. Some automakers, such as the Ford Motor Company, have adopted an aluminum-intensive design for certain vehicle models (*e.g.,* the F–150 pickup truck), achieving significant weight-savings and performance benefits. Other automakers are pursuing light-weight designs using an incremental ''multi-material'' approach, in which automakers use the best material for each particular part or application. Under the multi-material approach, aluminum ABS is being used to replace traditional steel in large automotive panels, such as the hood, liftgates, doors and fenders (*i.e.,* the vehicle's ''skin''). By doing so, automakers can substantially reduce the weight of vehicles, meet regulatory emissions targets, and achieve safety and performance benefits that could not be done using steel.

8. Light-weighting designs are also critical for the next generation of electric vehicles. Aluminum ABS can reduce electric vehicle weight by up to 20 percent, allowing an electric vehicle to run farther on a single charge.

9. Aluminum ABS is recognized as a critical input in automakers' light-weighting strategies. As automakers continue to build the bigger-yet-more-efficient vehicles that consumers demand, more and more aluminum ABS will be incorporated into automobile models.

10. Aluminum ABS demand is increasing. An industry-wide study conducted by Ducker Worldwide predicts that the total aluminum content in vehicles will increase 37 percent from about 400 pounds per vehicle in 2015 to more than 550 pounds by 2028.

11. Supply is tight. Suppliers have limited capacity to produce aluminum ABS. In North America, much of the aluminum ABS production capacity is already committed to fulfilling automaker orders. A supplier must have sufficient uncommitted capacity to satisfy the automaker's aluminum ABS quantity requirements in order to bid or compete for new vehicle models. A supplier that cannot meet those requirements because it has little or no uncommitted capacity cannot effectively compete for the business.

12. Based on Ducker's projections and their own market intelligence, Novelis and Aleris each independently has determined that the demand for aluminum ABS in North America will soon outgrow market supply. The majority of aluminum ABS production capacity is already committed to fulfilling existing automakers' orders, leaving the bulk of uncommitted capacity with Novelis and, its target, Aleris.

13. Additional capacity cannot be readily brought online to meet growing demand. Barriers to entry are high and expansion of existing production facilities is costly and takes years to complete. Moreover, steel suppliers cannot readily shift to production of aluminum ABS because aluminum ABS is produced using a distinct process on specialized equipment.

14. Due to transportation costs and supply chain risks, importing aluminum ABS is not a primary sourcing strategy for most automakers in North America. Imports, therefore, make up only a marginal volume of supply.

*B. Novelis Is Seeking To Eliminate an Emerging Competitive Threat Through This Acquisition*

15. For years, North American aluminum ABS production was dominated by just two firms, Novelis and another large domestic rival. By its own account, Novelis enjoyed this ''favorable industry structure'' because it allowed Novelis to embark on a ''price leadership strategy'' and realize ''substantial market-based pricing movement.'' Novelis took advantage of this industry structure to increase prices to certain automaker customers by up to 30 percent.

16. In 2016, Aleris, an aluminum ABS producer in the European market, established facilities in the United States. Aleris's entry had an immediate impact on pricing in North America, forcing Novelis to lower its prices. For instance, internal documents confirm that ''Novelis reduced [its] base price by up to 5%'' for one automaker in order to compete with Aleris's lower prices. Fearing lower prices from Aleris for another automaker customer, Novelis dropped its bid by about five percent to ''be in the range of Aleris.'' New capacity from Aleris threatened Novelis's ''premium pricing,'' and in turn, Novelis's high profit margins.

17. Aleris's entry into North America not only undercut Novelis's prices and margins, but it also resulted in vigorous head-to-head competition with Novelis on customer service and support. Based on its experience in Europe, Aleris immediately established a technical support center in the Detroit area to work closely with automaker design engineers to expand the use of aluminum ABS solutions. Novelis's CEO, Steve Fisher, testified that Aleris ''actually was in front of [Novelis] a little bit . . . with the customer solution center.'' In response, Novelis copied Aleris's efforts, starting its own solution center less than 30 miles from Aleris's facility.

18. Even before Aleris began producing aluminum ABS coils in the United States, Novelis tried to buy Aleris as a way to preserve the ''favorable industry structure'' that enabled Novelis's ''premium pricing.'' Aleris's private equity owners had, however, already agreed to sell Aleris to a foreign buyer. When Aleris's deal with the foreign buyer unraveled in the fall of 2017, Novelis aggressively moved to acquire Aleris.

19. Novelis was particularly concerned that in the hands of another buyer, Aleris would further erode Novelis's prices and margins. In documents setting forth Novelis's strategic analysis of the transaction, the Novelis due diligence team expressed concern that if Novelis were not the acquirer, Aleris could be sold to a ''[n]ew market entrant in the US with lower pricing discipline'' than Novelis, and that an ''[a]lternative buyer [was] likely to bid aggressively and negatively impact pricing'' in the market. A ''key takeaway'' of this analysis was that, by acquiring Aleris itself, Novelis ''[p]revents competitors from acquiring assets and driving less disciplined pricing.''

20. This same anticompetitive rationale was repeated in numerous internal analyses of the deal that were generated by, or presented to, top Novelis executives and/or the Novelis Board of Directors. These analyses of the deal state:

- ''[A]n acquisition by us as the market leader will help preserve the industry structure versus a new player . . . coming into our growth markets and disturbing the industry structure to create space for himself, while hurting us the most.''
- Novelis should buy Aleris because an ''alternative buyer [is] likely to bid aggressively and negatively impact pricing.''
- Another buyer of Aleris likely would be a ''[n]ew market entrant in the US with lower pricing discipline'' that would create the ''potential for accelerated price declines as they seek to fill capacity.'' If not Novelis, an alternative buyer might have ''lower pricing discipline.''

Novelis conducted a ''build or buy'' analysis of Aleris that concluded as ''key takeaways'' that Novelis should acquire Aleris because there is a ''disincentive for market leader [*i.e.,* Novelis] to add capacity and contribute to a price drop'' and an acquisition of Aleris ''prevents competitors from acquiring assets and driving less disciplined pricing.''

## III. Defendants and the Proposed Transaction

21. Novelis is a global manufacturer of semi-finished aluminum products with global revenues of approximately $12.3 billion for the fiscal year ending March 31, 2019. The company is incorporated in Canada and headquartered in Atlanta, Georgia. It operates 23 production facilities in North America, South America, Europe and Asia. Eight facilities are located in North America, including two (Oswego, New York, and Kingston, Ontario) that currently produce aluminum ABS. Another aluminum ABS finishing line is under construction in Guthrie, Kentucky. Novelis supplies flat-rolled aluminum products in three segments: beverage can, specialty and automotive.

22. Novelis is a wholly-owned subsidiary of Hindalco Industries, Ltd., an Indian company headquartered in Mumbai, India.

23. Aleris also is a global manufacturer of semi-finished aluminum products, generating global revenues of approximately $3.4 billion in 2018. Aleris is a Delaware corporation, headquartered in Cleveland, Ohio and operates 13 production facilities in North America, South America, Europe, and Asia. Aleris supplies flat-rolled aluminum products to the automotive, aerospace and building and construction industries, among others. Aleris has been a producer of aluminum ABS in Europe since 2002, and recently expanded ABS production into the North America market with new ABS production lines in Lewisport, Kentucky.

