

***Case No COMP/M.3225 -
ALCAN / PECHINEY (II)***

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(2) NON-OPPOSITION
Date: 29/09/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29/09/2003

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(2) DECISION

To the notifying parties

Dear Sir, Madam

**Subject: Case No COMP/M.3225 - ALCAN/PECHINEY
Notification of 11 July 2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 14 August 2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, as last amended by Regulation (EC) No 1310/97, by which the undertaking Alcan Inc. ("Alcan", Canada) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the French undertaking Pechiney by way of a public bid announced 7 July 2003.
2. In the course of the proceedings, the parties submitted undertakings designed to eliminate competition concerns identified by the Commission, in accordance with Article 6(2) of the Council Regulation. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Council Regulation and, in the light of these modifications, does not raise serious doubts as to its compatibility with the Common Market and with the EEA Agreement.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

THE PARTIES

3. Alcan is a Canadian corporation involved in all aspects of the aluminium industry. Its activities include bauxite mining, alumina refining, power generation, aluminium smelting, manufacturing and recycling, the production of fabricated products, packaging and research and development. Its packaging business includes the production of aerosol cans, cartridges and flexible packaging.
4. Pechiney is a French corporation involved in two core businesses, that is, aluminium products and packaging materials. Its aluminium business comprises bauxite mining, alumina refining, aluminium smelting, manufacturing and recycling, the production of fabricated products and research and development. Its packaging business includes the production of aerosol cans, plastic bottles, plastic cosmetic containers, cartridges and flexible packaging.

THE OPERATION

5. The notified concentration consists of the acquisition of sole control by Alcan over Pechiney.

CONCENTRATION

6. The operation constitutes a concentration within the meaning of article 3(1)(b) of the Council Regulation in that Alcan, pursuant to the transaction, acquires sole control of Pechiney.

COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (Alcan € 11,860 million; Pechiney € 11,910 million). Each of the undertakings concerned have a Community-wide turnover in excess of EUR 250 million (Alcan € [...] million; Pechiney € [...] million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension. The notified operation constitutes a co-operation case with the EFTA Surveillance Authority under Article 57 of the EEA Agreement in conjunction with Article 2(1)(c) of Protocol 24 to that Agreement.

COMPETITIVE ASSESSMENT

8. The merging parties are vertically integrated companies, with activities at all stages of the aluminium supply chain. They mine bauxite, refine it into alumina and smelt alumina into primary aluminium. Primary aluminium³, which usually takes the form of ingots, is transformed into semi-finished products (flat rolled products or extrusions).

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

³ Primary aluminium is a commodity which is traded at the London Metal Exchange (LME). A daily quotation, the LME price, is fixed there reflecting the supply and demand for primary aluminium.

Semi-finished products may be further processed into finished products. Semi-finished and finished aluminium products are used in a wide range of end-use applications such as the transportation industry, building and construction industry, the container and packaging industry, the electrical industry etc.

9. There are various types of suppliers in the aluminium markets. The merging parties are both fully vertically integrated producers. Other fully integrated producers that are active in the EEA market are Alcoa and Norsk Hydro/VAW. Others, like Amag/Constantia, Corus Aluminium and Elval, are active at various stages of the aluminium production chain. There exists a large number of aluminium transformers/fabricators, that is, non-integrated aluminium companies which use primary aluminium or flat rolled aluminium as a raw material in order to produce finished aluminium products. The merging parties may be both supplying and competing against smaller, downstream, non-integrated aluminium transformers or fabricators on the various final applications markets.
10. On the basis of the market investigation, the Commission considers that the proposed concentration will lead to serious doubts in the following markets: alumina refining technology, smelting technology, anode baking furnace technology, aluminium beverage can body stock, aluminium beverage can end stock, aluminium food can stock, aluminium aerosol cans and aluminium cartridges.

A. TECHNOLOGY

A.1 Licensing of alumina refining technology

Product markets

11. Alumina is a white powder principally used in smelters to produce aluminium. Alumina is produced out of bauxite ore by a refining process, the so-called Bayer process. Depending on the quality of the bauxite there are three different variants of the Bayer process:
 - (1) The low temperature Bayer process (100° to 150°) for gibbsitic bauxites
 - (2) The high temperature Bayer process (200° to 250°) for boehmetic bauxites
 - (3) The Bayer process for diasporic bauxites with temperature over 260°.

In addition, there is a lime/soda sintering process for the refining of high silica diasporic bauxites which is not a Bayer process. This process is almost exclusively used in Russia and China where this type of diasporic bauxite is mined.

12. Each of the three types of the Bayer process consists of several stages. The four main stages are digestion, clarification, precipitation and calcination, of which digestion and precipitation are the major steps. The digestion technology is directly dictated by the bauxite type that is treated by the alumina plant. However, the bauxite ore produced by one mine sometimes contains a mixture of two or three types of bauxite. It is possible to digest mixtures of gibbsitic and boehmetic bauxite by using a double digestion process. Moreover, it is possible to mix some gibbsitic bauxite into the feed stock of a refinery designed for boehmetic bauxite (so called sweetening process). Therefore, the high temperature Bayer process can also be used for refining gibbsitic bauxite, and the two technologies show a one-sided demand side substitutability.

13. Alcan claims that more than 80% of all refineries worldwide has in-house technology which can be used for either expansions (brownfield investments) or new refineries (greenfield investments). However, this does not exclude the existence of a merchant market since a significant number of refineries uses third party technology either for the whole Bayer flow sheet or substantial parts thereof. Therefore, there is a distinct market for alumina refining technology. For the purpose of this decision, the two technologies for the low and high temperature Bayer process are considered to constitute one market. However, the question whether the technology for refining diasporic bauxite constitutes a separate market can be left open, as an alternative definition would not affect the competitive assessment of this case.

Geographic market

14. The Commission has previously identified the geographic market for smelter grade alumina (SGA) to be limited to the western world excluding alumina from CIS and Chinese refineries.⁴ In this regard it should be noted that some Chinese and Russian refineries use western technology. Alcan, therefore, submits that the market for alumina refining technology is world-wide, as alumina refining technology is supplied all around the world, including China and Russia. This has been confirmed by the market investigation. However, it might be more appropriate to assume a market for the supply of western alumina refining technology, since no Russian technology has been licensed to third parties outside Russia, and Chinese technology is for diasporic bauxite only. However, it can be left open in the present case whether China and Russia are included in the relevant geographic market or not, since the competitive assessment would not change.

Competitive assessment

15. Both Alcan and Pechiney are active in the market for licensing refining alumina technology to third parties. However, whereas Pechiney offers refining technology for all three types of bauxite Alcan only offers technology for the refining of gibbsitic and boehmetic bauxite. Therefore, the merging parties have overlapping activities for the licensing of technology for the refining of gibbsitic and boehmetic bauxite.
16. Alumina producers have developed and improved the equipment, know-how and processes that are used in practising the Bayer process. Some of these developments and improvements are proprietary technology and protected by patents. Although proprietary technology for the alumina production is often more the right to use a know-how than a patented technology, there is a significant number of patents in existence.
17. As explained above, the Bayer process involves four main stages and several ancillary stages. Some alumina producers have only developed proprietary technologies for some of these stages and rely upon third parties for the remaining stages. There are also equipment vendors such as Outokumpu Lurgi or FFE, a subsidiary of FL Smidth, which own and license technology for particular stages of the Bayer process, like the calcination stage. Therefore, the market shares below are based on the assumption that there is one firm which supplied the critical steps, in particular digestion and precipitation, and which is considered as the principal technology supplier.

⁴ Case COMP/M.1693 Alcoa/Reynolds, at paras 18 and 19.

18. Demand for refining technology is very lumpy. The number of alumina refineries newly built or expanded during the last ten years is extremely limited. Between 1992 and 2002 there has been just one greenfield construction, the Alunorte refinery in Brazil, where a third party refining technology has been licensed in. The principal technology licensor was Alcan. In terms of brownfield expansions, Pechiney supplied the technology package for the two only projects implemented: Nalco in India and Bauxilum in Venezuela. Therefore, on the basis of a merchant market for refineries, in which the licensor of the refining technology has no ownership interest, the merged entity would have a 100% market share.
19. If installed capacity, i.e. the list of the 54 refineries in existence world-wide as submitted by Alcan, is taken as a basis, then the share of Alcan/Pechiney on the merchant market for refining technology for gibbsitic or boehmetic bauxite is [80-90]% (Alcan [60-70]%, Pechiney [15-25]%). This number is, however, considerably overstated, since some refineries changed ownership from an original owner with in-house refining technology to a new owner without such technology. For example, Alcan including Alusuisse previously owned 5 refineries which were subsequently sold to Glencore and Indal. Consequently, the market share of the merged entity would be reduced to [55-65]%.
20. Alcan submitted also figures for the two critical steps of the refining process. The merged entity would have [40-50]% (Alcan [20-30]%, Pechiney [10-20]%) for the digestion technology for all 54 refineries excluding those where the licensor has an equity interest. For precipitation the figure would be [35-45]% (Alcan [10-20]%, Pechiney [20-30]%).
21. The merged entity would enjoy similar high market shares for future projects. There are two new merchant market projects which have been announced for the next 5 years (until 2007 included). Comalco is constructing a new (greenfield) refinery in Australia, the CAR-project, which will come on stream in 2005. CAR uses various technology providers to cover the entire Bayer flow sheet. Among them is KLV, a joint venture between Hatch, Outokumpu Lurgi and VAW, for the critical step of digestion, but also Alcan for the alumina storage and handling. Concerning brownfield expansions, there is only one project, a further increase in capacity of the Bauxilum refinery in Venezuela, for which Pechiney has been chosen as the principal technology supplier.
22. It seems evident that market share alone is not a good indicator of market power in this market. In such a market, it is important to assess whether the parties' competitors on the downstream markets will be able to source the best technology at hand from a number of credible alternative suppliers. The notifying party claims that there are several companies that own alumina refining technologies which either actively license to third parties or could do so. These are Alcoa, Comalco (part of Rio Tinto), Kaiser, BHP Billiton, Hydro Aluminium and the Russian and Chinese suppliers. As indicated, the competitive overlap is limited to the refining of gibbsitic and boehmetic bauxite, since Alcan does not offer refining technology for diasporic alumina. The Chinese suppliers' refining technology is limited to diasporic bauxite, and, therefore, can not be seen as competitors for the refining of gibbsitic and boehmetic bauxite for which an overlap exists.
23. Alcan and Pechiney are the two only companies which offer the complete Bayer flow sheet covering all stages to third parties. Moreover, Alcan and Pechiney own by far the largest number of patents for alumina refining, and in particular for the two critical stages of digestion and precipitation. Pechiney owns 24 patents for alumina refining.

The figure for Alcan is similar, although Alcan claims that only 12 of its patents are of commercial value and are actually licensed. Both are also the leading suppliers for the two most critical stages, digestion and precipitation. Alcan in particular has developed the double digestion technology which enables the refinery to extract gibbsitic and boehmetic bauxite under less severe conditions whilst using less energy than other comparable solutions.

24. Alcoa has not licensed a total technology package to any third party, limiting its licensing to some parts of the process. The vast majority of patents it holds is for mud separation. BHP Billiton does not own patents of any significance in the context of technology supply, and does not supply technology for alumina refining. Hydro Aluminium co-owns a patent for a specific digestion process but is not supplying alumina technology on the merchant market. Comalco does not own any patents and is equally not active on the merchant market for supply of alumina refining technology. Russian Aluminium's subsidiary VAMI masters both the low and high temperature process and owns patents, but has not licensed this to any third party.
25. Kaiser technology was one of the dominating technologies in the 70' and early eighties. However, it progressively declined after the split of Kaiser Engineering from Kaiser Aluminium. The Queensland Alumina project (QAL) in Gladstone, Australia, demonstrates the superiority of Alcan or Pechiney over Kaiser. The initial design of QAL was based on Kaiser refining technology. The management of QAL wanted to base a brownfield expansion in 2001 on the existing in-house Kaiser refining technology. [Explains choice of alumina refining technology at QAL]. Alcan was chosen in the end, but was only winning from Pechiney by a narrow margin. Therefore, the only other credible supplier of core alumina refining technology, in particular digestion and precipitation, seems to be Hatch, including its KLV joint venture, which has taken over Kaiser Engineering in the end. However, the proven track record of Hatch is rather limited.
26. Moreover, even in projects where Alcan and Pechiney are not selected as the principal supplier of the refining technology they are chosen for some of the discrete steps of the process. As noted above Alcan will deliver the alumina storage and handling for the CAR refinery. This is due to the fact that Alcan and Pechiney also hold strong positions for other stages of the Bayer process such as the mud settling, where the Deep Thickener of Alcan and the Tassiter of Pechiney are the two most advanced solutions.
27. In view of the above, the operation raises serious doubts as to its compatibility with the common market in the market for the licensing of alumina refining technology.

