

such a price increase would be unprofitable and unsustainable. Accordingly, North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects

19. There are only four significant competitors in the sale of brazing sheet in North America. Pechiney is the second largest producer with over 30 percent of sales; Alcan is the fourth largest with over 10 percent of sales. After the proposed acquisition, the combined firm and the largest U.S. producer of brazing sheet would command over 80 percent of all brazing sheet sales. Total North American sales of brazing sheet exceed \$360 million annually.

20. The brazing sheet market would become substantially more concentrated if Alcan acquires Pechiney. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI") (defined and explained in Appendix A), the post-acquisition HHI would increase by at least 600 points, resulting in a post-merger HHI of about 3600, well in excess of levels that ordinarily would raise significant antitrust concerns.

21. The proposed transaction would combine Alcan with Pechiney, and remove a low cost, aggressive, and disruptive competitor in the North American brazing sheet market. Before the announced acquisition, Alcan recently had undertaken to significantly increase its sales of brazing sheet in North America. In 2001, Alcan moved its brazing sheet operations from England to Oswego, NY, then developed new, highly proprietary aluminum rolling technology that would make a low cost producer of brazing sheet in North America. Alcan also recently has completed qualifying to provide brazing sheet to several major domestic parts makers.

22. The proposed transaction will make it more likely that the few remaining brazing sheet producers will engage in anticompetitive coordination to increase prices, reduce quality and innovation, and decrease production of brazing sheet. After the acquisition, the combined firm and its largest North American rival would share market leadership and a common incentive to pursue strategies that emphasize accommodation and do the risk provocation. The acquisition also would substantially increase the likelihood that the combined firm will unilaterally increase prices of brazing sheet to the detriment of customs for whom Pechiney and Alcan are the only firms now qualified to provide brazing sheet for those customers' requirements. The other competitors in brazing sheet sales in North America do not have the incentive or ability, individually or collectively, to effectively constrain a unilateral or cooperative exercise of market power after the acquisition.

23. Purchasers of brazing sheet have benefited from competition between Alcan and Pechiney through lower prices and improved products. Alcan's acquisition of Pechiney would eliminate substantial competition and lead to an increase in prices and reduction in innovation and quality of brazing sheet.

24. The proposed transaction, if consummated, would eliminate a significant competitor and facilitate unilateral or coordinated increases in prices, or a reduction in levels of quality and innovation, for brazing sheet.

D. Entry Unlikely To Deter a Post Acquisition Exercise of Market Power

25. Successful entry into the brazing sheet market would not be timely, likely or sufficient to deter any unilateral or coordinated exercise of market power as a result of the transaction.

26. Significant barriers prevent do novo or lateral entry into the development, production, and sale of brazing sheet in North America. To produce this material, not only must a firm possess an aluminum hot rolling mill (which costs at least \$80 million to construct), but also the technology and expertise to create custom-engineered aluminum alloys that perform well in the demanding operating conditions prevalent in the small heat exchangers used in motor vehicles. Even firms with the physical and technological assets to produce brazing sheet must, in order to have a significant impact, "qualify" with customers, *i.e.*, demonstrate that it would be a reliable producer of consistently high quality brazing sheet material. Qualification can be acquired only after the new firm has made a substantial investment in expensive alloy technology, successfully completed a series of time-consuming tests of its materials and components, and acquired actual experience producing brazing sheet that meets the exacting specifications of risk-averse parts makers. It took Alcan over two years from when it moved its brazing sheet operations to Oswego, New York to qualify with enough customers to make a significant sales impact.

V. Violations Alleged

27. The effect of Alcan's proposed acquisition of Pechiney may be to substantially lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

28. The transaction will likely have the following anticompetitive effects, among others:

a. Competition generally in the development, production, and sale of brazing sheet in North America would be substantially lessened;

b. Actual and potential competition between Alcan and Pechiney in the development, production, and sale of brazing sheet in North America would be eliminated; and

c. Prices for brazing sheet sold in North America would likely increase and the levels of quality and innovation would likely decline.

29. Unless prevented, the acquisition of Pechiney by Alcan would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

VI. Requested Relief

30. Plaintiff requests:

a. That the proposed acquisition of Pechiney by Alcan be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18;

b. That defendants and all persons acting on their behalf be permanently enjoined and restrained from carrying out any contract, agreement, understanding or plan, the effect of which would be to combine Pechiney with the operations of Alcan;

c. That plaintiff recover the costs of this action; and

d. That plaintiff receive such other and further relief as the case requires and this Court may deem proper.

Dated: September 29, 2003.

Respectfully submitted,

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Appendix A—Herfindahl-Hirschman Index Calculations

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, HHI is 2600 ($30^2 + 30^2 + 20^2 = 2600$). The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Market in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* § 1.51.

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on September 29, 2003, and plaintiff and defendants, Alcan Inc., Alcan Aluminum Corp., Pechiney, S.A.,