24. Novelis and Aleris entered into a definitive Agreement and Plan of Merger, dated July 26, 2018. Under this agreement, Novelis will acquire 100 percent of the voting securities of Aleris for an estimated enterprise value of $2.6 billion.

## IV. The Relevant Market Threatened by the Acquisition

25. Aluminum ABS sold to automakers in North America constitutes a relevant antitrust market and line of commerce under Section 7 of the Clayton Act. A well-accepted methodology for determining a relevant market for antitrust analysis is to ask whether a hypothetical monopolist over all products in the proposed market could profitably impose at least a small but significant and non-transitory increase in price, or SSNIP. *See* Fed. Trade Comm'n & U.S. Dep't of Justice Horizontal Merger Guidelines (2010) (''Horizontal Merger Guidelines''); *accord Fed. Trade Comm'n* v. *Whole Foods Market,* 548 F.3d 1028, 1038 (DC Cir. 2008). A hypothetical monopolist of aluminum ABS sold to automakers in North America could profitably increase prices by at least a SSNIP because North American automakers are unlikely to substitute away from aluminum ABS in sufficient quantities to make that price increase unprofitable. Therefore, the sale of aluminum ABS to North American automakers is a relevant antitrust market.

*A. Relevant Product Market*

26. An automaker can make a car part out of aluminum, steel, or other material, but there are substantial differences in the physical properties of aluminum (as compared to steel), such

that an automotive engineer designing a car with particular weight, performance, safety specifications, and target retail price is unlikely to view steel and other materials as full functional substitutes for aluminum for the various car parts being designed. Nor is any other material likely to significantly impact the pricing of aluminum ABS for most car parts, or vice-versa. Aluminum ABS is a distinct line of commerce and constitutes a relevant product market even if a broader market for automotive materials may also exist.

27. Aluminum ABS is different from other materials used in automotive applications and meets many of the practical indicia that courts rely on to define a relevant product market. As an initial matter, Novelis and Aleris and other industry participants recognize aluminum ABS as a distinct product with its own market dynamics. Novelis and Aleris describe themselves as ''leaders'' in the aluminum ABS market, and they calculate market share for the automotive business by looking to sales of aluminum ABS alone. In strategic planning documents commenting on the competitive landscape in aluminum ABS, Novelis boasted that it is the ''[m]arket leader with ~60% share'' of the ''[a]utomotive business in North America.'' Similarly, in the defendants' ordinary course of business documents, the defendants refer predominantly to the supply, demand, and competitiveness of other aluminum ABS suppliers when discussing competitive dynamics in the automotive industry.

28. Aluminum ABS also has physical properties that are distinctive from other automotive materials. Compared to steel, for instance, aluminum has a higher strength-to-weight ratio, higher strength in large panels, and superior corrosion resistance. These qualities are highly sought after by auto designers and engineers. Alternative materials, such as steel, generally do not share these attributes and therefore, these materials are not reasonable substitutes for aluminum ABS for automakers when designing and engineering the technical and performance specifications of vehicles.

29. Steel companies are developing lighter, high strength steel varieties for the auto industry. But as Novelis has observed, high strength steel ''is largely replacing existing mild steel'' and ''cannibalizing the existing material'' (*i.e.,* traditional steel). The threat of substitution from aluminum to high strength steel is, as Aleris confirms, ''limited.''

30. The price of aluminum ABS is also distinct from other ABS materials, including steel. Aluminum ABS is about three to four times more expensive than traditional steel per pound, but North American automakers continue to adopt aluminum ABS in place of steel because of its superior light-weighting qualities and performance and safety benefits. As a result of those qualities, even as aluminum commodity pricing rose in 2018, Novelis prepared to tell its investors that ''[w]e are not seeing demand destruction in our markets.'' Moreover, while aluminum ABS prices are sensitive to price changes of aluminum ABS from other aluminum ABS suppliers, they are not sensitive to price changes in other materials, such as steel.

31. Further, from the automaker's perspective, the use of aluminum ABS requires a different tooling and joining process than the default production process of steel automotive parts. Automakers continue to invest millions of dollars to upgrade their production plants as they move towards greater adoption of aluminum.

*B. Relevant Geographic Market*

32. The relevant geographic market in which to assess the competitive harm from the proposed transaction is North America. When a supplier can price differently based on customer location, the Horizonal Merger Guidelines provide that the relevant geographic market may be defined based on the locations of targeted customers. Such pricing is possible in aluminum ABS as evidenced by the different prices charged by suppliers across geographic regions. For example, Novelis has observed that ''North America enjoys the highest regional pricing'' with Novelis's pricing several hundred dollars per ton higher in North America than in Europe. Because of transportation costs, import tariffs and duties, the limited shelf life of most types of aluminum ABS, and supply chain risks, customers of aluminum ABS in North America are unlikely to be able to defeat a price increase through arbitrage from outside North America.

33. This price gap between North America and other geographic regions has persisted over many years, supporting the conclusion that North America is a relevant geographic market.

**V. Anticompetitive Effects of the Acquisition**

34. The proposed acquisition is likely to lead to anticompetitive effects. As an initial matter, this transaction is presumptively anticompetitive. The Supreme Court has held that mergers that significantly increase concentration in concentrated markets are presumptively anticompetitive and, therefore, unlawful. *See United States* v. *Phila. Nat'l Bank,* 374 U.S. 321, 363–65 (1963). To measure market concentration, courts often use the Herfindahl-Hirschman Index (''HHI'') as described in the Horizontal Merger Guidelines. Mergers that increase the HHI by more than 200 and result in an HHI above 2,500 in any market are presumed to be anticompetitive.

35. The North American aluminum ABS market is already highly concentrated. By Novelis's own assessment, post-merger, Novelis could control more than 60 percent of the North American aluminum ABS market. Based on current sales estimates—which includes a marginal volume of imports—if Novelis were allowed to acquire Aleris, the HHI would increase by almost 500 points to a post-transaction HHI reaching almost 4,000. Thus, this merger is presumed to be anticompetitive under Supreme Court precedent.

36. Beyond the presumption provided under Supreme Court precedent, the facts establish the probable anticompetitive effect of the merger. First, Aleris's expansion into the North American market had an immediate positive impact on competition and pricing. Novelis reduced its pricing to some of the industry's largest and most significant automakers in order to meet customer ''targets (as set by Aleris),'' or to ''be in the range of Aleris.'' With uncommitted production capacity and its recent $425 million aluminum ABS expansion at its facility in Lewisport, Kentucky, Aleris is poised to continue to compete vigorously with Novelis by offering lower prices in an effort to steal share.