A.2 Licensing of smelting technology

Product market

28. The smelter cell is the electrolytic pot within which the reduction of alumina to produce aluminium takes place. The two principal smelter cell technologies in use today are the "Söderberg" and the "Prebake" processes. The older Söderberg technology uses an open cell and an unbaked anode to transmit electricity to the cell. Söderberg anodes are baked in the cell as part of the reduction process, with the carbon anode being extruded into the cell as a paste. The Söderberg technology is used at a number of older plants. Today, Söderberg smelters represent about one third of world production. Over time Söderberg smelters will either be closed or converted to more modern prebake cell technologies.

29. All aluminium plants built after 1970, but also refitted older plants, use prebake technology. The term prebake refers to the carbon anode blocks that are formed and baked in a separate baking furnace before being introduced into the pots. Prebake is more environmental friendly due to lower emissions, has a higher energy efficiency and allows a higher labour productivity. The PARCOM Recommendation⁵ mentions prebake technology as the best available technique for aluminium electrolysis.
30. The current standard in smelting cell technology can be described more specifically as “side by side centre-brake point feeder prebake technology.” The term “side by side” refers to the positioning of individual cells, whereas “centre-brake point feeder” refers to the alumina feeding mechanism.
31. Whilst a majority of smelter companies has in-house technology which can be used for either expansions (brownfield investments) or new smelters (Greenfield investments) there is nevertheless a merchant market since a significant number of in particular new smelters uses third party technology. Therefore, there is a distinct market for aluminium smelter cell technology. The question whether the Söderberg and the prebake technology constitute two separate product markets can, however, be left open since the competitive assessment would not change materially.

Geographic market

32. Alcan submits that the market for aluminium smelting technology is world-wide, as aluminium smelting technology is supplied all around the world, including China and Russia. In this regard it should be noted that some Chinese and Russian refineries use western technology, and that the two Chinese firms Guiyang Aluminium and Magnesium Institute (GAMI) and Sheyang Aluminium and Magnesium Engineering and Research Institute (SAMI) provided limited supplies of their technology to India and Iran respectively. The market investigation confirmed that the relevant geographic market for smelter technology is worldwide.

Competitive assessment

33. There is no horizontal overlap between Alcan and Pechiney since Alcan has stopped supplying aluminium smelting technology to third parties. However, Pechiney does supply its smelting technology to third parties. Its two main product lines are the AP 18 and the AP 30 technology and their derivatives. Pechiney has also developed the new AP 50 technology for large smelters, which is the most powerful technology currently available, but not yet in operation. There are three main elements which determine output and performance of a smelter, namely amperage, efficiency of the cells (measured in current efficiency) and number of cells. In this respect Pechiney’s two technologies AP 18 and AP 30 are seen as the best technologies available on the market.
34. Alcan submitted a table in its notification which takes account of a period of 22 years. The share of Pechiney in this period for new build smelters was, according to Alcan, [50-60]%. However, this figure underestimates Pechiney’s strength, since several important suppliers of technology stopped licensing to third parties in the 1980s. Alcoa,

⁵ Oslo and Paris Conventions for the prevention of marine pollution. PARCOM Recommendation 1/94. Adopted at the sixteenth joint meeting of the Oslo and Paris commissions in Karlskrona: 13-17 June 1994.

to which Alcan attributed a [15-25]% market share in this table, is the prime example for this. Therefore, it is more important to look at the past 10 years, where 4.2 million tons of smelting capacity have been built or added, of which 2.4 million tons or 57% have been constructed under a licence.

35. In a subsequent submission Alcan looked at the more recent period of between 1992 and 2002, and stated that Pechiney licensed its technology to eight out of 10 new smelting plants. When also including brownfield expansions, Pechiney licensed its AP 18 to four and its AP 30 technology to eight smelters over the past ten years. Pechiney, in its 2000 Annual Report⁶, estimated that “approximately 80% of recently commissioned smelting capacity in the world utilises Pechiney technology. This figure is broadly in line with the Commission’s own market investigation according to which Pechiney enjoys [a strong position] for greenfield smelter projects and [a strong position] for brownfield projects.
36. Alcan claims that there are a number of other companies that license or could license aluminium smelter technology, such as Alcoa, Hydro, Dubal/Comalco and the Russian and Chinese technology institutes. However, Alcoa has stopped licensing its technology in the 1980s. Hydro owns the HAL 230 /HAL 250 technologies. While this technology could be licensed to third parties Hydro itself states in its response to the Commission’s market investigation, that it is not the company strategy to do so. Indeed, there are few projects: Venalum 1991 and Alba 1995, equipped with the older HAL 230 technology, whilst the more modern Hydro technology HAL 250 has not been implemented for third party projects. The market investigation also showed that in some instances Hydro demands equity participation in smelters for which it grants a licence. Dubal and Comalco have co-developed the CD 200 technology based on older Kaiser technology. CD 200 has so far been implemented at large scale only by each company for its own use in Dubai and New Zealand. The Russian VAMI has not licensed its technology outside Russia since 1985. The running performance of the Chinese SAMI and GAMI remains largely unknown and is supposedly well below western standards.
37. In view of the above it becomes clear that only Pechiney has a proven track record of a bankable leading technology for licensing to third parties. This was also confirmed by the market investigation where respondents described Pechiney’ technology as being superior to all other smelter technologies and as the only credible technology being licensed to third parties.
38. The Commission’s market investigation has also shown that there is only one project in Brazil, where alternative Söderberg technology may be chosen (a technology which is not offered by Pechiney). All other new projects are using prebake. Therefore, Pechiney is clearly the dominant supplier of smelting technology to third parties.
39. Both Alcan and Pechiney are active on the downstream market of aluminium production and supply. The combined market share of Alcan and Pechiney for primary aluminium would be around [10-20]% in terms of capacity and [10-20]% in terms of production. As a result the licensing of smelting technology to third parties is a vertically affected market.
40. The licensing of its smelting technology has been a long-standing business strategy driven by Pechiney’s desire to amortise its substantial investments made in new

⁶ Pechiney, Annual Report 2000, p.27

smelting technology. However, this could change since the merged entity has a broader base of primary aluminium and, by spending the same percentage of turnover on R&D, a higher R&D budget. Currently, Pechiney produces close to 1 million tons of primary aluminium, corresponding to market share of around 4%. After the merger with Alcan, the merged entity would have a capacity of 3 million tons, and the combined market share would increase by more than [...] points to [10-20]%. This gives the merged entity a significantly larger room for manoeuvre to behave more independently of its competitors on the smelting technology market. Under the assumption that the annual income from licensing is between [15 and 40] million € corresponding to one typical full license package, an increase of the LME price of 10 € per ton or more would already offset the loss from stopping to license its technology. In such a case, the merged entity would have an incentive to stop licensing, and the merger could strengthen Pechiney's already [strong position] on the merchant market for smelting technology. The merger would thus provide Alcan with an increased incentive to leverage its newly gained [strong position] for smelting technology. That it may be commercially rational not to license anymore is demonstrated by Alcoa, which has the second best technology and a similar market share in primary aluminium (around [10-20]%). Alcoa has stopped licensing in the 1980s.

41. Any such strategy not to license anymore or to demand a substantial increase in the price of the license would, however, depend on an increase or slowed down decrease of the LME price for primary aluminium in order to offset the loss of revenue from licensing. It is rather unlikely that Alcan would be able to become dominant in the downstream market of aluminium. In order to increase its market share to 40%, it would have to add two new large scale smelters each year, invest in excess of 20 billion € and still need ten years. This would also only be possible when assuming the absence of any counter action of Alcan's competitors in that market. Therefore, by foreclosing the market for smelting technology, Alcan would not gain a dominant position on the downstream primary aluminium market and would thus not be able to raise prices by restricting its own output.
42. However, control over the leading smelting technologies may enable Alcan to hinder expansion by competitors in the downstream market. By refusing to license or demanding a substantial increase in the price of the licence some smelters would not be built and others might be built either with Pechiney technology at much higher licence fees or with inferior technology that produces aluminium at higher cost and with lower output per smelter. Alcan itself has estimated that the increase in production cost could be as much as [4-8]% (or [30-60] € on an average production cost of 800 € per ton) compared to the AP 30 technology of Pechiney. Alcan made a comparison of Pechiney's AP 30 with Hydro's HAL 230 and Comalco/Dubal's CD 200 technology, which are the two second best technologies on the merchant market. The calculations show a [2-8]% higher production cost for the HAL 230 and [1-5]% for the CD 200 technology. The lower figures of the ranges correspond to a low energy and low labour cost location.
43. The higher cost of production would increase the cost of competitors in two ways. Firstly the higher cost would lead to reduced profits which could prevent investments in new smelters if the required return on investment is no longer met. This would have the effect of keeping marginal high cost smelters in operation instead of replacing them by more efficient smelters. Second, using an inferior technology has a direct impact on variable costs. Although the technology package is normally paid for by a lump sum in the order of [15-45] million € depending on the size of the smelter, Pechiney's technology reduces the electricity consumption per ton of aluminium produced. Higher

variable costs have a direct impact on price. As a result, the price of primary aluminium would be higher if Pechiney's technology is no longer available.

44. In view of the above, the operation raises serious doubts as to its compatibility with the common market in the market for the licensing of smelter cell technology.

A.3 Anode technology

Product market

45. As explained above, the two main types of smelter cell technologies in use are the „Söderberg“ and the „prebake“ technology. A majority of about two thirds of today's smelters uses the prebake smelting cell technology. The Söderberg cell utilises an unbaked anode which is a form of paste fed into the cell. The Söderberg technology, therefore, does not require anode baking technology. The prebake cell utilises a baked anode. Baked anodes are produced in a high temperature furnace before being placed into the cell.
46. Carbon anodes are produced in an anode baking plant in three steps:
- The paste plant where petroleum coke is sized and mixed with coal tar pitch to form green anodes, which are large blocks of carbon („green anode“ technology)
 - The anode baking furnace where green anodes are fired at high temperature in a refractory lined furnace to cure the green anodes and improve their physical and electrical properties (anode baking furnace technology)
 - The rodding shop where the baked anodes are joined to metallic rods to allow the anodes to be connected to the electrical circuit in the pots.
47. The first two steps, green anode technology and anode baking furnace technology, are two separate markets, whereas the last step seems to be rather a low-tech annex to the second step. The key step is the anode baking furnace technology. Two different technologies exist in the market: open and closed furnace designs. The closed furnace design is the older technology and is generally not applied in modern smelters. The question, whether open and closed anode baking furnace designs form distinct markets can, however, be left open, since the competitive assessment would not change under any alternative market definition.

Geographic market

48. Alcan submits that the market for anode baking furnace technology is world-wide, as anode baking furnace technology is supplied all around the world, including China and Russia. In this regard it should be noted that the two Chinese GAMI and SAMI have limited supplies of their technology to India. Therefore, the relevant geographic market for anode baking furnace technology is worldwide.

Competitive assessment

49. In a prebake anode smelter cell the carbon anode is consumed in the electrolytical process and needs to be replaced every 14 to 30 days. As a general rule, half a ton of carbon anode is needed to produce one ton of primary aluminium. Due to this high demand for anodes, as well as to ensure uninterrupted supply, anodes are usually

manufactured in a carbon anode plant on site. In some instances, producers of primary aluminium buy ready made prebaked anodes from a third party and get them shipped to their smelter. This is, however, the exception to the rule, and is often caused by environmental legislation, as is the case for all smelters in Iceland. It should also be noted, that one of the largest producers of anodes for sale to third parties is Aluchemie in Rotterdam, which belongs to Alcan.

50. Both Alcan and Pechiney are active in the licensing of open anode baking furnace designs. According to Alcan there are numerous competitors that license or could license open anode baking furnace designs, such as Alcoa, Kaiser, Comalco, RusAl or the two Chinese institutes GAMI and SAMI. However, whilst these firms do have in-house furnace technology, the Commission's market investigation did not provide evidence of such licensing activity for third party transactions, with the exception of GAMI/SAMI, which, according to press releases, are supplying anode baking technology to the Indian Balco smelter project. For closed furnace technology there are only two suppliers, the German company Riedhammer and Hydro. Hydro, however, has not licensed its technology to other aluminium producers except for a license to Dubal in 1990, and Riedhammer has increasingly difficulties in finding customers for its older technology.
51. As a result of the transaction, there would be only two real alternatives in the overall market for baking furnace technology. However, Riedhammer is supplying only closed baking furnaces, whereas R&D Carbon has not yet found any licensee for its open furnace technology. The takeover of Pechiney by Alcan would, therefore, lead to [a strong position] for the licensing of open anode baking furnace technology, and [a strong position] in the overall market for the licensing of anode baking furnace technology.
52. Alcan claims that prebaked anodes are likely to be superseded by inert anodes. While carbon anodes are consumed during the smelting process inert anodes of the new technology will be made of nickel and copper and would not be consumed. According to Alcan, competitors such as in particular Alcoa are leading this development. However, Alcoa, when questioned about the commercialisation of inert anodes, stated that it would most likely not be able to do so in the next 5 years to come. Moreover, also Pechiney is actively researching in this field.
53. In view of the above, the operation raises serious doubts as to its compatibility with the common market in the market for the licensing of anode baking furnace technology.

