U.S. Department of Justice

Antitrust Division

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

March 15, 2004

Mr. David R. Jury
Assistant General Counsel
United Steelworkers of America
Five Gateway Venter
Pittsburgh, Pennsylvania 15222

Re: *Public Comment on Proposed Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed Sept. 29, 2003)*

Dear Mr. Jury:

This letter responds to your letter of February 13, 2004, commenting on the proposed Final Judgment ("Judgment") submitted for entry in this case. The United States's Complaint in this case charged that Alcan's acquisition of Pechiney would substantially lessen North American competition in the sale of brazing sheet, a rolled aluminum alloy widely used in fabricating certain critical components of heat exchange systems (*e.g.*, heaters, air conditioners, and radiators) for all types of motor vehicles. The proposed Judgment would resolve those competitive concerns by requiring the defendants to divest Pechiney's "brazing sheet business," a term defined in the Judgment, § II(E), to include Pechiney's entire aluminum rolling mill in Ravenswood, West Virginia, which, *inter alia*, produces all of the brazing sheet sold by Pechiney in North America.

Your union, United Steelworkers of America, represents hourly employees and retirees of the Ravenswood facility. In your letter, you expressed support for Governor Bob Wise's previous comment in which he urged modifying the proposed Judgment either to permit Alcan to retain Ravenswood facility (irrespective of the competitive harm the acquisition would cause in the brazing sheet market), or to allow the Ravenswood facility to "revert" to Alcan in the event a new buyer is unable "to keep the plant open." You also expressed a willingness to work constructively with any purchaser willing "to build a relationship" with your union and negotiate "an appropriate labor agreement that protects active members and retirees."

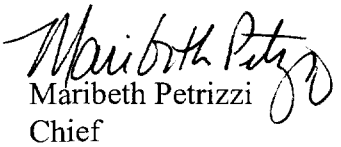
The United States believes that, in order to be an effective competitor, the new owner of Pechiney's brazing sheet business must be capable of operating the assets successfully (*see* Judgment, § IV (J)). Indeed, a lynchpin of the proposed decree is its requirement that the Ravenswood facility be divested to a person who, in the United States's judgment, is able to operate it successfully in competition with Alcan and others (*see* Judgment, § IV(J)). To that end, the proposed Judgment requires the defendants to divest any tangible and intangible assets used in the

production and sale of brazing sheet, including the entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* Judgment, §§ II(E)(1)-(3).

Any concern that there may not be an acceptable purchaser of these assets may well be premature. Although the defendants have solicited offers for Pechiney's brazing sheet assets, they have not selected a proposed purchaser. In the event the defendants are unable to find an acceptable purchaser on their own, the proposed decree permits the Department of Justice to nominate, and the Court to appoint, a trustee responsible for conducting an independent search for an acceptable purchaser and selling Pechiney's brazing sheet assets "at such price and on such terms as are then obtainable upon reasonable effort" (Judgment, § V(B)). At this point in the divestiture process, however, it would be inappropriate to conclude that the defendants' – or if necessary, the trustee's – efforts to sell Pechiney's brazing sheet assets will not produce an acceptable, viable purchaser capable of vigorously competing in the development, production, and sale of brazing sheet in North America.[1]

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

Sincerely yours,



Maribeth Petrizzi
Chief
Litigation II Section

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[1]An "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is unviable. *See* Judgment, § IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

United Steelworkers of America
AFL-CIO·CLC

Five Gateway Center
Pittsburgh, PA 15222
412-562-2400 • 412-562-2484 (Fax)

Writer's Direct Dial (412) 562-1164
Writer's Facsimile (412) 562-2429

February 13, 2004

VIA UPS NEXT DAY DELIVERY
1Z 263 055 22 1022 944 4

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

Re: United States v. Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC

United States District Court for the District of Columbia, Case No. 1:03CV02012

Dear Ms. Petrizzi:

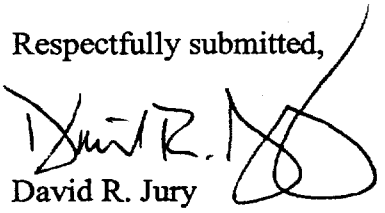
I write on behalf of the United Steelworkers of America, AFL-CIO·CLC ("USWA"), the exclusive bargaining representative of the hourly production and maintenance employees employed by Pechiney Rolled Products ("Pechiney") at its Ravenswood, West Virginia facility. This letter is submitted under the terms of the Tunney Act, 15 U.S.C. §16, and relates to the Final Judgment that has been proposed in this matter.

It is our understanding that West Virginia Governor Bob Wise has submitted to you a letter in which he proposes that the Final Judgment be modified either to permit Alcan Aluminum Corporation ("Alcan") to retain the brazing sheet business and other operations at the Ravenswood facility (thus obviating the need for the marketing and sale of the plant) or provide that the facility "revert" to Alcan in the event that the buyer of the plant is unable to keep the plant in operation. Governor Wise clearly has acted out of his concern about the future of aluminum making at Ravenswood, a future that is now uncertain as no purchaser for the plant has been identified.

As the representative of the hourly employees and retirees of the Ravenswood plant, it goes without saying that the USWA shares that concern. The USWA is prepared

to work constructively with all parties-in-interest relating to the sale of the facility and to engage with any prospective purchaser that wishes to build a relationship with the USWA and negotiate an appropriate labor agreement that protects both our active members and retirees. Nevertheless, because the results of any sale process cannot be predicted today, the USWA would support modifying the Final Judgment generally in the manner that Governor Wise has suggested, provided, of course, that Alcan consents to such treatment.

Respectfully submitted,



David R. Jury
Assistant General Counsel

DRJ/dd
cc: Leo Gerard, International President
Andrew Palm, International Vice President
Lawrence McBrearty, Canadian National Director
Ernest R. Thompson, Director
Tim Dean, Sub-District Director