37. Through this acquisition, however, Novelis would seize control of Aleris's uncommitted capacity, eliminating a rival it described as ''poised for transformational growth.'' Aleris and Novelis are the only two firms expected to have sizable uncommitted North American capacity over the next few years. If the merger is enjoined, head-to-head competition between Aleris and Novelis would likely intensify as they fight to fill their production lines. As Novelis's own documents reveal, this competition would have disrupted Novelis's ''premium pricing'' strategy, resulting in lower prices to automakers.

38. In addition, the proposed acquisition likely would reduce quality and innovation in aluminum ABS. For example, Novelis copied Aleris's establishment of a technical support center in the Detroit area, which was developed to work directly with

automakers. The merger would eliminate this type of competition between the two firms.

39. If allowed to proceed, the proposed acquisition would reduce the number of North American aluminum ABS suppliers from 4 to 3. This consolidation would concentrate more than half of the domestic aluminum ABS sales, 60 percent of projected total domestic capacity, and the majority of uncommitted domestic capacity under the control of one firm.

40. Post-transaction, no other firms would have the incentive and ability to constrain Novelis. The transaction would result in higher prices, as well as reduced innovation and technical support for automakers that rely on this critical input.

**VI. Absence of Countervailing Factors**

41. New entry or expansion by existing competitors is unlikely to prevent or remedy the transaction's likely anticompetitive effects in the market for aluminum ABS.

42. The aluminum ABS market has significant barriers to entry. Barriers include the high cost and long-time frame needed to build production facilities. For example, to compete in the automotive market, aluminum companies generally must build a specialized ''heat-treat'' finishing line to make aluminum sheet for automotive applications. These heat-treat finishing lines take years to build and cost hundreds of millions of dollars to construct, and require sophisticated technological know-how to operate.

43. In addition to heat-treat finishing lines, aluminum ABS suppliers need aluminum coils that are wide enough for automotive applications. These aluminum coils are produced at hot mills, and there are only a few hot mills in North America. Building a new hot mill takes several years and requires a significant capital investment of well over a billion dollars. Meanwhile, expanding or re-outfitting an existing facility to have auto-capable hot mill capacity could also require several hundred million dollars.

44. As a result of these barriers, entry into the market for aluminum ABS would not be timely, likely, or sufficient to defeat the substantial lessening of competition that is likely to result from Novelis's acquisition of Aleris.

45. Moreover, because of supply chain risks and other factors, customers of the merged firm (*i.e.,* North American automakers) are unlikely to turn to foreign suppliers of aluminum ABS in sufficient volume to mitigate the anticompetitive effects of the merger.

**VII. Jurisdiction and Venue**

46. The United States brings this civil antitrust action against defendants Novelis and Aleris under Section 15 of the Clayton Act, 15 U.S.C. 25, as amended, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

47. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a) and 1345. Novelis and Aleris develop, manufacture, and sell aluminum ABS in the flow of interstate commerce. The activities of Novelis and Aleris in developing, manufacturing, and selling these products substantially affect interstate commerce.

48. This Court has personal jurisdiction over Novelis and Aleris. Both parties have significant contacts with this judicial district: Novelis is registered to do business in the State of Ohio and transacts business in this District; Aleris is headquartered in Cleveland, Ohio and also transacts business in this District. Moreover, Novelis's proposed acquisition of Aleris will have effects throughout the United States, including in this District.

49. Venue is proper in this District pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391(b) and (c).

**VIII. Violation Alleged**

50. Novelis's acquisition of Aleris is likely to lessen substantially competition in the relevant market in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

51. The transaction will have the following effects, among others:

a. Eliminate head-to-head competition between Novelis and Aleris in the development, manufacture and sale of aluminum ABS;

b. Likely reduce competition between and among Novelis and the remaining suppliers of aluminum ABS; and

c. Likely cause prices of the relevant product to increase, delivery times to lengthen, terms of service to become less favorable, and innovation to be reduced.

**IX. Request for Relief**

52. The United States requests that this Court:

a. adjudge and decree the acquisition of Aleris by defendant Novelis to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

b. preliminarily and permanently enjoin and restrain the defendants from carrying out the proposed acquisition of Aleris by Novelis or any other transaction that would combine the two companies and further enjoin the defendants from taking any steps towards completing the acquisition of Aleris by Novelis;

c. award such temporary and preliminary injunctive and ancillary relief as may be necessary to avert the dissipation of Aleris's tangible and intangible assets during the pendency of this action and to preserve the possibility of effective permanent relief;

d. award the United States the cost of this action; and

e. grant the United States such other and further relief as the Court deems just and proper.

Respectfully submitted,

September 4, 2019

FOR PLAINTIFF UNITED STATES OF AMERICA,

Makan Delrahim
*Assistant Attorney General*

Kathleen O'neill
*Senior Director of Investigations and Litigation*

Craig W. Conrath
*Director of Litigation*

Patricia A. Brink
*Director of Civil Enforcement*

Julia A. Schiller
*Counsel to the Assistant Attorney General*

John Read
*Acting Chief, Defense, Industrials, and Aerospace Section*

Stephanie A. Fleming
*Assistant Chief, Defense, Industrials, and Aerospace Section*

Samer M. Musallam (OH #0078472)
Lowell R. Stern
Blake W. Rushforth
Bashiri Wilson
Angela Ting
James Foster
Siddarth Dadhich
Thomas Dematteo
Ethan Stevenson
*Trial Attorneys,*
*Antitrust Division, United States Department of Justice,*
*450 Fifth Street NW, Washington, DC 20530, Telephone: (202) 598–2990, Facsimile: (202) 514–9033, samer.musallam@usdoj.gov.*

**United States District Court for the Northern District of Ohio**

*United States of America,* Plaintiff, v. *Novelis Inc. and Aleris Corporation,* Defendants.

Case.: 1:19–cv–02033–CAB

**[Proposed] Final Judgment**

*Whereas*, Plaintiff, United States of America, filed its complaint on September 4, 2019, and the United States and Defendants, Novelis Inc. and Aleris Corporation, by their respective attorneys, have consented to entry of this Final Judgment, without this Final Judgment constituting any evidence against or admission by a party regarding any issue of fact or law;

*And whereas,* Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

*And whereas,* the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

*And whereas,* Defendants agree to make a divestiture for the purpose of remedying the loss of competition alleged in the Complaint;

*And whereas,* Defendants represent that the divestiture and other relief required by this Final Judgment can and will be made and that Defendants will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

*Now therefore,* upon consent of the parties, it is *ordered, adjudged, and decreed*:

**I. Jurisdiction**

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

**II. Definitions**

As used in this Final Judgment:

A. ''Acquirer'' means the entity to whom Defendants divest the Divestiture Assets.

B. ''Aluminum ABS'' means aluminum automotive body sheet, a rolled aluminum sheet product used for automotive applications.