B. FLAT ROLLED PRODUCTS

Relevant product markets

54. Flat rolled products ("FRP") are a group of semi-finished flat aluminium products that are produced in a number of steps in hot and cold rolling mills. In particular, FRPs are produced from aluminium sheet ingots, sometimes referred to as rolling ingots or slabs, which are either produced from primary aluminium or from scrap (secondary aluminium).
55. FRPs comprise over fifteen categories of products, some of which correspond to a specific end application, whereas some others are multi-purpose products (a large part of the latter is stockist material which cannot be allocated to specific sectors). In general rolling mills may be configured in such a way as to produce various types of FRPs

depending on the final application (the so-called “product mix”). The categories of FRPs that mills can produce include the following: common material alloy (1xxx, 3xxx and 5xxx); paint stock & sheet; foil stock and foil; beverage can body stock; beverage can end stock; food can stock; bright sheet; brazing sheet; plate and shate; lithographic sheet; fin stock; other thin gauge (3xxx and 5xxx); automotive sheet; and heat treat.

56. For certain applications, where the thickness of the flat product varies between 4 and 12 mm, FRPs do not require to be cold rolled. After the appropriate surface finishing, these FRPs are ready for sale out of the hot rolling mill. “Hot” FRPs include bands for silos, tanks, truck or rail vehicles, off-shore applications, shipbuilding (superstructure), and automotive applications (e.g. wheel rims). “Cold” FRPs include a variety of aluminium products used in applications such as packaging (foils, containers, cans), building and construction, lithography, electrical engineering, etc.
57. Alcan argues that all categories of FRPs constitute one single relevant product market given their high degree of supply-side substitutability. In previous decisions, however, the Commission has identified three categories of FRPs that do constitute distinct product markets. These categories are : standard FRPs (including standard sheet, plates, foil stock, etc.) and aluminium food can sheet⁷ as well as lithographic sheet⁸. In addition, the Commission considered other categories of FRPs that could constitute distinct product markets, such as paint sheet or aerospace plate and sheet.⁹
58. The market investigation has confirmed that FRPs do not constitute one single relevant product market. In fact, the degree of supply-side substitutability varies from one FRP type to another. In general, aluminium rolling mills produce a range of FRPs, the so-called product mix. Different types of FRPs sell at different prices and their relative profitability is reflected in the profit margin resulting from rolling a particular type of FRP. Aluminium producers try to optimise the product mix of their mills, by producing the highest-margin types of FRPs within the availability of their rolling and finishing equipment. However, not all the mills are equipped to produce all the types of FRPs. For instance, only a few mills in the EEA are capable of producing beverage can body stock and food can stock. In addition, the manufacturer of beverage can body stock and food can stock needs to meet stringent qualification requirements. Therefore, whilst the supply-side substitutability argument seems relevant in respect to the standard FRPs categories (standard sheet, plates, foil stock, etc.), it was not supported by the market investigation with respect to beverage can body and end stock and food can body stock.
59. Concerning painted sheet, however, the market investigation showed that this FRP forms part of the standard FRPs market. Painted sheet is flat aluminium strip that is painted in order to provide additional protection against corrosion. Painted sheet is used for a variety of outdoor applications in the construction business or in the automobile industry. There is a high degree of supply-side substitutability between painted sheet and standard FRPs. Painted sheet production uses the same equipment, technology and

⁷ See case COMP/M.2702 Norsk Hydro/VAW, 04.03.2002; case COMP/M.2111 Alcoa/British Aluminium, 27.10.2000..

⁸ case COMP/M.1663 Alcan/Alusuisse, 14.03.2000.

⁹ See case COMP/M.2702 Norsk Hydro/VAW, 04.03.2002; case COMP/M.2111 Alcoa/British Aluminium, 27.10.2000.

production processes that are used for all standard FRPs. It is then painted in a separate production line.

60. With regard to automotive sheet, the market investigation has indicated that aluminium automotive sheet is not a standard FRP, although it is in direct competition with automotive sheet made from steel. So far, aluminium automotive sheet is a new, nascent application. Over 98% of all metal sheet used for automobiles is still steel sheet, and less than 2% is accounted for by aluminium. Car manufacturers have a choice between aluminium and steel when a new model is designed. The Commission's market investigation showed that there were occasions where car manufacturers switched back to steel for a body part of the latest generation of a certain model which used to be aluminium in the previous version. Therefore, for the time being, aluminium and steel automotive sheet seem to belong to the same relevant product market. However, even if automotive aluminium sheet were to constitute a separate product market, any competition problems would be solved by the remedies offered by Alcan in relation to other FRPs product markets.

Standard FRPs

61. In previous decisions¹⁰, the Commission has considered that there exists a distinct market for standard FRPs. This market consists of all FRPs that do not constitute distinct product markets within the field of FRPs and includes the following products : standard sheet, plates, foil stock, etc. For these standard FRP categories, there exists a certain degree of supply-side substitutability, and the market investigation has indicated that aluminium producers are able to produce the full range of standard FRPs, switching production between the different types within a short period of time and without incurring significant additional costs.

Beverage can body stock – Beverage can end stock

62. Metallic beverage cans are made of aluminium or tinplate (steel). In Europe, both aluminium and tinplate are used for the production of beverage cans. Whilst in some Member States aluminium is the only material used for beverage cans, it is equal or less important than tinplate in others. Despite this, there are several reasons limiting the substitutability between aluminium and tinplate can stock. From a demand-side point of view, aluminium has specific technical advantages. An aluminium can is 4.5% lighter than a tinplate can and as such, it contributes to the reduction of transport and handling cost for can makers, bottlers and retailers. Aluminium cans can be embossed and shaped, offer better external wall printing quality and do not corrode, thus allowing longer shelf life after filling. Environmental reasons, in particular recycling and the resulting high value of aluminium can scrap, are an additional element for considering aluminium and tinplate as distinct markets. With regard to prices, aluminium and tinplate can body stock prices do not track each other neither do they present any price correlation. From the supply side, beverage cans are produced on dedicated lines for either aluminium or tinplate. Beverage can makers have indicated that it is difficult to convert their lines from tinplate to aluminium and vice versa in case of an increase in the cost of metal. The investment and time needed to make such a conversion reduces its

¹⁰ See in particular case COMP/M.2702 Norsk Hydro/VAW, 04.03.2002.

ability to defeat or discourage a 5% to 10% price increase in aluminium can body stock. Finally, some beverages, such as beer and ciders, are exclusively or predominantly sold in aluminium cans. Moreover, the can end and tab is always made of aluminium, even if the can as such is made of tinplate.

63. Therefore, the Commission considers aluminium and tinplate beverage can body stock to constitute separate product markets. Aluminium can end/tab stock differs from body stock as they are made of harder alloys than can body stock. They require more powerful mills and more mill time to be produced than can body stock, and are therefore more expensive per kilogram than body stock. Body stock cannot be used to make lids and vice versa. Defining can body stock on the one hand and end/tab stock the other hand, is in line with the result of the Commission's market investigation in 2000 when Alcan first tried to merge with Pechiney.¹¹
64. It can therefore be concluded that aluminium can body stock and aluminium can end/tab stock both constitute distinct relevant product markets.

Food can sheet

65. Food can sheet is used in the manufacture of food cans, which may be made of either aluminium or steel (tinplate). Aluminium cans have superior characteristics compared to steel cans, allowing a variety of can shapes and better print quality. As aluminium does not corrode, it allows longer shelf life after filling. Aluminium cans have thus become established in certain, high value added segments of the food market, particularly for canned seafood, meat pates, and similar delicatessen products. These cans are always printed and are supplied in a wide variety of round and non-round shapes and sizes to maximise their appeal to final consumers. The market investigation has indicated that for a food producer, substitution from aluminium to tinplate is not simply a question of changing metal, it is about redesigning the food company's product, marketing and image. The market investigation carried out in this case has confirmed this conclusion. Therefore, as for beverage can stock, and in line with previous Commission practice,¹² there is a distinct market for aluminium food cans.

Relevant geographic market

66. With regard to the relevant geographic market, the Commission has found in previous decisions that the FRP markets are at least the EEA plus Switzerland and possibly, for certain categories, even wider. The market investigation carried out in this case has confirmed this conclusion.
67. In particular, the market investigation has indicated that there exist some imports of FRP into the EEA and that the level of imports will probably increase in the future. For the time being, FRP producers from Eastern Europe, Russia, CIS and Turkey are, in general, unable to meet the quality requirements and specifications of customers in the EEA.
68. Such is evidently the case for the FRPs with high technical requirements such as beverage and food can sheet. Most EEA customers do not view these FRP producers as

¹¹ see press release IP/00/258 of 14 March 2000

¹² case COMP/M.2702 Norsk Hydro/VAW, 04.03.2002, at para.12

credible suppliers. This also is evidenced by the fact that none of the existing EEA can makers has ever imported can body stock from these countries, apart from some testing material. Imports from the US or Japan would be uneconomical (high freight costs, import duties, inability to take back aluminium scrap), would leave the can makers without local technical assistance and would require long lead-times (an additional 3 to 4 weeks shipping time to local EU supplies). Therefore, for the present analysis, it can be concluded that the market for beverage body can stock, beverage can end stock and food can stock is the EEA plus Switzerland. The question whether the geographic market for standard FRPs is EEA-wide or wider can be left open for the purpose of the present case, as the operation does not raise concerns on the basis of any alternative market definition.

Competitive Assessment

69. Alcan produces FRPs in Western Europe from five facilities, or facility groupings. These are : (a) Norf¹³ (hot and cold mills), Nachterstedt (cold mill and finishing lines) and Göttingen (cold mill and finishing lines), all three of which are located in Germany ; (b) Rogerstone (hot and cold mill) and Falkirk (cold mill), both of which are located in UK ; (c) Singen (hot and cold mill)(Germany) ; (d) Sierre (hot and cold mill)(Switzerland); and (e) Pieve (continuous casting and cold mill) and Bresso (finishing lines), which are located in Italy.
70. Pechiney produces FRP in Western Europe from five facilities which are: (a) Neuf-Brisach (hot and cold mill)(France) ; (b) Issoire (hot and cold mill)(France) ; (c) Annecy (cold mill)(France) ; (d) Rugles (continuous casting and cold mill)(France) ; and (e) Dudelange (continuous casting and cold mill)(Luxembourg).
71. The concentration will lead to horizontal overlaps in the following FRP markets: standard FRP, beverage can body stock, beverage can end/tab stock and food can body stock. There are no horizontal overlaps for lithographic sheet, bright sheet, aerospace plate and brazing sheet.

All FRP

72. The merged entity would have a market share of all aluminium FRP in the EEA¹⁴ of [35-45]% in terms of production (Alcan [20-30]%, Pechiney [10-20]%). In terms of capacity, the parties' combined share would be [40-50]% for hot mill capacity (Alcan [20-30]%, Pechiney [10-20]%) and [40-50]% for cold mill capacity (Alcan [30-40]%, Pechiney [10-20]%).
73. The parties' main competitors' production shares for all aluminium FRP are Norsk Hydro: [20-30]% ; Alcoa: [10-20]%; Corus: [5-15]%; Elval: [0-10]%; Austria Metall: [0-10]%; Sapa [0-10]%).

¹³ The Norf rolling mill is owned and operated by Aluminium Norf AG, which is presently a 50/50 production joint venture between Alcan and Hydro Aluminium Deutschland. Hydro Aluminium Deutschland is a subsidiary of the Norwegian group Norsk Hydro.

¹⁴ All market shares on an EEA + Switzerland 2002 basis

74. As far as capacity is concerned (hot mill and cold mill capacity), the parties' main competitors' market shares are : Norsk Hydro ([10-20]%), Alcoa ([5-15]%), Corus ([5-15]%), Elval ([0-10]%), Sottile ([0-10]%), Austria Metall ([0-10]%), Sapa ([0-10]%).
75. It should be highlighted that the merged entity's market shares (both in terms of hot and cold mill capacity and share of production) are in themselves already indicative of market power, in particular taking into account the significantly lower market positions of its immediate competitors. Even taking into account the relevance of imports in some specific categories of FRPs, the parties' combined capacity share would be approximately [35-45]%, that is, more than twice that of its immediate competitor, Norsk Hydro. Apart from the above, the competitive overlaps in the markets for beverage can body and can end stock and food can stock will lead to the creation of a dominant position held by the merging parties in these markets.
76. In addition to their position for standard FRPs, beverage can stock, beverage can end stock and food can body stock, the merged entity will also hold strong position in other FRP categories (aerospace sheets, lithographic sheets, brazing sheets, bright sheets), which will give it the opportunity to optimise the product mix of each of its rolling mills, and such confers it with a significant competitive advantage over its competitors.

Standard FRP

77. The market share of the merged entity in the market for standard FRPs would be [30-40]% (Alcan [20-30]%, Pechiney [10-20]%). Other competitors are Norsk Hydro ([20-30]%), Alcoa ([10-20]%), Corus ([10-20]%), Elval ([0-10]%), Austria Metall ([0-10]%), Sapa ([0-10]%), others ([0-10]%).

