

proposed Final Judgment. According to the terms of the settlement, defendants must divest Pechiney's brazing sheet business¹ to a person acceptable to the United States, in its sole discretion, within 120 calendar days after Alcan receives preliminary notification from the responsible French stock market regulatory agency, Conseil des Marchés Financiers, that the firm's tender offer for shares of Pechiney has been successful, or within five (5) days after notice of entry of the Final Judgment, whichever is later. The United States, in its sole discretion, may extend the time period for this divestiture one or more times, not to exceed a total of 60 days past the initial divestiture deadline. If defendants do not complete the ordered divestiture within the prescribed time period, then the United States may nominate, and the Court will appoint, a trustee who will have sole authority to divest Pechiney's brazing sheet assets.

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the Tunney Act. Entry of the proposed Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violations of the Antitrust Laws

A. The Defendants and the Proposed Transaction

Alcan is a Canadian corporation based in Montreal, Quebec. One of the world's largest fully integrated aluminum producers, Alcan produces primary aluminum ingot and a wide range of rolled aluminum products, including brazing sheet. Its annual revenues exceed \$12.5 billion, including over \$30 million in North American sales of brazing sheet. This business operation is managed by a domestic subsidiary of Alcan, Alcan Aluminum Corporation.

Pechiney is a French corporation based in Paris, France. Pechiney is also a major fully integrated aluminum producer, with annual revenues exceeding \$11.3 billion. Its U.S. subsidiary, Pechiney Rolled Products, LLC, produces a wide variety of rolled aluminum products (including brazing sheet) in an aluminum rolling mill in Ravenswood, West Virginia. Pechiney's total North American sales of brazing sheet exceed \$100 million annually.

Alcan has launched a tender offer for shares of Pechiney, a transaction now valued at over \$4.6 billion. The tender offer, publicly announced in early July and approved in August by Pechiney's board of directors, is expected to be completed in early December 2003. If the tender offer is successful, Alcan's acquisition of Pechiney would combine, respectively, the fourth and second largest competitors in the sale of brazing sheet in

North America, and substantially lessen competition in this already highly concentrated market.

The acquisition would combine Alcan, a low-cost new entrant and pricing maverick, with Pechiney, a large industry incumbent. The deal would eliminate Alcan's incentive to expand its sales quickly by reducing its brazing sheet prices and increase its sales at the expense of larger rivals such as Pechiney, and end the current intense competitive rivalry in developing, producing, and selling brazing sheet in North America. This competition, which promises to intensify in the next few years as Alcan finishes qualifying its brazing sheet for more applications with other North American customers, has already produced significant improvements in brazing sheet quality, durability, and reliability, and highly competitive prices and contractual terms for this material. The transaction would reduce the number of significant competitors in the sale of brazing sheet in North America from four to three, and substantially increase the prospect of future tacit or explicit post-merger coordination between these firms to increase prices of brazing sheet to the detriment of consumers. Other North American competitors in the sale of brazing sheet have neither the production capacity nor competitive incentive, individually or collectively, to discipline a small but significant post-merger unilateral or cooperative price increase in brazing sheet.

B. The Effects of the Transaction on Competition in the Sale of Brazing Sheet

1. Relevant market: the sale of brazing sheet in North America. The Complaint alleges that development, production, and sale of brazing sheet is a relevant product market within the meaning of Section 7 of the Clayton Act. Brazing sheet describes a class of custom-engineered aluminum alloys made of a solid metal core clad on one or both sides with an alloy whose melting temperature is lower than that of the core material. When heated to the appropriate temperature, the cladding alloy melts and forms a durable, uniform leak-proof bond between the core and any adjoining aluminum surface, effectively welding the two materials together. Brazing sheet is ideally suited, and virtually all of it is used, for fabricating the major components of heat exchange systems for motor vehicles. These heat exchangers include engine cooling systems, such as radiators and oil coolers, and climate control systems, such as heater cores and air conditioning units (*i.e.*, evaporator and condenser cores).

By constructing the basic components of motor vehicle heat exchangers with brazing sheet, a parts maker can avoid the tedious and costly task of welding or soldering individual components, many of which have usually intricate surfaces that form joints deep within the heat exchange unit. A parts maker can instead loosely assemble brazed components and bake the entire assembly in a brazing oven. The surfaces of the components will meet, converting the assembly into a solid, leak-proof heat exchange unit.

The major components of all heat exchangers used in motor vehicles are made

of brazing sheet, a material that enables vehicle makers simultaneously to reduce vehicle cost, size, and weight; improve gas mileage; and extend engine, climate control system, and drive train life. In heat exchange applications, no other material can match the combination of low cost, strength, light weight, durability, formability, and corrosion resistance provided by brazing sheet.

A small but significant and nontransitory increase in prices for brazing sheet would be profitable and sustainable because it would not cause parts makers to begin using significant amounts of other materials to make heat exchangers for motor vehicles. The development, production, and sale of brazing sheet is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act.²

The Complaint alleges that the sale of brazing sheet in North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act. Over ninety percent of brazing sheet sold in North America is produced by firms located in either the United States or Canada. Some customers import brazing sheet into North America from overseas sources. Foreign brazing sheet, however, is significantly more expensive and more prone to unpredictable and costly delivery delays than brazing sheet produced in North America. North American customers are reluctant to rely on it for general production requirements. A small but significant and nontransitory increase in prices of brazing sheet sold in North America would be profitable and sustainable because it would not be undermined by increased customer imports of brazing sheet from overseas sources. North America is a relevant geographic market in which to assess the competitive effects of Alcan's proposed acquisition of Pechiney on sales of brazing sheet.

2. Anticompetitive effects of the acquisition. The Complaint alleges that in this highly concentrated market for brazing sheet, a combination of Alcan and Pechiney likely would: (i) Substantially lessen competition in the development, production, and sale of brazing sheet in North America; (ii) eliminate actual and potential competition between Alcan's and Pechiney's brazing sheet businesses; and (iii) increase prices and reduce current levels of quality and innovation for brazing sheet in North America.

Specifically, the Complaint alleges that Pechiney and Alcan are, respectively, the second and fourth largest producers of brazing sheet in North America. The

² Brazing sheet is designed for and sold to motor vehicle parts makers (and others) on an application-specific basis. Thus, it may be possible to delineate relevant markets smaller than the "all brazing sheet" market alleged in the Complaint. A producer of brazing sheet for use in one type of heat exchange component, however, generally has the ability to make and market brazing sheet suitable for use in producing other types of components for heat exchange units. According to the Merger Guidelines, if such production substitutability is "nearly universal" among the firms that make and sell brazing sheet, then it is appropriate, as a matter of convenience, to describe the relevant product market as "all brazing sheet." See Horizontal Merger Guidelines, n. 14 (1997 rev.).

¹ Pechiney's brazing sheet business, as defined in Section II(E) of the proposed Final Judgment, includes all tangible and intangible assets of Pechiney's Ravenswood, West Virginia aluminum rolling mill and the engineering facilities, wherever located, that provide research and development support for any product produced at the Ravenswood plant.