C. ''Novelis'' means Defendant Novelis Inc., a Canadian corporation with its headquarters in Atlanta, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Aleris'' means Defendant Aleris Corporation, a Delaware corporation with its headquarters in Cleveland, Ohio, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''Divestiture Assets'' means:

1. All of Defendants' rights, title, and interests, wherever located, in and relating to the manufacturing and support facilities located at:

a. 1372 State Route 1957, Lewisport, Kentucky 42351 (the ''Lewisport Rolling Mill''); and

b. 1450 East Avis Drive, Madison Heights, Michigan 48071 (the ''Innovation Center'');

2. All tangible assets, wherever located, related to or used in connection with the operation of the Lewisport Rolling Mill, including, but not limited to: Research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and all other tangible property and assets; all licenses, permits, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records; and

3. All intangible assets related to or used in connection with the operation of the Lewisport Rolling Mill, including, but not limited to: All patents; licenses and sublicenses; intellectual property; copyrights; trademarks; trade names; service marks; service names; technical information; computer software (including software developed by third parties) and related documentation; know-how; trade secrets; drawings; blueprints; designs; design protocols; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information Aleris provides to its own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

F. ''Operational'' means capable of operating at full capacity, and in a state of (i) current operation or (ii) readiness to operate.

G. ''Regulatory Approvals'' means (i) any approvals or clearances pursuant to filings with the Committee on Foreign Investment in the United States (''CFIUS''), or under antitrust or competition laws required for the Transaction to proceed; and (ii) any approvals or clearances pursuant to filings with CFIUS, or under antitrust, competition, or other U.S. or international laws, or any local regulatory approvals by the City of Lewisport, Kentucky or the City of Madison Heights, Michigan, required for Acquirer's acquisition of the Divestiture Assets to proceed.

H. ''Relevant Employees'' means all full-time, part-time, or contract employees who supported or whose job responsibilities related to the Divestiture Assets at any time between July 26, 2018 and the date on which the Divestiture Assets are divested to an Acquirer, including but not limited to all employees located at the Lewisport Rolling Mill, the Innovation Center, and all other personnel involved in the design, manufacture, or sale of any products produced at the Lewisport Rolling Mill, including engineering and support employees, wherever such employees are located.

I. ''Transaction'' means the proposed acquisition of Aleris by Novelis.

**III. Applicability**

A. This Final Judgment applies to Novelis and Aleris, as defined above, and all other persons, in active concert or participation with any Defendant, who receive actual notice of this Final Judgment.

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, Defendants must require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from Acquirer.

**IV. Divestiture**

A. Defendants are ordered and directed, within the later of ninety (90) calendar days after the Court's entry of the Order Stipulating to Modification of the Order to Hold Separate Assets in this matter, or thirty (30) calendar days after all Regulatory Approvals have been received, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed one hundred eighty (180) calendar days in total, and will notify the Court of any extensions. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, Defendants promptly must make known, by usual and customary means, the availability of the Divestiture Assets. Defendants must inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that the Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. Defendants must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due-diligence process; provided, however, that Defendants need not provide information or documents subject to the attorney-client privilege or work-product doctrine. Defendants must make this information available to the United States at the same time that the information is made available to any other person.

C. Defendants must cooperate with and assist Acquirer in identifying and hiring all Relevant Employees, including:

1. Within ten (10) business days following receipt of a request by the Acquirer of the Divestiture Assets or the United States, Defendants must identify all Relevant Employees to Acquirer and the United States, including by providing organization charts covering all Relevant Employees.

2. Within ten (10) business days following receipt of a request by Acquirer or the United States, Defendants must provide to Acquirer and the United States the following additional information related to Relevant Employees: Name; job title; current salary and benefits including most recent bonus paid, aggregate annual compensation, current target or guaranteed bonus, if any, and any other payments due to or promises made to the employee; descriptions of reporting relationships, past experience, responsibilities, and training and educational histories; lists of all certifications; and all job performance evaluations. If Defendants are barred by any applicable laws from providing any of this information, within ten (10) business days following receipt of the request, Defendants must provide the requested information to the full extent permitted by law and also must provide a written explanation of Defendants' inability to provide the remaining information.

3. At the request of Acquirer, Defendants must promptly make Relevant Employees available for private interviews with Acquirer during normal business hours at a mutually agreeable location.

4. Defendants must not interfere with any efforts by Acquirer to employ any Relevant Employees. Interference includes but is not limited to offering to increase the salary or improve the benefits of Relevant Employees unless the offer is part of a company-wide increase in salary or benefits that was announced prior to July 26, 2018, or has been approved by the United States, in its sole discretion. Defendants' obligations under this paragraph will expire six (6) months after the divestiture of the Divestiture Assets pursuant to this Final Judgment.

5. For Relevant Employees who elect employment with Acquirer within six (6) months of the date on which the Divestiture Assets are divested to Acquirer, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, and provide all benefits that those Relevant Employees otherwise would have been provided had the Relevant Employees continued employment with Defendants, including but not limited to any retention bonuses or payments. Defendants may maintain reasonable restrictions on disclosure by Relevant Employees of Defendants' proprietary non-public information that is unrelated to the Divestiture Assets and not otherwise required to be disclosed by this Final Judgment.

6. For a period of twelve (12) months from the date on which the Divestiture Assets are divested to Acquirer, Defendants may not solicit to rehire Relevant Employees who were hired by Acquirer within six (6) months of the date on which the Divestiture Assets are divested to Acquirer unless (a) an individual is terminated or laid off by Acquirer or (b) Acquirer agrees in writing that Defendants may solicit to rehire that individual. Nothing in this paragraph prohibits Defendants from advertising employment openings using general solicitations or advertisements and hiring individuals who respond to such solicitations or advertisements.

D. Defendants must permit prospective Acquirers of the Divestiture Assets to have reasonable access to make inspections of the physical facilities and access to all environmental, zoning, and other permit documents and information, and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants must warrant to Acquirer that each asset to be divested will be Operational and without material defect on the date of sale.

F. Defendants must not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. Defendants must make best efforts to assign, subcontract, or otherwise transfer all contracts related to the Divestiture Assets, including all supply and sales contracts, to Acquirer. Defendants must not interfere with any negotiations between Acquirer and a contracting party.

H. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the date on which the Divestiture Assets are divested to Acquirer, Defendants must enter into a contract to provide transition services for back office, human resource, and information technology services and support for the Divestiture Assets for a period of up to twelve (12) months on terms and conditions reasonably related to market conditions for the provision of the transition services. The United States, in its sole discretion, may approve one or more extensions of this contract for transition services, for a total of up to an additional six (6) months. If Acquirer seeks an extension of the term of this contract for transition services, Defendants must notify the United States in writing at least three (3) months prior to the date the contract expires. Acquirer may terminate a contract for transition services without cost or penalty at any time upon commercially reasonable notice. The employee(s) of Defendants tasked with providing these transition services must not share any competitively sensitive information of Acquirer with any other employee of Defendants.

I. Defendants must warrant to Acquirer that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets. Following the sale of the Divestiture Assets, Defendants must not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

J. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV or by a Divestiture Trustee appointed pursuant to Section V of this Final Judgment must include the entire Divestiture Assets, and must be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by Acquirer as part of a viable, ongoing business of the development, manufacture, and sale of Aluminum ABS, and will remedy the competitive harm alleged in the

Complaint. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment,

(1) must be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of the design, manufacture, and sale of Aluminum ABS; and

(2) must be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability unreasonably to raise Acquirer's costs, to lower Acquirer's efficiency, or otherwise to interfere in the ability of Acquirer to compete effectively.