Beverage can body stock – beverage can end stock :

78. The market share of the merged entity for aluminium beverage can body stock (in terms of production) would be of [65-75]% (Pechiney [35-45]%, Alcan [25-35]%). Only two competitors remain: Norsk Hydro ([15-25]%) and Elval [0-10]%).
79. The market share of the merged entity for aluminium can end stocks would be [40-50]% (Pechiney [20-30]%, Alcan [10-20]%). Other competitors include Norsk Hydro ([20-30]%) and Alcoa ([20-30]%).

Food can body stock

80. The merged entity's share of the food can body stock market would be [55-65]% (Pechiney [30-40]%, Alcan [25-35]%). Other competitors include Norsk Hydro ([5-15]%), Elval ([5-15]%), Alcoa ([0-10]%) and Sottile ([0-10]%).
81. As a result of the merger, competition in aluminium beverage and food can body stock markets will be significantly reduced. The merged entity will account for more than [45-55]% of these two markets, with its main competitors, Norsk Hydro and Elval, not being able to capture dissatisfied customers in case of supra-competitive pricing by the merged firm.
82. The competitive overlaps brought about by concentration in the markets for beverage can body stock, beverage can end stock and food can stock will lead to the creation of a dominant position held by the merging parties in those markets. The new entity would be able to exert market power.

83. In the light of the above, the notified operation raises serious doubts as to its compatibility with the common market with regard to the market for all FRPs and with regard to beverage can body stock, beverage can end stock and food can body stock in particular.

C. ALUMINIUM FOIL

84. Aluminium foil is primarily an intermediate product used in manufacturing a variety of packaging products, such as semi-rigid containers, flexible packaging, industrial products or as an end use product for domestic use (household foil). From a demand side perspective, this translates into four main applications: container foil, converter foil, household foil and industrial foil and corresponds to the different physical and metallurgical characteristics of aluminium foil.
85. Aluminium container foil is a heavy gauge foil product used for the production of semi-rigid aluminium containers which are primarily used in the food industry. Aluminium converter foil is used for the production of flexible packaging. Household foil is a light gauge rolled product, used primarily for multi-purpose, short-life wrapping in the domestic and commercial preparation and preservation of food products. Aluminium industrial foil is a semi-finished foil used for various industrial end-use applications including electronic components, cable wrapping, insulation and heat exchangers for the automotive and construction industries.
86. Alcan considers that because of the very high degree of supply side substitutability, there is one single relevant product market encompassing all aluminium foil. The market investigation has not fully confirmed this view as most producers have dedicated production lines for the different thickness ranges. However, for the purpose of this case, the question whether the four above mentioned categories of aluminium foil constitute one or distinct product markets can be left open, as the operation does not raise concerns on the basis of any alternative market definition.
87. Alcan considers that the relevant geographic market for aluminium foil is at least EEA-wide. This has been in general confirmed by the market investigation.
88. The parties' market shares on the overall aluminium foil market would be [25-35]% (Alcan [10-20]%, Pechiney [10-20]%). Other competitors include Norsk Hydro ([20-30]%), Alcoa ([0-10]%), Elval ([0-10]%) and Comital ([0-10]%).
89. If a separate market for container foil market were to be concluded, the parties would have a market share of [30-40]% (Alcan [25-35]%, Pechiney [0-10]%). Other competitors include Elval ([20-30]%), Laminazione Sottile ([10-20]%) and Hydro Aluminium ([5-15]%). Imports are about [0-10]% of total sales and are likely to rise in future as entry barriers for these low added-value products are not substantial. It is unlikely that the strengthening of Alcan's position in this commodity market could confer the merged entity with market power. Such has been confirmed by the market investigation.
90. For converter foil, the merged entity would have a [25-35]% market share (Alcan [10-20]%, Pechiney [10-20]%). Other competitors include Norsk Hydro ([30-40]%), Alcoa ([0-10]%), Comital ([0-10]%), Carcano ([0-10]%), Elval ([0-10]%). Imports account for [0-10]% of total sales. Although the merged entity and Hydro Aluminium will have similar shares of aluminium converter foil in the EEA, there is no risk that the concentration will create a situation of collective dominance. Indeed, the new entity and

Norsk Hydro have different strategies and business models and therefore incentives in relation to converter foil. Alcan is vertically integrated into the downstream flexible packaging industry, therefore using a considerable volume of its production captively, whereas Norsk Hydro is not. In the market for household foil, the new entity will have a [10-20]% market share (Alcan [0-10]%, Pechiney [0-10]%). Other competitors include Elval ([10-20]%), Comital ([10-20]%) and Hydro ([5-15]%). Imports account for nearly one third of total consumption in the EEA. Therefore, it seems unlikely that the merged entity would become dominant in this segment.

91. In the market for industrial foil, the parties would hold a [25-35]% market share (Alcan [15-25]%, Pechiney [5-15]%). The new entity will continue to face strong competitors in this market such as Hydro ([20-30]%), Sapa ([10-20]%), Laminazione Sottile ([10-20]%) and Alcoa ([5-15]%).
92. On the basis of the above, it is unlikely that the proposed concentration will alter the competitive dynamics in the aluminium foil markets. There is effective competition and as a consequence any price increase will trigger increased output by the other competitors or increased imports. Neither single dominance nor collective dominance issues would arise on the possible sub-markets, neither on an EEA-wide basis nor if such a market were considered to be wider than the EEA.

D. HARD-ALLOY EXTRUSIONS

Relevant markets

93. Extrusions are the second most important category of aluminium semi-finished products after FRPs. Extrusions are formed by pushing aluminium billets through a die. Aluminium extruded products are used in a wide range of applications, including aerospace, automotive, building and construction, and industrial uses. They come in a variety of shapes, including rods, bars, profiles and forging stock.
94. Hard-alloy extrusions are used primarily for applications that require high levels of strength, such as aerospace and other transport applications. Soft-alloy extrusions, on the other hand are used for building and construction, less severe transportation applications, screw machines stock and general applications. The manufacture of hard-alloy extrusions differs from soft-alloy extrusions in that, in the case of the former, special heat treatment and other processing is required as well as a greater degree of pressure being required to extrude the billet.
95. In previous Commission decisions¹⁵, two separate markets for aluminium extrusions have been identified: hard-alloy extrusions and soft-alloy extrusions. Only the market for hard-alloy extrusions is affected by the present concentration.
96. Concerning the relevant geographic market, in previous decisions, the Commission has defined the geographic market for hard-alloy extrusions as being EEA-wide¹⁶. The same would apply to the present case.

¹⁵ Case IV/M.2111 – Alcoa/British Aluminium, Case COMP/M.2702 Norsk Hydro/VAW.

¹⁶ Case IV/M.2111 – Alcoa/British Aluminium

Competitive assessment

97. The market shares in 2002 by production of the merged entity on the EEA-wide market for hard-alloy extrusions is [15-25]% (Pechiney [10-20]%, Alcan [0-10]%). Other competitors include Alcoa ([10-20]%), Fuchs ([10-20]%), Corus ([5-15]%), Eural ([5-15]%), Metalba ([0-10]%), Aluhette ([0-10]%), Unna ([0-10]%), and others.
98. Although the merged entity will be the largest supplier of hard-alloy extrusions in the EEA, it will not have a dominant position and will face effective competition from numerous competitors. Therefore, the transaction will not create or strengthen a dominant position for Alcan on the EEA market for hard-alloy extrusions.

E. RIGID PACKAGING

E.1. ALUMINIUM CARTRIDGES

Relevant Product Market

99. Aluminium cartridges are made from an aluminium disc or slug which is stamped from an FRP to obtain the form of a tube. The cartridge is filled from the bottom side and closed with a piston and finally seamed. Aluminium cartridges are used to pack materials of various kinds. The most common materials packaged are sealant and adhesives used in the car and construction industry. The total market volume is in the order of 11 - 14 Mio. €.

Demand Side Substitutability

100. According to the parties there is extensive demand side substitutability as customers could easily switch to cartridges made of other materials such as plastic (polyamide, polyethylene), cardboard or steel. The market investigation, however, has not supported this view. For certain applications such as silicone or acrylate sealant, polyethylene or polyamide based cartridges can be used as an alternative to aluminium. However, polyethylene cartridges are considerably cheaper than aluminium cartridges (about 60%), whilst Polyamide cartridges are more expensive than aluminium. Moreover, both plastic materials do not provide the necessary barrier properties (chemical resistance and air tightness) required for highly reactive products such as polyurethane (PU) -based sealants and adhesives. The two largest customers of the parties, for instance, buy aluminium cartridges for the packaging of PU- products only. These two customers account for more than [25-35]% of the total European market alone.
101. PU-based sealants are also sold in cardboard cartridges with an inside layer of aluminium. These cardboard cartridges are about 11% more expensive than the equivalent aluminium cartridge. Since this type of cartridge does not offer any additional value over the aluminium cartridge, substitution would be uneconomic.
102. The only alternative widely used is a multi-layer packaging foil with an inside layer of aluminium. The foil is then cut and sealed by customers as part of the filling process. The packaged product is spread by the final user through a spread gun, just as for cartridges. Multilayer packaging is only used for larger volumes in high volume professional applications. Moreover, the multilayer packaging is more than 3 times cheaper than the aluminium cartridge. Therefore, based on the above, it appears that

cartridges made of aluminium forms a separate relevant product market from the point of view of demand side substitutability.

Supply side substitutability

103. The parties claim that there are no barriers to hinder entry. Aluminium slugs are, as confirmed by the market investigation, readily available on the market. The parties suggest that all that is needed to start production is an impact extrusion press. However, the investment needed is around 3.5 Mio. €, which is equivalent to 25% of the total market volume. Second-hand aluminium cartridge lines would still cost between 1 and 1,5 million €. None of the producers of the slug have indicated their willingness to integrate forward and start producing cartridges themselves.
104. The parties also suggested that producers of aluminium tubes or aerosol cans have already the necessary extrusion press and could easily start producing cartridges. Such has been contradicted by these companies, as a further investment of 1-1.5 Mio. € would be required to actually start producing cartridges. Moreover, the customer base for cartridges is entirely different from that of tubes. The likelihood that producers of plastic cartridges could enter the market is even more remote as such would require an investment of more than 5.6 Mio. €, almost half the market size. Therefore, the Commission concludes that none of these producers are prepared to enter the market within the foreseeable future.

Conclusion

105. For all the reasons above, the position of the Commission is that the relevant product market for the purpose of this case is the market for aluminium cartridges.

Relevant Geographic market

106. Since aluminium cartridges can be transported at low cost relative to value throughout Europe, the parties believe that the relevant product market is at least the EEA. Alcan and Pechiney produce aluminium cartridges in one single location each for the supply of the whole of Europe. The market investigation revealed that customers source in Europe only. This is due to differences in product quality and because of logistical considerations such as just in time delivery. Consequently, the relevant geographic market is, for the purpose of this decision, limited to the EEA plus Switzerland.

Competitive Assessment

Market shares

107. On the basis of the parties' 2002 figures, they would supply [45-55]% of the market for aluminium cartridges (Alcan [30-40]%, Pechiney [10-20]%). The Swiss company Obrist would rank second with [25-35]%, followed by Tuben Bischofszell with [15-25]% and several fringe firms. Therefore the parties hold a market share which is significantly higher than the share of their closest competitor, which is already an indication of [a strong position] in this market.
108. The parties claim that in the case of Alcan one single customer accounts for [over half] of its sales, whereas the biggest customer of Pechiney buys [approximately half] of its production. According to the parties these two customers would exercise

considerable countervailing market power. First of all, there is no demand-side substitutability. Moreover, it would be difficult to switch a larger volume to another existing supplier in the short term, since the smaller competitors of the parties are all running close to full capacity. If, for instance, [...] wanted to switch its purchasing volume to another supplier of aluminium cartridges only Obrist would have the necessary capacity to produce such a large volume. However, this would not be possible in the short run since Obrist's production is committed to its current customers.

109. Therefore, for the reasons stated above, the Commission considers that the present operation will lead to a situation in which the merging parties will become dominant in the market for aluminium cartridges.

E.2. AEROSOL CANS

Relevant product market

110. In case IV/M.603 Crown Cork&Seal/Carnaud Metalbox, the Commission had identified a relevant product market for tinplate aerosol cans, distinct from the market for aluminium aerosol cans. The parties are of the opinion that this decision only addressed the question whether aluminium could be regarded as a substitute for tinplate cans but not vice versa. According to the parties, tinplate aerosol cans do constrain suppliers of aluminium aerosol cans. Not only has the price gap in favour of tinplate widened since the 1995 Crown Cork decision, technological progress has also almost wiped out the qualitative advantage of aluminium for most applications. The parties, therefore, suggest that today there is only one market for aerosol cans including both tinplate and aluminium cans. However, the Commission's market investigation has not supported this.
111. Responses from customers support the view that two separate markets exist. For many applications tinplate does not constitute an alternative to aluminium. From a technical point of view, there are two applications for which the use of tinplate is not possible. Firstly, tinplate cannot be formed into small diameter cans by welding. Such applications are predominantly 35mm diameter cans used for personal care products, which represent 14% of the total consumption of aluminium cans in Europe. The parties claim that this can will soon be available in tinplate also, using the newly developed technology to produce 2-piece tinplate cans. The Commission however underlines that currently only the parties possess this 2-piece technology.
112. The second application for which tinplate is not a substitute is for cans intended to contain aggressive substances, such as hair styling and conditioning mousses, which represent 13% of the total consumption of aluminium cans in Europe. The parties claim that it will be possible to pack hair mousse also in tinplate. However, for tinplate to be able resisting aggressive substances, a very costly coating of the interior must be applied which makes this type of tinplate can non-competitive with its aluminium equivalent.
113. Other technical factors relating to pressure also inhibit the use of tinplate for certain applications. Tinplate cans with very high-pressure resistance are available, but only for large diameter cans. Finally, also pure water aerosols cannot be packaged in tinplate (1% of total demand for aluminium aerosol cans).
114. The existence of a separate market for aluminium aerosol cans is also based on marketing issues and consumer preferences. Particularly in the segments for hair sprays and deodorants, the customers of aerosol cans have submitted that the normal three-

piece tinplate can with its side-seam is not well perceived by the final consumer and would lead to a loss of sales. Therefore, according to the producers of personal care products, a switch to the three-piece tinplate can is not possible for marketing reasons. Such is evidenced by the fact that those customers of aerosol cans that switched from aluminium to tinplate in recent years, albeit representing small volumes, have reverted to aluminium over the following 2 to 3 years either for quality or for marketing reasons.

115. The above elements lead to the conclusion that there is very limited demand side substitutability between the standard three-piece tinplate and the aluminium aerosol can. The only real alternative for customers seems to be the two-piece tinplate can. However, this NewCan is currently only available in small quantities and one format, and the parties are the only manufacturers in Europe who currently possess this technology. Even if small diameter cans made of tinplate will be available in the future, it will be the parties who capture this demand.
116. Tinplate cans are significantly less expensive (15-30%) than aluminium aerosol cans. It can be considered that the producer of the personal care product would not pay a higher price for an aluminium can if there are no benefits.
117. With regard to supply-side substitution, it is to be noted that the three different types of aerosol cans on the market (aluminium, two piece and three- piece tinplate cans) are all manufactured by applying completely different production processes. Consequently, there is no possibility to switch production lines from aluminium to tinplate aerosol cans or vice versa. To enter the market for aluminium aerosol cans, heavy investments are required (around 6 million €). In addition, there is overcapacity in the market, of which the parties have the largest share. The conclusion that new entry is unlikely, is confirmed by the fact that there has been no new entrant in the last 5 years in the EEA.
118. On the basis of the above elements, it can be concluded that the relevant product market for the purpose of this case is the market for aluminium aerosol cans.

Relevant Geographic market

119. The Commission stated in a previous decision (case IV/M.603 Crown Cork Seal/Carnaud Metallbox), that the market for (tinplate) aerosol cans is EEA-wide. This conclusion was confirmed by the market investigation in this case. Transport of empty cans over long distances is economically not viable and such is supported by the small amount of imports (around 5%, mainly from Eastern European Producers). Therefore the relevant geographic market for aluminium aerosol cans is limited to the EEA.

Competitive Assessment

120. On the basis of the parties' 2002 figures, the combined market share of the new entity is around [40-50]% (Alcan [20-30]%, Pechiney [20-30]%). The list of competitors includes Emasa ([10-20]%), Tubettificio ([0-10]%), Nussbaum-Lechner ([5-15]%), Tubex ([0-10]%) and Moravia ([0-10]%). The parties' market share would be around four times higher than that of the nearest competitor.
121. The parties claim, that there is over-capacity in the aluminium aerosol industry. However, the parties have the largest share of this spare capacity. Even on the basis of their own estimations, the parties would have a share of at least [35-45]% of total overcapacity which exceeds the production capacity of any of the smaller suppliers. Therefore, the parties are in the best position to win a price war. Given that the merged

entity is six times bigger than the next producer it is more likely that other producers will follow the price lead of the market leader.

122. The parties claim that the introduction of two-piece tinplate cans has induced many customers to switch from aluminium to tinplate. However, apart from Boxal, the Alcan aerosol can division, there are only two alternative suppliers of 2-piece tinplate cans, the US-company Dispensing Containers Corporation (DCC) and the Japanese company Toyo Seikan. As mentioned above, it is economically not viable to ship empty cans over very long distances. Moreover, Pechiney has a stake in DCC and intends to develop this 2-piece tinplate aerosol technology in Europe. Consequently, any European customer who wishes to replace aluminium aerosol cans by the advanced 2-piece tinplate can will have to turn to the merging parties.
123. On the basis of the above the Commission considers that the concentration will lead to a situation in which the merging parties will become dominant in the market for aluminium aerosol cans.

F. FLEXIBLE PACKAGING

Relevant Product market

124. Alcan and Pechiney are both active in the production of flexible packaging, which is produced by converting plastic and cellulose films, aluminium foils and paper into packaging products. Generally, a combination of materials is used (laminates) but a material can also be used independently (monowrap). Flexible packaging is used for the packaging of a wide range of both food and non-food products that are ultimately sold to the end consumers.
125. The notifying party considers that there is a single product market, covering all flexible packaging products, as customers can choose from a number of different types of flexible packaging products. Alcan continues by stating that flexible packaging suppliers (converters) offer a wide range of different products, which are often produced on the same machines using a diversity of materials. Most of Alcan's competitors have confirmed this view. Flexible packaging customers by contrast tend to define markets very narrowly.
126. The Commission has already analysed the flexible packaging market in previous cases¹⁷, suggesting that the market could be segmented on the basis of the end-use application, as such defining flexible packaging markets for products ranging from food to pharmaceuticals.
127. The market investigation has suggested that an alternative market segmentation could be made on the basis of the technical characteristics of the materials used. Indeed, the various applications call for different barrier characteristics such as providing a barrier to moisture and oxygen to protect the packaged goods, seal strength, print quality, design. Only certain types of packaging can potentially deliver all these properties for a given application. However, the ultimate consequence of such approach

¹⁷ Case COMP/M.2441 - Amcor/Danisco/Ahlstrom of 11.06.2001, Case COMP/M.2840 - Danapak/Teich/JV of 30.08.2002 and Case COMP/M.3049 Alcan/Flexpac, Decision of 24.02.2003.

would be that each packaged product would constitute an application market in itself for which a number of alternative flexible packaging solutions co-exist¹⁸. Indeed, all flexible packaging is, ultimately, tailored-made to meet a single customer's requirements.

128. Taking into account the above considerations, the Commission considers that the most appropriate approach would be to distinguish between the different categories of end-applications in as far as these applications require similar barrier characteristics. Such would distinguish separate flexible packaging markets for food, non-food, household goods, medical supplies and pharmaceuticals. For the latter two categories, specific requirements need to be met through specific testing and the validation time needed is generally longer and stricter than the one required by food packaging customers. In addition, costly precautionary measures need to be taken in the manufacturing environments of these products in order to comply with the regulation in force. Therefore, and in line with its previous decisions, the Commission considers a number of broad product categories as the most appropriate alternative to a market definition that comprises all flexible packaging.
129. The Commission has investigated whether within these broad product categories narrower flexible packaging markets could be identified. Further subdivision has to be applied with care in order to take account of the degree of demand and supply substitutability. Defining too narrow product markets may provide an artificial segmentation that does not reflect the market dynamics and could ultimately lead to considering every possible end-use application as a relevant product market.
130. Third parties, mostly producing food products, have submitted that their products display packaging characteristics that only a very limited number of materials can meet. Indeed, for certain food products, and in particular portioned processed cheese, the product is in direct contact with the packaging. Third parties submit that for such applications only lacquered aluminium foil can meet the requirements with regard to barrier properties, conservation ability, consumer preferences with regard to the bending and folding properties of the packaging and production applicability¹⁹. The Commission acknowledges that certain of these properties are provided for by packaging material other than aluminium foil. However, no other material fulfils all these properties together, and within such narrow tolerances, as portioned processed cheese requires.
131. The market investigation has confirmed that for such specific food products, in contrast with other food packaging applications, there is no possibility of demand substitution. With regard to supply-side substitutability, the market investigation has confirmed that specific knowledge is necessary with regard to the applications of the different lacquers and printing on the aluminium foil. With regard to potential entry,

¹⁸ A chocolate producer could for instance choose between aluminium foil and PET flexible film to meet requirements such as odour barrier, puncture resistance, heat seal whilst being able to produce a high quality print on the surface of the packaging. Various examples can be found whereby the same product is sold with very distinctive (flexible) packaging.

¹⁹ Aluminium foil for the packaging of processed cheese is very thin (12 μ) and is coated with three layers of lacquering, two of which are on the inside and one on the outside. Of the two inside layers the one in contact with the cheese is a heat-seal lacquer. When processed cheese is filled into the foil at a temperature of around 80° the heat-seal lacquer reacts and seals the cheese vacuum-like. This allows the processed cheese to be stored for years, even without proper cooling,

only those converters that have the required equipment, knowledge and experience in producing advanced aluminium based flexible packaging solutions can enter this market. The market investigation has not provided evidence that suppliers of other flexible packaging made of, for instance, plastic, could easily and readily produce cheese foil. Even those firms that produce two-way lacquered lidding material may not be able to enter the market for cheese foil in the short term, because their production machine has to be able to handle the aluminium foil used for the packaging of portioned processed cheese. The Commission's market investigation has however confirmed the ability of converters that operate three-way lacquering packaging machines to switch from the production of lacquered cheese foil to flexible packaging solutions for many other products. Given this level of supply-side substitutability²⁰ (see also below at para. 142 et seq.), the Commission does not consider it necessary to define flexible packaging markets as narrow as only covering a specific product, although it acknowledges that there are flexible packaging niche applications with specific technical requirements that only a limited number of converters can meet.

132. In any event, for the purposes of this decision the precise relevant product market definition can be left open since, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or in a substantial part of it.

Relevant Geographic market

133. Alcan submits that the appropriate geographic market is EEA-wide, which is in line with the Commission's findings in the above mentioned previous decisions. The market investigation revealed that customers source in Europe only. This is due to differences in product quality and because of logistical considerations such as just in time delivery. According to estimates by third parties, around 80% of the world production originates from western Europe. Imports play a very minor role. Consequently, the relevant geographic market is, for the purpose of this decision, limited to the EEA.

Competitive Assessment

134. On the basis of a market definition comprising all "flexible packaging" products within the EEA, the merged entity's combined market share (value-based) would be [15-25]% for 2002 (Alcan [10-20]%, Pechiney [0-10]%), ahead of Amcor Flexibles Europe ([10-20]%), Teich/Constantia ([5-15]%), Sealed Air Cryovac ([0-10]%), Clondalkin ([0-10]%) and a wide range of smaller but capable competitors. Seen the fragmentation on the supply-side, it can be excluded that the transaction could create or strengthen a dominant position.
135. On the basis of the distinct application markets defined above, the transaction would lead to significant overlaps in the pharmaceuticals segment and to a lesser extent for the other packaging applications.

²⁰ It was demonstrated that Alcan's Triplex laminator packaging machine at Sarrebourg produces [100-150] different flexible packaging structures and [800-1000] different products, ranging from Aluminium/PET or PET/paper based jam lidding production to pharmaceutical flexible packaging, confectionery, dried flexible packaging, bouillon cubes, cheese foil and other cheese packaging to the production of aluminium lacquered packaging for portioned processed cheese and that the switching of production between these structures is done within a couple of hours. Alcan's competitors have comparable machines some of which are newer and give even more flexibility

136. For medical supplies (ranging from paper bags, sachets and lidding materials to formable webs), Pechiney's activities add less than [0-10]% to Alcan's [10-20]% market share, and the combined entity will continue facing larger rivals such as Rexam and Wipak. For household goods (films, foils, paper and laminates), the combined entity would have a market share of [5-15]% (Alcan [0-10]% and Pechiney [0-10]%). A large number of competitors are active in this market, of which the most important are Amcor, Constantia, Clondalkin and Safta. Flexible packaging for non-food products includes inter alia tobacco interliner, wine bottle cap foils and other miscellaneous applications on the basis of foils, films and laminates. Alcan's share on this possible market is [20-30]%, whilst that of Pechiney is around [0-10]%. Amcor ([10-20]%) and Clondalkin ([5-15]%) are the major competitors.
137. The majority of flexible packaging sales in the pharmaceutical segment is made with blister packaging. Blister packaging consist of two parts, the blister base or base web, and the lidding or top web, which is sealed to the base after the drugs have been filled in. The lidding generally contains a layer of aluminium, and this explains the presence of aluminium producers in this segment. Other applications are sachets and strip packs. Alcan is the current market leader ([20-30]%) and the acquisition would add an additional [5-15]% (combined market share of [30-40]%)²¹.
138. Whilst the transaction would strengthen Alcan's already strong position in the pharmaceutical segment, the market test has pointed to a number of arguments that exclude the possibility of Alcan being able to behave independently on the market. Firstly, the merged entity would continue to face competition from strong flexible packaging players with growing market shares such as Constantia ([10-20]%), Amcor ([10-20]%), Hueck ([5-15]%), Klöckner Pentaplast ([5-15]%), Carcano and a number of smaller players. Secondly, pharmaceutical flexible packaging is custom made according to the customer's frequently changing specifications. In this respect, the customer can choose from a variety of packaging solutions ranging from sachets, pouches and tubes to strip packs and blister packaging. The customer also decides what material will be used, and the market investigation has indicated examples where aluminium based packaging can be displaced by all plastic based packaging for which competitors such as Klöckner Pentaplast, Tekni-Plex and EVC have a better position. Thirdly, compared to many commodity packaging applications (mainly in the food segment), flexible packaging for pharmaceuticals is a relatively high margin business. As none of the capable converters in this segment uses dedicated machines for the production of pharmaceutical packaging, any independent behaviour of the parties to raise prices or lower quality output would be countered by converters that increase pharma packaging output on their machines by lowering output for commodity packaging, in order to grow their market shares.
139. On the demand-side, Alcan submits that the customers in this segment, large pharmaceutical companies, exercise considerable buyer power. Such has not been

²¹ As indicated in the Alcan/Flexpac decision, the distinction of sub-markets for flexible packaging affects the validity of independent source market share information available. All market shares are based on the parties' calculations for 2002, and sourced from PCI Films Consulting Ltd. Alternative market calculations indicate a higher market share for Alcan ([30-40]%), but a lower share ([0-10]%) for Pechiney, resulting in a combined market share of [30-40]%

contradicted by the market investigation. The customer base is concentrated and a number of pharmaceutical companies are also active in other segments that require flexible packaging. As confirmed by the market investigation, these customers organise EEA-wide tenders and carry out centralised purchasing operations of the relevant products at a European and in some instances global level. Finally, it is common that the customer specifies the raw material or substrates that the converter than needs to transform into flexible packaging.