K. If any term of an agreement between Defendants and Acquirer to effectuate the divestiture required by this Final Judgment varies from a term of this Final Judgment then, to the extent that Defendants cannot fully comply with both, this Final Judgment determines Defendants' obligations.

**V. Appointment of Divestiture Trustee**

A. If Defendants have not divested the Divestiture Assets within the period specified in Paragraph IV(A), Defendants must immediately notify the United States of that fact in writing. Upon application of the United States, the Court will appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee by the Court, only the Divestiture Trustee will have the right to sell the Divestiture Assets. The Divestiture Trustee will have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, at a price and on terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and will have other powers as the Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any agents or consultants, including, but not limited to, investment bankers, attorneys, and accountants, who will be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such agents or consultants will serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants may not object to a sale by the Divestiture Trustee on any ground other than malfeasance by the Divestiture Trustee. Objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee will serve at the cost and expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee will account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for any of its services yet unpaid and those of any agents and consultants retained by the Divestiture Trustee, all remaining money will be paid to Defendants and the trust will then be terminated. The compensation of the Divestiture Trustee and any agents or consultants retained by the Divestiture Trustee must be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement that provides the Divestiture Trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished, but the timeliness of the divestiture is paramount. If the Divestiture Trustee and Defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of the appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. Within three (3) business days of hiring any agent or consultant, the Divestiture Trustee must provide written notice of the hiring and rate of compensation to Defendants and the United States.

E. Defendants must use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any agents or consultants retained by the Divestiture Trustee must have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants must provide or develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets; other confidential research, development, or commercial information; or any applicable privileges. Defendants may not take any action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture.

F. After appointment, the Divestiture Trustee will file monthly reports with the United States setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered by this Final Judgment. Reports must include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets and will describe in detail each contact with any such person. The Divestiture Trustee will maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered by this Final Judgment within six (6) months of appointment, the Divestiture Trustee must promptly file with the Court a report setting forth: (1) The Divestiture Trustee's efforts to accomplish the required divestiture; (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished; and (3) the Divestiture Trustee's recommendations. To the extent such report contains information that the Divestiture Trustee deems confidential, such report will not be filed in the public docket of the Court. The Divestiture Trustee will at the same time furnish such report to the United States, which will have the right to make additional recommendations to the Court consistent with the purpose of the trust. The Court thereafter may enter such orders as it deems appropriate to carry out the purpose of this Final Judgment, which, if necessary, may include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute Divestiture Trustee.

**VI. Notice of Proposed Divestiture**

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture

required herein, must notify the United States of a proposed divestiture required by this Final Judgment. If the Divestiture Trustee is responsible for effecting the divestiture, the Divestiture Trustee also must notify Defendants. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of this notice, the United States may request from Defendants, the proposed Acquirer, other third parties, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer and other prospective Acquirer. Defendants and the Divestiture Trustee must furnish the additional information requested within fifteen (15) calendar days of the receipt of the request, unless the United States provides written agreement to a different period.

C. Within forty-five (45) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, other third parties, and the Divestiture Trustee, whichever is later, the United States must provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not the United States, in its sole discretion, objects to the proposed Acquirer or any other aspect of the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object or upon objection by the United States, a divestiture may not be consummated. Upon objection by Defendants pursuant to Paragraph V(C), a divestiture by the Divestiture Trustee may not be consummated unless approved by the Court.

D. No information or documents obtained pursuant to Section VI may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand-jury proceedings), for the purpose of evaluating a proposed Acquirer or securing compliance with this Final Judgment, or as otherwise required by law.

E. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information, at 28 CFR 16.7. Persons submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire ten years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' See 28 CFR 16.7(b).

F. If at the time a person furnishes information or documents to the United States pursuant to Section VI, that person represents and identifies in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' the United States must give that person ten calendar days' notice before divulging the material in any legal proceeding (other than a grand-jury proceeding).

**VII. Financing**

Defendants may not finance all or any part of Acquirer's purchase of all or part of the Divestiture Assets made pursuant to this Final Judgment.

**VIII. Hold Separate**

Until the divestiture required by this Final Judgment has been accomplished, Defendants must take all steps necessary to comply with the Hold Separate Stipulation and Order entered by the Court on January 9, 2020, or any superseding Order. Defendants will take no action that would jeopardize the divestiture ordered by the Court.

**IX. Affidavits**

A. Within twenty (20) calendar days of the filing of the Order Stipulating to Modification of the Order to Hold Separate Assets and proposed Final Judgment in this matter, and every thirty (30) calendar days thereafter until the divestiture required by this Final Judgment has been completed, Defendants must deliver to the United States an affidavit, signed by Defendants' Vice President, Strategy and Sustainability and General Counsel, describing the fact and manner of Defendants' compliance with this Final Judgment. Each affidavit must include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, an interest in the Divestiture Assets, and must describe in detail each contact with such persons during that period. Each affidavit also must include a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, and to provide required information to prospective Acquirers. Each affidavit also must include a description of any limitations placed by Defendants on information provided to prospective Acquirers. If the information set forth in the affidavit is true and complete, objection by the United States to information provided by Defendants to prospective Acquirers must be made within fourteen (14) calendar days of receipt of the affidavit.

B. Within twenty (20) calendar days of the filing of the Order Stipulating to Modification of the Order to Hold Separate Assets and proposed Final Judgment in this matter, Defendants must deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants must deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to Section IX within fifteen (15) calendar days after the change is implemented.

C. Defendants must keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after the divestiture has been completed.

**X. Compliance Inspection**

A. For the purposes of determining or securing compliance with this Final Judgment, or of related orders such as a Hold Separate Stipulation and Order, or of determining whether this Final Judgment should be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the United States, including agents retained by the United States, must, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants must submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained pursuant to Section X may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information, at 28 CFR 16.7. Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire ten years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 16.7(b).

E. If at the time that Defendants furnish information or documents to the United States pursuant to Section X, Defendants represent and identify in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' the United States must give Defendants ten (10) calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

**XI. Limitations on Reacquisition**

Defendants may not reacquire any part of or any interest in the Divestiture Assets during the term of this Final Judgment.

**XII. Retention of Jurisdiction**

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

**XIII. Enforcement of Final Judgment**

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in a civil contempt action, a motion to show cause, or a similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs, including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four (4) years following the expiration of this Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action; (2) all appropriate contempt remedies; (3) additional relief needed to ensure the Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by Section X.

**XIV. Expiration of Final Judgment**

Unless the Court grants an extension, this Final Judgment will expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and the continuation of this Final Judgment no longer is necessary or in the public interest.