140. In what concerns flexible packaging for food products, the new entity would have a [10-20]% market share ([10-20]% + [0-10]%). Major competitors in this segment are Amcor ([10-20]%), Sealed Air Cryovac ([0-10]%), Teich ([0-10]%) and a wide range of smaller competitors. In previous decisions, a number of flexible packaging sub-segments for food products, ranging from pet food to dairy, have been considered. As discussed, the existing demand-side and supply-side substitutability makes such segmentation highly artificial. In any case, the combined entity would have a combined market share in excess of [20-30]% in only one such hypothetical segment, namely dairy where the parties would have a combined market share of [25-35]% ([15-25]% + [0-10]%), facing strong competitors such as Constantia ([15-25]%) and Amcor ([10-20]%). Several third parties complained about the proposed merger in this specific segment. Customers for processed portioned cheese packaging, yoghurt and other specialised flexible lidding have stated that the concentration would put them in a single sourcing situation with potential alternative suppliers not capable to produce at the same quality level. Although the packaging products referred to are very different, they display comparable technical requirements and are produced using the same machines. The following arguments on the competitive dynamics for cheese foils can thus be applied to the other products mentioned.
141. Lidding material for yoghurts, deserts etc. and flexible packaging for portioned processed cheese (cheese foil) are two main applications in the dairy subsegment. Although, as discussed above, cheese foil cannot be considered as a market in itself, the Commission has investigated whether the parties could behave independently from its competitors and customers for such a demand.
142. Looking at cheese foil,²² the Commission considers that apart from suppliers that are actually producing cheese foil also those competitors producing products of a comparable technical complexity on machines that are calibrated to put three layers on the foil in one production run could within a reasonable time exert sufficient competitive pressure upon a combined Alcan/Pechiney. Indeed, the market investigation has confirmed that cheese foil is not more technically demanding to produce than any other type of flexible packaging that requires triple lamination or triple lacquering. In this respect, producers of jam lids, pharmaceutical packaging, dairy lidding, confectionery packaging etc. can meet the requirements of cheese foil customers. Moreover, it is technically possible to produce printed and unprinted cheese foil on a two-head machine, although printed foil would be produced uneconomically. Hueck and many more converters that have two headed lacquering machines could invest in an additional lacquer head if market opportunities for three way lacquering products present themselves (this would be an investment that is much less important than a new machine). With regard to new entry, the parties have estimated that a new lacquering

²² When looking at a hypothetical market for cheese foil, Alcan and Pechiney supply around [75-85]% of demand (of which more than [45-55]% originates from one single customer).

machine capable of producing cheese foil would cost around 7.5 Mio €, which is a substantial investment in view of the total hypothetical market size of around 50 Mio €. However, such an investment cannot be excluded per se as triple laminating/lacquering machines can produce a wide range of flexible packaging products and, therefore, can address a considerable part of the flexible packaging market.

143. Apart from Alcan, the most important supplier of advanced flexible packaging solutions based on aluminium foil, and Pechiney, which has invested heavily in R&D to meet customer specifications for such applications, only the Italian company Comital is currently producing cheese foils (inter alia for [...]). Teich/Danapak, AEP Borden and Huhtamaki are producing packaging products with comparable requirements on three head machines and could enter the market. Other suppliers, such as Clondalkin and Hueck, have left the market but could be considered as sufficiently capable to re-enter the market, should prices go up as a consequence of the proposed merger.
144. As it is the role of the converter to adapt its production process to meet its customers' needs, and as all flexible packaging is uniquely tailored to meet a single customer's requirements, it is important to verify whether credible alternatives to the parties will remain in the market. Given that, apart from Comital which is expanding in cheese foils, a number of capable competitors could enter the market, the Commission has verified whether there are barriers that could frustrate such an attempt.
145. The market investigation has not pointed to such barriers. In fact, most of the know how lays with the manufacturers of the packaging machines and the lacquer and ink suppliers. [...] and lacquer suppliers have confirmed that they supply standard cheese foil lacquers and are able to assist converters in fine-tuning a lacquer that meets the individual requirements of the cheese producer. It is correct that the cheese foil producer needs to develop and fine-tune production procedures and that the combination of foil, lacquers, varnishes and inks needs to be optimised by testing on each individual machine, but these procedures are not significantly more demanding than those needed for the production of other lacquered lidding material or pharmaceutical packaging. The market investigation has not indicated that the parties would have specific knowledge that competitors could not develop.²³ With regard to the question whether such entry could be swift with a guaranteed outcome, processed portioned cheese manufacturers such as [...], have argued that stringent quality assurance and production fine-tuning would require more than 18 months of testing before an alternative lacquered aluminium foil converter could be approved. However, the Commission considers that [...]’s requirements are specific and significantly exceed those of comparable products. [...]’s supplier switching problems are therefore to be considered to be of a commercial nature and are not influenced by the transaction.
146. As for pharmaceutical packaging, the Commission’s market investigation has indicated that cheese foil is a higher margin flexible packaging application. Competitors that can enter the market have confirmed that, apart from using spare capacity, they will free up production capacity from lower margin applications if opportunities arise. Such would clearly be the case if the new Alcan would try to increase prices. As mentioned above, a flexible packaging producer can change its product mix very easily and rapidly

²³ As illustrated by a cheese foil customer who stated that even Alcan is not capable to produce comparable quality in all its plants without going through extensive trial and error production and testing.

to produce a higher output of higher margin flexible packaging products²⁴. The ability of the flexible packaging supplier to do so is entirely conditional upon being offered the opportunity by a customer to produce such flexible packaging products. In this respect, it should be stressed that the demand for cheese foil is highly concentrated, with [...] having 70% of the processed portioned cheese market, and purchasing more than [45-55]% of the parties' output of cheese foil. It seems, therefore, that this segment is to a large extent created and driven by [...], who has the power to sponsor new suppliers or to make previous re-enter if need be. In sum, even if foil with three lacquers for the packaging of portioned processed cheese were to be considered as a separate market, supply-side substitutability and market entry would defeat any price increase.

Conclusion

147. Therefore, even on the basis of these narrow hypothetical product market definitions, the creation of a dominant position of the merged entity appears to be unlikely, since in each of the above market segments, there will be no scope for the merged entity to exercise market power by raising prices above the competitive level, or by reducing product quality. Following the proposed operation, the combined entity will continue to face strong competition from a number of suppliers in each segment of the market for overall flexible packaging.

Vertical relationship

148. Flexible packaging products are made from a number of different intermediate products, principally plastic and cellulose films, aluminium foils and paper. According to the parties' estimations, less than 25% of all flexible packaging products contain an aluminium foil substrate. As discussed above, both Alcan and Pechiney produce aluminium foils. In as far as an aluminium converter foil market can be defined, EEA in scope, the new entity would have a [25-35]% share of the merchant market. Such is not likely to lead to adverse vertical effects. First of all, both Alcan and Pechiney are already vertically integrated. The effect of the transaction is limited to an increase of their level of vertical integration. Secondly, Alcoa and Norsk Hydro are important producers of converter foils without flexible packaging businesses. Conversely, a number of important converters such as Comital, Teich, Constantia and Hueck are vertically integrated upstream and not dependent on the parties for the supply of converter foil. Therefore, it is unlikely that a combined Alcan/Pechiney would have the possibility or have the incentive to foreclose its competitors in the downstream flexible packaging market(s).

VI. COMMITMENTS SUBMITTED BY THE PARTIES

149. On 18 August and 8 September 2003, pursuant to Article 6(2) of the Merger Regulation, the Parties offered certain commitments to remove the competition concerns identified by the Commission. These commitments were subsequently refined and improved. The full text of the final commitments dated 26 September 2003 is attached to (Annex) and forms an integral part of this decision.

²⁴ Cheese foil represents higher margins than dried flexible packaging, most dairy and jam lidding and most other cheese packaging.

Remedies for Technology Markets

Summary of commitments

150. Alcan considers that there are two equally effective alternative commitment packages that are effectively able to remove any competition problem raised by the proposed transaction in relation to the markets for the licensing of alumina refining technology:

- a non-exclusive licence with no right to sublicense of Pechiney's Alumina Refining Technology for gibbsitic, boehmetic or diasporic bauxite;

or

- a non-exclusive licence with no right to sublicense of Alcan's Alumina Refining Technology for gibbsitic or boehmetic bauxite.

151. To ensure the viability and effectiveness of the divestment package, Alcan will ensure that the licence comprises all relevant intellectual property rights (including technology, know-how, manufacturing processes, procedures and relevant patents). To the extent applicable and required by the relevant purchaser, technical support to the licensee will also be provided. The licence will be granted for a period of [...] on normal arm's length terms and conditions common in the aluminium industry and shall be similar to those offered by Alcan or Pechiney (as the case may be) in the twelve-month period immediately before the merger.

152. Alcan offers a non-exclusive licence with no right to sublicense of Pechiney's aluminium smelting technologies AP 18, AP 30, AP 50 and variants thereof. To ensure the viability and effectiveness of the divestment package, Alcan will ensure that the licence comprises all relevant intellectual property rights (including technology, know-how, manufacturing processes, procedures and relevant patents). To the extent applicable and required by the relevant purchaser, technical support to the licensee will also be provided. The licence will be granted for a period of [...] on normal arm's length terms and conditions common in the aluminium industry and shall be similar to those offered by Alcan or Pechiney (as the case may be) in the twelve-month period immediately before the merger.

153. With regard to anode baking furnace designs Alcan offers to divest its designs for the construction and operation of a furnace for the baking of prebaked carbon anodes. To ensure the viability and effectiveness of the divestment package, Alcan will ensure that the licence comprises all relevant intellectual property rights (including technology, know-how, manufacturing and design processes, procedures and other relevant intellectual property); Alcan will be entitled to continue to use Alcan Anode Baking Furnace Designs for its own purposes, free of royalty.

Assessment

154. The proposed remedies would remove the overlap for anode baking furnace technology and grant access to one of the two technologies for alumina refining and Pechiney's smelting technology. The market test showed that these remedies would solve the competition problem identified above.

Remedies for FRPs

Summary of commitments

155. Alcan considers that there are two equally effective alternative commitment packages that are effectively able to remove any competition problem raised by the proposed transaction in relation to the FRP business:

The divestment of Pechiney's Neuf-Brisach (France) hot and cold rolling mill facilities and Pechiney's Annecy (France) cold rolling mill facilities (together the "Pechiney FRPs Divestment Business"); or

The divestment of Alcan's 50% interest in the Norf (Germany) hot and cold rolling mill facilities and Alcan's Göttingen (Germany) cold rolling mill and finishing lines facilities (together the "Alcan FRPs Divestment Business").

156. To guarantee the viability and effectiveness of the divestment package, Alcan undertakes to ensure that the divested businesses have all necessary and appropriate assets including, to the extent applicable and required by the relevant purchaser, the following: (i) access to research and development; (ii) adequate financial resources, should divestment proceed by way of a de-merger; (iii) production assets; (iv) transfer of all supply contracts ; (v) distribution networks and sales and marketing operations; (vi) customer lists and contracts; (vii) personnel; (viii) transitional arrangements for a period up to three years to guarantee divested business' sales to the retained business.

Assessment of the first commitment package

157. Alcan argues that the proposed commitments will either remove the entire accretion of market shares entailed by the proposed transaction in relation to FRP or reduce the merged entity's market share to levels that could not raise competition problems.
158. Alcan is also of the opinion that the proposed commitments consist in the sale of autonomous, stand-alone entities, which will be able to act as a competitive force in the FRPs business, thus restoring conditions of effective competition in the overall FRP market and in all of the markets mentioned above.
159. After taking the remedy into account, and from a pure quantitative point of view, the notified concentration would result in very little accretion, and in some markets zero or negative accretion, of market shares. In all markets where the merged entity's market share exceeds 40%, the divestment commitments will remove the entire overlap. Post-merger, Alcan's market share, on a production basis, in all of the affected FRP markets would be less than approximately [30-40]%, with the sole exception of beverage can body stock market where the overlap would have been removed in its entirety.
160. Overall, the market test has confirmed that both the Pechiney or the Alcan FRPs Divestment Business are considered as potentially viable and competitive assets in their own right and that their separation from the merged entity will substantially reduce the overlap and eliminate the competition problems relating to FRPs business in the EEA.
161. However the market test has explicitly shown that the first remedies package offered by Alcan has to be improved in order to enhance the long term viability and competitiveness of the Pechiney or the Alcan FRPs Divestment Business. It derives from

the concerns expressed by respondents to the Commission's investigation that the remedies package should aim at: (1) securing the supply of the raw material (sheet ingots), (2) guaranteeing that they will have a viable customer base in order to be independent from the merged entity, and (3) transferring of all FRP related R&D personnel and laboratories from either Alcan or Pechiney to guarantee the long-term viability of either the Alcan or the Pechiney FRPs Divestment Business.

162. In addition, third parties raised the concern that, even if the Pechiney or the Alcan FRPs Divestment Business were appropriately endowed, financial buyers may not have the capability and/or incentives to develop the business beyond the short term. In particular, respondents to the Commission's investigation have explained that if a financial buyer were to purchase the Alcan FRPs Divestment Business, it would heavily rely on Norsk Hydro's expertise and experience and will consequently not behave independently on the market.

Summary of the improved remedy package

163. In order to address the above mentioned concerns, Alcan submitted on 26 September 2003 an improved remedies package which includes:

- (i) providing the purchaser either the Alcan or the Pechiney FRP Divestment Business with an option to purchase Alcan's Latchford facility. Latchford is a recycling facility with an ingot production capacity of approximately [100-200] kt per year. Alcan argues that this would not only resolves any metal supply concerns but also any scrap recycling issues;
- (ii) transferring with either the Alcan or the Pechiney FRP Divestment Business all of the FRPs research and development facilities and staff currently located in the central research centre of Pechiney at Voreppe (France) or Alcan at Neuhausen (Switzerland) involved in activities related to the Pechiney or the Alcan FRP Divestment Business respectively;
- (iii) adding Nachterstedt (a cold mill facility) to the Alcan FRP Divestment Business package to make certain that it will have a viable customer base and will be independent from a commercial point of view of the merged entity;
- (iv) replacing Pechiney's Annecy facility by Pechiney's aluminium foil mill and associated facilities at Rugles (France) in the Pechiney FRPs Divestment Business and providing the purchaser of the Pechiney FRPs Divestment Business with an option to purchase the Annecy facility;
- (v) strengthen the purchaser standards by specifying that Alcan will have to demonstrate to the satisfaction of the Commission that the future purchaser has a strategic commitment to the competitiveness and development of the business including as to flat-rolled product development and R&D.

Assessment of the improved remedy package

164. Alcan's market share on the general FRPs market after divesting the Pechiney FRPs Divestment Business would change from [40-50]% to [30-40]% (or [25-35]% if the Annecy facility is also divested) or to [25-35]% if the Alcan FRPs Divestment Business is divested. On the market for standard FRPs, the merged entity's share would change from [30-40]% to [30-40]% (if the Pechiney FRPs Divestment Business is divested – or [30-40]% if the Annecy facility is also divested), or [30-40]% (if the Alcan FRPs Divestment Business is divested). On the market for beverage can body stock, the merged entity's share would change from [70-80]% to [30-40]% (if the Pechiney FRPs Divestment Business is divested – the Annecy facility does not produce beverage can body stock) and [35-45]% (if the Alcan FRPs Divestment Business is divested). On the market for beverage can end stock, the merged entity's share would change from [40-50]% to [10-20]% (if the Pechiney FRPs Divestment Business is divested – the Annecy does not produce beverage can end stock) or [20-30]% (if the Alcan FRPs Divestment Business is divested). On the market for food can body stock, the merged entity's share would change from [60-70]% to [25-35]% (if the Pechiney FRPs Divestment Business is divested – the Annecy facility does not produce food can body stock) or [30-40]% (if the Alcan FRPs Divestment Business is divested). On a hypothetical market for aluminium automotive sheet, the merged entity's market would be reduced from [70-80]% to [50-60]% (with a negative accretion of market shares of [0-10]%) if the Alcan FRPs Divestment Business is divested, or to [55-65]% if the Pechiney FRPs Divestment Business is divested, with no accretion of market shares (the Annecy facility does not produce automotive sheet).
165. After taking the improved remedy package into account, and from a pure quantitative point of view, the notified concentration would result in little accretion (the maximum being [0-10]% on the market for standard FRPs under the Pechiney FRPs Divestment Business - without Annecy - option), and in some markets zero or negative accretion, of market shares. The merged entity's market share will not exceed [35-45]%, with the exception of a hypothetical market for aluminium automotive sheet where the commitments offered by Alcan will remove the entire overlap.
166. The improved remedy package will allow the future owner of the Alcan or the Pechiney FRPs Divestment Business to be more independent from the divested business in terms of raw material supply (ingots). Currently, the Alcan and the Pechiney FRPs Divestment Businesses already self supply for about [35-45]% of their needs for metal supply by recycling metal waste generated by their production operation. The Latchford facility produces approximately [100,000 to 200,000] tonnes of ingot which represent approximately [20-30]% of the Alcan FRPs Divestment Business' needs in metal supply and [35-45]% of the Pechiney FRPs Divestment Business' needs in metal supply. The remainder could be obtained from third parties, as it is already the case now for Alcan.
167. The improved remedy package will also result in the transfer of all R&D staff located at the mills and of all R&D staff with FRP related activities located at P echiney's (in Voreppe) or Alcan's (in Neuhausen) central research centre. In both cases approximately [40-60] scientists and technicians will be transferred. This will provide the Alcan or the Pechiney FRPs Divestment Business with sufficient capabilities in respect of R&D, product development, technology and market knowledge in respect of the broad range of FRPs which each of them produces. Alcan will transfer to the FRP divestment businesses all personnel and necessary equipment and other assets at Voreppe or Neuhausen that are presently used by Pechiney or Alcan to support the divestment businesses. If required, it will establish a separate building for them. The criteria to select the staff in Voreppe and Neuhausen will be decided by Alcan after

consultation with the potential purchaser and will be based on its needs of R&D staff. This will ensure that it has full ownership of all necessary R&D activities to maintain and develop the viability and long-term competitiveness of the divested business. The identification and transfer of the relevant personnel, buildings, equipment and other assets at Voreppe or Neuhausen shall be undertaken under supervision of the monitoring trustee and with the co-operation of an independent expert.

168. In addition, adding the Nachterstedt facility to the Alcan FRPs Divestment Business will ensure the purchaser of a viable customer base because this mill consumes considerable amounts of rolled material from Norf (around [20-30]% of Norf's annual production). Taking into account the divestment of Nachterstedt, the Alcan FRPs Divestment Business will only depend on the merged entity for approximately [15-25]% of its annual sales. Similarly, replacing the Annecy facility by the Rugles facility in the Pechiney FRPs Divestment Business will ensure the purchaser of a viable customer base because this later facility consumes approximately [5-15]% of Neuf-Brisach's annual production. Taking into account the divestment of Rugles, the Pechiney FRPs Divestment Business will only depend on the merged entity for approximately [15-25]% of its annual sales. As the commitments offered by Alcan provides for a transitional period of up to 3 years during which these sales will be guaranteed, both the Alcan and Pechiney FRPs Divestment Businesses will have the ability to further develop an already viable customer base independently from the merged entity.
169. In addition, the fact that the Annecy facility will only be included in the Pechiney FRPs Divestment Business at the purchaser's request eliminate potential concerns raised by the market test with regard to [...].
170. In order to ensure the immediate restoration of competition, the Commission wishes to emphasise that the purchaser must have the financial resources, proven expertise, commitment and incentives to maintain and develop the relevant FRPs Divestment Businesses as a viable and active competitive force in competition with Alcan and other competitors. All these elements which remain subject to the approval of the Commission, will be crucial to ensure the efficacy of the undertakings. The Commission will assess these elements in light of the identity of the purchaser, the characteristics of the Alcan or the Pechiney FRP Divestment Business (including their very large size, integrated manufacturing process which produce sophisticated products), and in light of the specificities of the functioning of the relevant market. In particular, the Commission will examine whether the purchaser:
- has a strategic commitment to the competitiveness and development of the relevant FRP Divestment Business, including as to R&D and to the development of new flat rolled products and related alloys;
 - will have access to aluminium sheet ingots at competitive terms and conditions and in sufficiently large volumes; and
 - has sufficient prior and existing relevant expertise and experience [...] in order to support the relevant FRP Divestment Business.
171. In other words, a purchaser without a proven track record [...], without adequate access to aluminium supply, and without convincing business plans as to its commitment to future development of the divestment business including, but not limited to new products and alloys, will not normally be considered as an acceptable purchaser

by the Commission. The Commission has, however, reasons to believe that there are players on the market that would meet these criteria.

Conclusion on the commitments on FRPs

172. In the light of the above, the Commission concludes that the commitments submitted by Alcan on 26.09.2003 are sufficient as to eliminate any serious doubts as to the compatibility of the transaction with the common market in relation to the general FRP business in general and any of the affected FRP markets as identified above.
173. The above mentioned commitments constitute conditions, as only by fulfilling them (subject to any change pursuant to the review clause of the Annex), can the structural change on the relevant market be achieved.
174. The remaining commitments as contained in the Annex constitute obligations (subject to any change pursuant the review clause of the Annex), as they concern the implementing steps, which are necessary to achieve the structural change that is sought.

Remedies for Rigid Packaging

Summary of the commitments

175. In relation to aluminium aerosol cans, Alcan commits that (a) Alcan's aerosols business carried out by a number of Alcan subsidiary companies at its plants at Belfaux, Beaurepaire and Veenendaal and (b) Pechiney's aerosols business carried on by a number of Pechiney subsidiary companies at its plants at Bellegarde, Barcelona, Milano, Devizes and Velim will cease to be under common ownership and control by Alcan. This will be accomplished by divesting either business as a viable going concern with all necessary assets and other resources.
176. In relation to aluminium cartridges, Alcan commits that (a) Alcan's cartridges business carried out at its Göttingen plant and (b) Pechiney's cartridges business carried on by it at its Saumur plant will cease to be under common ownership and control by Alcan. This will be accomplished by divesting either business as a viable going concern with all necessary assets and other resources.
177. To enhance the viability and effectiveness of the divestment packages, Alcan will ensure that the relevant businesses have all necessary and appropriate assets including, to the extent applicable and required by the relevant purchaser, the following: (i) the Assets; (ii) the Personnel and (iii) where relevant, the benefit for a transitional period of up to three years after Closing of certain arrangements between the Divestment Business and Alcan or Pechiney (as the case may be) for the supply and/or purchase of products or services.

Assessment of the commitments

178. Alcan argues that the proposed commitments will remove the entire accretion of market shares entailed by the proposed transaction in relation to aluminium aerosol cans and aluminium cartridges. Such is indeed the case. In addition to the elimination of the competition problems created by the transaction, the market test of the remedies has confirmed that the assets proposed are viable and competitive in their own right.

Conclusion on the commitments on Rigid Packaging

179. In the light of the above, the Commission concludes that the commitments submitted by Alcan are sufficient as to eliminate any serious doubts as to the compatibility of the transaction with the common market in relation to the markets for aluminium aerosols cans and aluminium cartridges.
180. The above-mentioned commitments constitute conditions, as only by fulfilling them (subject to any change pursuant to the review clause of the Annex), can the structural change on the relevant market be achieved.
181. The remaining commitments as contained in the Annex constitute obligations (subject to any change pursuant the review clause of the Annex), as they concern the implementing steps, which are necessary to achieve the structural change that is sought.

VII. CONCLUSION

182. For the above reasons, and subject to full compliance with the commitments by Alcan, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(2) of Council Regulation (EEC) No 4064/89.

For the Commission

Mario MONTI
Member of the Commission
(signed)

ALCAN INC.

PUBLIC OFFER FOR PECHINEY

CASE COMP/M.3225 *ALCAN/PECHINEY (II)*

**COMMITMENTS OFFERED
BY ALCAN INC.
TO THE
COMMISSION OF THE EUROPEAN
COMMUNITIES**

26 September 2003



FRESHFIELDS BRUCKHAUS DERINGER

By hand and by fax: 00 32 2 296 4301

Commission of the European Communities
Directorate General for Competition
Directorate B - Merger Task Force
rue Joseph II, 70
B-1000 BRUSSELS

1.1.1.1.1.Case COMP/M.3225 – ALCAN/PECHINEY
(II)

1.1.1.1.2.COMMITMENTS OFFERED BY ALCAN INC.
to the COMMISSION OF THE EUROPEAN
COMMUNITIES
in relation to
alumina refining technology, aluminium smelter cell
technology
and anode baking furnace designs

1.1.1.1.2.1.