**XV. Public Interest Determination**

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including by making available to the public copies of this Final Judgment, the Competitive Impact Statement, comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16]

_____

United States District Judge

**United States District Court for the Northern District of Ohio**

*United States of America,* Plaintiff, v. *Novelis Inc. and Aleris Corporation,* Defendants.

Case No.: 1:19–cv–02033–CAB

**Competitive Impact Statement**

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''APPA'' or ''Tunney Act''), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

**I. Nature and Purpose of the Proceeding**

On July 26, 2018, Defendant Novelis Inc. (''Novelis'') agreed to acquire Defendant Aleris Corporation (''Aleris'') for approximately $2.6 billion, which would have made the combined company the largest supplier of aluminum automotive body sheet (''ABS'') in the United States. The United States filed a civil antitrust Complaint on September 4, 2019, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition for the development, manufacture, and sale of aluminum ABS in North America, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

Before the United States initiated this lawsuit, the United States and Defendants agreed that the lawfulness of the transaction under Section 7 of the Clayton Act (15 U.S.C. 18) hinged on whether aluminum ABS constitutes a relevant product market under the antitrust laws. As set forth in more detail in Plaintiff United States' Explanation of Plan to Refer this Matter to Arbitration (Dkt. 11), the United States, using its authority under the Administrative Dispute Resolution Act of 1996 (''ADRA''), 5 U.S.C. 571 *et seq.,* reached an agreement with Defendants to refer this matter to binding arbitration following fact discovery should the parties be unable to reach a resolution that resolved the United States' competitive concerns with the Defendants' transaction within a certain period of time. Per the arbitration agreement, binding arbitration would resolve a single dispositive issue: whether aluminum ABS constitutes a relevant product market under the antitrust laws. Further, the United States and Defendants agreed that if the United States prevailed in arbitration, the United States would then file a proposed Final Judgment requiring Defendants to divest Aleris's Lewisport Rolling Mill in Lewisport, Kentucky and related assets, which constitute Aleris's entire aluminum ABS operations in North America. The arbitration agreement recognized that the Court would retain jurisdiction to determine whether entry of the proposed Final Judgment is in the public interest. *See* 15 U.S.C. 16(b)–(h). Had Defendants prevailed in arbitration, the arbitration agreement would have required the United States to seek to voluntarily dismiss the Complaint.

To preserve the Divestiture Assets pending the outcome of the arbitration, the Court entered a Hold Separate Stipulation and Order on January 9, 2020, requiring Novelis to hold separate, preserve, and maintain the Divestiture Assets as set forth in the proposed Final Judgment. (Dkt. 41). Under the terms of that Order, Novelis took certain steps to ensure that the Divestiture Assets were preserved and operated in such a way as to ensure that the Divestiture Assets continue to be ongoing, economically viable business units.

On January 21, 2020, following the completion of fact discovery, the Court entered an Order staying proceedings and referring the matter to binding arbitration pursuant to the ADRA, 5 U.S.C. 571, *et seq.* (Dkt. 44). On March 9, 2020, the United States prevailed in arbitration with the arbitrator determining that aluminum ABS is a relevant product market under the antitrust laws. *See* Arbitration Decision, March 9, 2020 (public version) (available at *https://www.justice.gov/atr/case-document/file/1257031/download*).

The United States has therefore filed a proposed Modified Hold Separate Stipulation and Order (''Modified Stipulation and Order'') and a proposed Final Judgment, which are designed to address the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest the Divestiture Assets, which include the Lewisport Rolling Mill in Lewisport, Kentucky and Aleris's Innovation Center in Madison Heights, Michigan.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

**II. Description of Events Giving Rise to the Alleged Violation**

*A. The Defendants and the Proposed Transaction*

Novelis is a global manufacturer of semi-finished aluminum products with global revenues of approximately $12.3 billion for the fiscal year ending March 31, 2019. The company is incorporated in Canada and headquartered in Atlanta, Georgia. It operates 23 production facilities in North America, South America, Europe, and Asia. Eight facilities are located in North America, including two (Oswego, New York, and Kingston, Ontario) that currently produce aluminum ABS. Another aluminum ABS finishing line is being commissioned in Guthrie, Kentucky. Novelis supplies flat-rolled aluminum products in three segments: beverage can, specialty, and automotive. Novelis is a wholly-owned subsidiary of Hindalco Industries, Ltd., an Indian company headquartered in Mumbai, India.

Aleris also is a global manufacturer of semi-finished aluminum products. It generated global revenues of approximately $3.4 billion in 2018. Aleris is a Delaware corporation, headquartered in Cleveland, Ohio, and operates 13 production facilities in North America, South America, Europe, and Asia. Aleris supplies flat-rolled aluminum products to the automotive, aerospace, and building and construction industries, among others. Aleris has been a producer of aluminum ABS in Europe since 2002 and exported small volumes of aluminum ABS to North America from its European facility. In 2017, following significant financial and capital investments in its Lewisport, Kentucky facility, Aleris began developing, manufacturing, and selling aluminum ABS from its Lewisport facility to meet growing North American customer demand. Lewisport is a fully integrated manufacturing facility that includes a cast house, as well as cold and hot mill operations. In addition to its hot mill used to manufacture heat-treated aluminum ABS, the Lewisport facility's cold mill continues to produce non-heat-treated aluminum alloys for ''specialty'' products used in the construction industry. The entire Lewisport facility will be divested.

Novelis and Aleris entered into a definitive Agreement and Plan of Merger, dated July 26, 2018, for Novelis to acquire 100 percent of the voting securities of Aleris for an estimated enterprise value of $2.6 billion. As permitted under the terms of the Arbitration Agreement (Dkt. 11–1 at ¶ 5) and the Hold Separate Stipulation and Order entered by the Court on January 9, 2020 (Dkt. 41), Defendants consummated their transaction on April 14, 2020.

*B. Industry Background*

The North American automotive industry is a vital sector of the

American economy. The industry represents the single largest manufacturing sector in the United States, accounting for about three percent of gross domestic product. For decades, automakers used flat-rolled steel almost exclusively in the construction of automotive bodies. Growing consumer demand for larger vehicles loaded with safety and performance features and increasing fuel economy regulations have led automakers to pursue light-weight designs.

Automakers have turned to aluminum ABS, which is 30 to 40 percent lighter than traditional steel, as the material of choice for light-weighting the next generation of vehicles. Aluminum is more expensive than steel, but has distinct and superior physical properties for automotive use. Vehicles made with aluminum are lighter and more fuel-efficient. Light-weight vehicles also have significant performance advantages including faster acceleration, better handling, shorter braking distance, and increased payload and towing capabilities. Light-weighting designs are also critical for the next generation of electric vehicles. Aluminum ABS can reduce electric vehicle weight substantially, allowing an electric vehicle to run farther on a single charge.

*C. Relevant Product Market*

As alleged in the Complaint, aluminum ABS is different from other materials used in automotive body sheet applications. Steel and other materials are not practical substitutes for aluminum ABS in many applications. The Complaint alleges that in the event of a small but significant non-transitory price increase, automakers would not substitute away from aluminum ABS in a sufficient volume to make the price increase unprofitable. Therefore, the Complaint alleges that the development, manufacture, and sale of aluminum ABS is a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

Following the completion of fact discovery, the Court referred the matter to arbitration to adjudicate the issue of relevant product market. On March 9, 2020, the arbitrator issued a decision in which he determined that aluminum ABS is a relevant product market under the antitrust laws. See Arbitration Decision, March 9, 2020 (public version) (available at *https://www.justice.gov/atr/case-document/file/1257031/download*). As the arbitrator explained, an automaker can make a car part out of aluminum, steel, or other material, but there are substantial differences in the physical properties of aluminum (as compared to steel), such that an automotive engineer designing a car with particular weight, performance, safety specifications, and target retail price is unlikely to view steel and other materials as full functional substitutes for aluminum for the various car parts being designed. Nor is any other material likely to significantly impact the pricing of aluminum ABS for most car parts, or vice-versa. The development, manufacture, and sale of aluminum ABS is a distinct line of commerce and constitutes a relevant product market.

*D. Geographic Market*

The Complaint alleges that the relevant geographic market in which to assess the competitive harm from the proposed transaction is North America. When a supplier can price differently based on customer location, the Horizontal Merger Guidelines provide that the relevant geographic market may be defined based on the locations of targeted customers. Such pricing is possible in aluminum ABS as evidenced by the different prices charged by suppliers across geographic regions. Because of transportation costs, import tariffs and duties, the limited shelf life of most types of aluminum ABS, and supply chain risks, customers of aluminum ABS in North America are unlikely to be able to defeat a price increase through arbitrage from outside North America. Pricing differences among suppliers in the various geographic regions in which aluminum ABS is sold has persisted over many years, supporting the conclusion that North America is a relevant geographic market.

The Complaint alleges that, in the event of a small but significant non-transitory increase in the price of the aluminum ABS, customers in North America would not procure these products from suppliers located outside North America in a sufficient volume to make such a price increase unprofitable. Accordingly, the Complaint alleges that North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

*E. Anticompetitive Effects*

The Complaint alleges that Novelis, Aleris, and two other firms are the only producers of aluminum ABS located in North America. Through this acquisition, however, Novelis would gain control of Aleris's uncommitted capacity, eliminating a rival Novelis described as ''poised for transformational growth.'' Aleris and Novelis are the only two firms expected to have sizable uncommitted North American capacity to produce aluminum ABS over the next few years. This consolidation would concentrate more than half of the domestic aluminum ABS production and sales, 60 percent of projected total domestic capacity, and the majority of uncommitted domestic capacity under the control of one firm.

The Complaint alleges that, post-transaction, no other firms would have the incentive and ability to constrain Novelis. The transaction would result in higher prices, as well as reduced innovation and technical support for automakers that rely on this critical input. According to the Complaint, the proposed acquisition, therefore, would likely substantially lessen competition in the development, manufacture, and sale of aluminum ABS in North America in violation of Section 7 of the Clayton Act.

*F. Absence of Countervailing Factors: Entry*

The Complaint alleges that entry or expansion by existing competitors is unlikely to prevent or remedy the transaction's likely anticompetitive effects in the market for the development, manufacture, and sale of aluminum ABS in North America. The North American aluminum ABS market has significant barriers to entry. Barriers include the high cost and long time-frame needed to build production facilities. For example, to compete in the automotive market, aluminum companies generally must build a specialized ''heat-treat'' finishing line to make aluminum sheet for automotive applications. These heat-treat finishing lines take years to build and cost hundreds of millions of dollars to construct, and require sophisticated technological know-how to operate. In addition to heat-treat finishing lines, aluminum ABS suppliers need aluminum coils that are wide enough for automotive applications. These aluminum coils are produced at hot mills, and there are only a few hot mills in North America. Building a new hot mill takes several years and requires a significant capital investment of well over a billion dollars. Meanwhile, expanding or re-outfitting an existing facility to have auto-capable hot mill capacity could also require several hundred million dollars. Moreover, because of supply chain risks and other factors, the Complaint alleges that customers of the merged firm (*i.e.,* North American automakers) are unlikely to turn to foreign suppliers of aluminum

ABS in sufficient volume to mitigate the anticompetitive effects of the merger.

**III. Explanation of the Proposed Final Judgment**

The divestiture required by the proposed Final Judgment addresses the United States' concerns with the merger and will fully remedy the loss of competition threatened by this merger by requiring the merged firm to divest Aleris's North American aluminum ABS operations in their entirety. In doing so, the divestiture will establish an independent and economically viable competitor with the scale and scope to compete effectively and preserve competition in the market for the development, manufacture, and sale of aluminum ABS in North America.

Paragraph IV(A) of the proposed Final Judgment requires Defendants to divest the Divestiture Assets within the later of ninety (90) calendar days of the filing of the Modified Stipulation and Order, or thirty (30) days after the Regulatory Approvals have been received, to an acquirer acceptable to the United States, in its sole discretion. Paragraph IV(A) provides that the United States, in its sole discretion, may grant one or more extensions of the divestiture period, up to a total of 180 days. The proposed Final Judgment includes the possibility of an additional 180 days to accomplish the divestiture due to the current business climate and the potential impact of the COVID–19 pandemic on Defendants' ability to accomplish the divestiture within the specified period.

The divestiture includes two facilities (one production facility in Lewisport, Kentucky (''the Lewisport Rolling Mill'') and one technical service center located in Madison Heights, Michigan (''the Innovation Center'')); and all other tangible and intangible assets related to or used in connection with the Lewisport Rolling Mill. Paragraph IV(J) of the proposed Final Judgment requires that the Divestiture Assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be operated by the purchaser as part of a viable, ongoing business that can compete effectively in the development, manufacture, and sale of aluminum ABS.

The proposed Final Judgment contains provisions to facilitate the immediate use of the Divestiture Assets by the acquirer. Paragraph IV(H) of the proposed Final Judgment requires Defendants, at the acquirer's option, to enter into a transition services agreement on or before the date on which the Divestiture Assets are divested to the acquirer for service and support relating to the Divestiture Assets for a period of up to twelve (12) months. That paragraph further provides that the United States, in its sole discretion, may approve one or more extensions of this transition services agreement for up to a total of an additional six (6) months. Paragraph IV(H) also provides that employees of Defendants tasked with providing any transition services must not share any competitively sensitive information of the acquirer with any other employee of Defendants.

The proposed Final Judgment also contains provisions intended to facilitate the acquirer's efforts to hire employees engaged in the Divestiture Assets. Paragraph IV(C) of the proposed Final Judgment requires Defendants to provide the acquirer with organization charts and information relating to these employees and to make them available for interviews, and it provides that Defendants must not interfere with any negotiations by the acquirer to hire them. In addition, Paragraph IV(C)(5) provides that, for employees who elect employment with the acquirer, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, and provide all benefits that the employees would generally be provided if transferred to a buyer of an ongoing business. This paragraph further provides that, for a period of twelve (12) months from the filing of the Complaint, Defendants may not solicit to hire or hire any employee engaged in the Divestiture Assets who was hired by the acquirer, unless that individual is terminated or laid off by the acquirer or the acquirer agrees in writing that Defendants may solicit or hire that individual.

If Defendants do not accomplish the divestiture within the period prescribed in the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The divestiture trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After the divestiture trustee's appointment becomes effective, the trustee will provide periodic reports to the United States setting forth his or her efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the divestiture trustee and the United States will make recommendations to the Court, which will enter such orders as appropriate, in order to carry out the purpose of the trust, including by extending the trust or the term of the divestiture trustee's appointment.

The proposed Final Judgment also contains provisions designed to promote compliance and make the enforcement of the Final Judgment as effective as possible. Paragraph XIV(A) provides that the United States retains and reserves all rights to enforce the provisions of the Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XIV(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment is intended to restore competition the United States alleged would otherwise be harmed by the transaction. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XIV(C) of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XIV(C) provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any enforcement effort,

including the investigation of the potential violation.

Paragraph XIV(D) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four (4) years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four (4) years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XV of the proposed Final Judgment provides that the Final Judgment will expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

## IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

## V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to:

Katrina Rouse, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

## VI. Alternatives to the Proposed Final Judgment

As an alternative to the binding arbitration on the issue of relevant product market definition and the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have sought preliminary and permanent injunctions against Novelis's acquisition of Aleris. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for the development, manufacture, and sale of aluminum ABS in North America. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

## VII. Standard of Review Under the APPA For the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see also United States, et al.* v. *Hillsdale Community Health Ctr.,* No. 15–12311 (JEL), 2015 WL 10013774 at *1 (E.D. Mich. Oct. 21, 2015) (''[T]he Court's review is limited to deciding whether the proposed final judgment is in the ''public interest;'' the Court is without authority to modify it.'') (citations omitted); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted); *see also United States* v. *Deutsche Telekom AG,* No. 19–2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Id.* at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'') (internal citations omitted); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''); *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Pubic Law 108–237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

## VIII. Determinative Documents

In formulating the proposed Final Judgment, the United States considered the Arbitration Agreement (Exhibit A to Plaintiff United States' Explanation of Plan to Refer this Matter to Arbitration (Dkt. 11–1)), and the Arbitration Decision (available at *https://www.justice.gov/atr/case-document/file/1257031/download*). Under the Tunney Act, the United States must provide copies of documents it considered determinative in formulating its remedy proposal. (*See* 15 U.S.C. 16(b)). The Arbitration Agreement is a determinative document because it (a) establishes that the parties agree to file a proposed Final Judgment requiring Defendants to divest Aleris's Lewisport Rolling Mill in Lewisport, Kentucky should the United States prevail in arbitration and (b) establishes that the arbitration addresses one dispositive legal issue: Whether aluminum ABS is a relevant product market. The Arbitration Decision is a determinative document because it provides the reasoning for the arbitrator's decision, after hearing evidence, that aluminum ABS is a relevant product market. There are no other determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: May 12, 2020

Respectfully submitted,

*FOR PLAINTIFF UNITED STATES OF AMERICA*

Samer M. Musallam (Ohio #0070472)

Lowell R. Stern

*United States Department of Justice, Antitrust Division, DIA Section, 450 Fifth Street NW, Suite 8700, Washington, DC 20530, Tel.: (202) 598–2990, Email:*

*samer.musallam@usdoj.gov, Email: lowell.stern@usdoj.gov.*

*Attorneys for Plaintiff United States*

[FR Doc. 2020–11073 Filed 5–21–20; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–645]**

### Bulk Manufacturer of Controlled Substances Application: Noramco, Inc.

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before July 21, 2020.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.33(a), this is notice that on February 26, 2020, Noramco, Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801–4417, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Marihuana | 7360 | I |
| Tetrahydrocannabinols | 7370 | I |
| Codeine-N-oxide | 9053 | I |
| Dihydromorphine | 9145 | I |
| Hydromorphinol | 9301 | I |
| Morphine-N-oxide | 9307 | I |
| Amphetamine | 1100 | II |
| Lisdexamfetamine | 1205 | II |
| Methylphenidate | 1724 | II |
| Nabilone | 7379 | II |
| Phenylacetone | 8501 | II |
| Codeine | 9050 | II |
| Dihydrocodeine | 9120 | II |
| Oxycodone | 9143 | II |
| Hydromorphone | 9150 | II |
| Hydrocodone | 9193 | II |
| Morphine | 9300 | II |
| Oripavine | 9330 | II |
| Thebaine | 9333 | II |
| Opium extracts | 9610 | II |
| Opium fluid extract | 9620 | II |
| Opium tincture | 9630 | II |
| Opium, powdered | 9639 | II |
| Opium, granulated | 9640 | II |
| Oxymorphone | 9652 | II |
| Noroxymorphone | 9668 | II |
| Tapentadol | 9780 | II |

The company plans to manufacture the listed controlled substances as an Active Pharmaceutical Ingredient (API) for supply to its customers. In reference to drug codes 7360 (Marihuana) and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetics. No other activities for these drug codes are authorized for this registration. This notice does not constitute an evaluation or determination of the merits of the company's application.

**William T. McDermott,**

*Assistant Administrator.*

[FR Doc. 2020–11077 Filed 5–21–20; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

### Advisory Board; Notice of Meeting

This notice announces a forthcoming virtual meeting of the National Institute of Corrections (NIC) Advisory Board. The meeting will be open to the public.

*Name of the Committee:* NIC Advisory Board.

*General Function of the Committee:* To aid the National Institute of Corrections in developing long-range plans, advise on program development, and recommend guidance to assist NIC's efforts in the areas of training, technical assistance, information services, and policy/program development assistance to Federal, state, and local corrections agencies.

*Date and Time:* 11:00 a.m.–1:30 p.m. on Friday, June 19, 2020 (approximate).

*Location:* Virtual Platform.

*Contact Person:* Susan Walters, Executive Assistant, National Institute of Corrections, 320 First Street NW, Room 901–3, Washington, DC 20534. To contact Ms. Walters, please call (202) 353–4213.

*Agenda:* On Friday, June 19, 2020, the Advisory Board will receive a brief Agency Report from the NIC Acting Director, with time for questions and planning for subsequent FY20–FY21 Advisory Board meeting(s).

*Procedure:* On June 19, 2020, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 8, 2020. Oral presentations from the public will be scheduled between approximately 1:00 p.m. to 1:15 p.m. on June 19, 2020. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 8, 2020.

*General Information:* NIC welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Susan Walters at least 7 days in advance of the meeting. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

**Shaina Vanek,**

*Acting Director, National Institute of Corrections.*

[FR Doc. 2020–11051 Filed 5–21–20; 8:45 am]

**BILLING CODE 4410–36–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice to Employees of Coverage Options Under Fair Labor Standards Act Section 18B

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before June 22, 2020.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

*Comments are invited on:* (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used