Pursuant to Article 6(2) of Council Regulation (EEC) No. 4064/89 as amended by Council Regulation (EC) No. 1310/97 (the **Merger Regulation**), Alcan Inc. hereby provides the following commitments (the **Commitments**) in relation to the markets for the licensing of alumina refining technology, the licensing of aluminium smelter cell technology and the provision of anode baking furnace designs in the EEA in order to remove any serious doubts that the Commission of the European Communities (the **Commission**) may have with regards to its compatibility with the common market thereby enabling to adopt a decision declaring the Notified Concentration (as defined herein) compatible with the common market and the functioning of the EEA Agreement by adopting a decision pursuant to Article 6(1)(b) of the Merger Regulation (the **Decision**).

These Commitments are given by Alcan without prejudice to its position that the Notified Concentration does not, notwithstanding any serious doubts that the Commission may have with respect to the licensing of alumina refining technology, the licensing of aluminium smelter cell technology and the provision of anode baking furnace designs, create or strengthen a dominant position within the common market or a substantial part of it and is therefore compatible with the common market and the functioning of the EEA Agreement.

The Commitments shall take effect upon the date of adoption by the Commission of the Decision, provided that if completion of the Notified Concentration does not subsequently take place for any reason and is thereby abandoned, Alcan shall not be bound by these Commitments.

Any term used in these Commitments that is not defined herein but is defined in the Divestment Commitments shall bear the meaning ascribed to it in the Divestment Commitments. Any other term used in these Commitments shall be interpreted in the light of the Commission Notice on remedies acceptable under Council Regulation (EEC) No. 4064/89 and under Commission Regulation (EC) No. 447/98.

1.2. Section A – Definitions

1. In these Commitments, the following expressions shall have the following meanings:

Alcan Alumina Refining Technology means all relevant intellectual property rights (including technology, know-how, manufacturing processes, procedures and relevant patents) for Alcan's Bayer process flowsheet technology and parts thereof for the production of smelter grade alumina by the refining of gibbsitic or boehmetic bauxite as at [...] owned and controlled by Alcan and available for licensing to third parties;

Alcan Anode Baking Furnace Designs means those designs for the construction and operation of a furnace for the baking of prebaked carbon anodes (including all technology, know-how, patents, manufacturing and design processes, procedures and other relevant intellectual property), including the design of the furnace tub and refractory, the refractory specifications and relevant installation specifications;

Divestment Commitments means the commitments given by Alcan on 26 September 2003 in relation to flat rolled products, aluminium aerosol cans and aluminium cartridges;

Licence means a non-exclusive licence of the Technologies (or any of them) with no right to sub-licence either:

- (a) in the case of the Alcan Alumina Refining Technology or the Pechiney Alumina Refining Technology, to design, construct and operate an alumina refinery having a predetermined design production capacity using the licensed Technology and to sell anywhere in the world alumina produced at the said alumina refinery using the licensed Technology; or
- (b) in the case of the Pechiney Aluminium Smelter Cell Technology, to build and operate an aluminium smelter having a predetermined design production capacity using the licensed Technology and to sell anywhere in the world aluminium produced at the said aluminium smelter using the licensed Technology,

and ***Licensing*** shall be interpreted accordingly;

Licensee means a third party that has entered into a Licence with Alcan for the Licensing of the Technologies or any of them and/or for the provision of Technical Support;

Licensing Trustee means the one or more than one natural or legal person, independent from the Parties, that will (subject to prior approval by the Commission pursuant to paragraph 27 of the Divestment Commitments, which shall apply *mutatis mutandis*), be appointed by Alcan pursuant to an exclusive Mandate to monitor Alcan's compliance with

its obligations under the Conditions and Obligations concerning the Licensing of the Technologies;

Pechiney Alumina Refining Technology means all relevant intellectual property rights (including technology, know-how, manufacturing processes, procedures and relevant patents) for Pechiney's Bayer process flowsheet technology and parts thereof for the production of smelter grade alumina by the refining of gibbsitic, boehmetic or diasporic bauxite by the Bayer process as at [...] owned and controlled by Pechiney and available for license to third parties;

Pechiney Aluminium Smelter Cell Technology means all relevant intellectual property rights (including technology, know-how, manufacturing processes, procedures and relevant patents) for the production of aluminium by the electrolytic reduction of alumina by the Hall-Heroult Process in reduction cells equipped with prebaked anodes, as at [...] owned and controlled by Pechiney and available for license to third parties, being those reduction technologies commonly known as AP-18, AP-30, AP-50 and variants thereof;

Technical Support means, in relation to a Technology, such technical assistance that Alcan or Pechiney (as the case may be) as licensor may provide to the Licensee in order to transmit the licensed Technology to the Licensee during the design, construction, commissioning, start-up and initial operation of the plant utilising the licensed Technology; and

Technology means, depending on the context, either the Alcan Alumina Refining Technology, the Pechiney Alumina Refining Technology, the Pechiney Smelter Cell Technology or any severable parts of each of them and ***Technologies*** shall be interpreted accordingly.

1.3. Section B. Alumina refining technology and aluminium smelter cell technology licensing commitments

1.3.1. Commitment to Licence the Technologies

2. Subject to paragraphs 4 and 5 Alcan commits:

(a) to grant, upon request by a third party, a Licence to such third party of:

(i) either the Alcan Alumina Refining Technology or the Pechiney Alumina Refining Technology, in either case for a period of [...] from [...]; and/or

(ii) the Pechiney Aluminium Smelter Cell Technology for a period of [...];

(b) to provide, if requested, following the granting of a Licence, Technical Support to the Licensee.

3. The terms and conditions of any Licence granted, and the provision of Technical Support (if any), pursuant to paragraph 2 shall be agreed by Alcan and the Licensee on normal arm's length terms and conditions common in the aluminium industry and shall be similar to those offered by Alcan or Pechiney (as the case may be) in the [...] period immediately before [...].

4. Given the nature of technology transfer businesses (which are project-based and labour intensive), Alcan will not be obliged to grant a Licence of the Technologies (or any

of them) to a third party (or to enter into discussions or other work concerning the possible granting of a Licence) where it does not have the resources (whether personnel, managerial or other) that are required in order for it to be able to grant a Licence, taking account of the requirements of its own businesses and requirements of other Licensees. Alcan may also refuse to grant a Licence (or to enter into discussions or other work concerning the possible granting of a Licence) where it has an objectively justifiable reason for doing so, including, without limitation, (a) where it has reasonable grounds to believe that to grant a Licence would create a risk to its intellectual property, (b) where the third party requesting a Licence presents a credit risk to Alcan, or (c) where the proposed project is in a location that presents a risk to Alcan or its employees. The application of this paragraph will be monitored by the Licensing Trustee in accordance with paragraphs 8 and 9. Either Alcan or the third party may submit any dispute in respect of the application of this paragraph to the Licensing Trustee.

1.3.2. "Sunset" clause

5. Alcan may, by means of a reasoned request, request the Commission to relieve it of its obligation under paragraph 2 to grant Licences in respect of one or more of the Technologies if Alcan can demonstrate to the Commission's reasonable satisfaction that market conditions have changed since [...] so as to make Alcan's obligations under paragraph 2 unnecessary.

1.3.3. Arbitration

6. If, within a period of [...] of the making of a request by a third party seeking a Licence pursuant to paragraph 2, Alcan and the third party are unable to reach agreement on the terms of a Licence, either party may submit the matter to arbitration in accordance with the following provisions:

- (a) the arbitration shall be conducted in London under the rules of the International Chamber of Commerce in the English language;
- (b) the party wishing to initiate arbitration proceedings shall specify its reasons for doing so, nominate its arbitrator and communicate this to the other party, which shall then nominate its own arbitrator, and to the Licensing Trustee. The arbitrators appointed by the parties shall jointly nominate a third arbitrator, who shall act as chairman of the arbitration panel;
- (c) unless the parties agree or the arbitration panel orders otherwise, the arbitration hearing shall be established within [...] of the nomination of the third arbitrator. The arbitration panel shall be entitled to request any relevant information from the parties, provided that it may not disclose confidential information and business secrets that are protected by Community law;
- (d) each party shall submit a single proposal for the terms of the Licence to the arbitration panel. The arbitration panel must select, within [...] of the arbitration hearing and by majority decision, one of the two submitted proposals in its entirety. The third party seeking a Licence must provide prima facie evidence that the terms and conditions proposed by Alcan are not in accordance with the requirements of paragraph 2. If it is able to do so to the satisfaction of the arbitration panel, Alcan must then produce evidence to the satisfaction of the arbitration panel that the terms and conditions proposed by it are in accordance with the requirements of paragraph

2. If a party is unable to meet its burden of proof, the arbitration panel shall decide in favour of the other party's proposal; and
- (e) if the third party seeking a Licence does not enter into a Licence in the form of the award of the arbitration panel within [...] following its communication to the parties, Alcan may request (with notice to the Licensing Trustee) the Commission to relieve it of its obligations under paragraph 2 to grant a Licence to the third party in question.

1.3.4. Licensing Trustee

7. Alcan shall appoint a Licensing Trustee to ensure its compliance with its obligations in paragraphs 2 and 6 and to monitor Alcan's application of paragraph 4. The provisions of paragraphs 22 to 29 of the Divestment Commitments shall apply *mutatis mutandis* to the appointment of the Licensing Trustee, provided that the Licensing Trustee's Mandate shall reflect the nature of the Licensing Trustee's duties and obligations. The provisions of paragraphs 39 and 40 of the Divestment Commitments shall apply *mutatis mutandis* the replacement, discharge and reappointment of the Licensing Trustee. Alcan's duties and obligations pursuant to paragraph 34 of the Divestment Commitments (provision of cooperation, assistance and information) shall also apply *mutatis mutandis* the Licensing Trustee.

8. The Licensing Trustee shall monitor Alcan's compliance with its obligations in paragraphs 2 and 6 of these Commitments, including negotiations with third parties. It shall arbitrate disputes arising from the application of paragraph 4 subject to the Commission's review. The Licensing Trustee shall report [...] to the Commission in respect of its obligations under this paragraph 8, or at more frequent intervals if requested by the Commission to do so.

1.3.5. Reporting Obligations

9. Alcan will report to the Licensing Trustee without delay, and [...] to the Commission, on any requests received by it from third parties to enter into Licences for the Technologies (or any of them), the progress of negotiations with them, the grant of any Licences of the Technologies (or any of them) and any arbitration proceedings commenced pursuant to paragraph 6 and their outcome. It shall also provide without delay to the Licensing Trustee and the Commission copies of any agreements that it enters into for the Licensing of the Technologies (or any of them) and copies of any arbitration awards made pursuant to paragraph 6.

1.3.6. No obligation to continue research and development into the Technologies

10. Nothing in these Commitments shall require or oblige Alcan to continue to carry out research and development into any Technology, or to make improvements to any Technology.

1.4. Section C – Commitments relating to anode baking furnace designs

11. Alcan commits to divest, within the First Divestment Period, the Alcan Anode Baking Furnace Designs. This shall be effected by Alcan granting the purchaser (at Alcan's option) either a sole licence or assignment of the Alcan Anode Baking Furnace Designs, to enable the Purchaser to sell anode baking furnace designs to third parties, provided that

Alcan will be entitled to continue to use the Alcan Anode Baking Furnace Designs for its own purposes, free of royalty (but shall not be entitled to sell or transfer the Alcan Anode Baking Furnace Designs to other parties).

12. Paragraphs 5 to 8 and 17 to 42 of the Divestment Commitments shall apply *mutatis mutandis* in relation to Alcan's obligations under paragraph 11.

.....

duly authorised for and on behalf of Alcan Inc.

Brian W. Sturgell
Executive Vice-President

26 September 2003

ALCAN INC.

PUBLIC OFFER FOR PECHINEY

CASE COMP/M.3225 ALCAN/PECHINEY (II)

**COMMITMENTS OFFERED
BY ALCAN INC.
TO THE
COMMISSION OF THE EUROPEAN
COMMUNITIES**

26 September 2003



FRESHFIELDS BRUCKHAUS DERINGER

By hand and by fax: 00 32 2 296 4301

Commission of the European Communities
Directorate General for Competition
Directorate B - Merger Task Force
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1.4.1.1.1.1. Case COMP/M.3225 – ALCAN/PECHINEY
(II)

1.4.1.1.2. COMMITMENTS OFFERED BY ALCAN INC.
to the COMMISSION OF THE EUROPEAN
COMMUNITIES

Pursuant to Article 6(2) of Council Regulation (EEC) No. 4064/89 as amended by Council Regulation (EC) No. 1310/97 (the *Merger Regulation*), Alcan Inc. hereby provides the following commitments (the *Commitments*) in relation to the markets for aluminium flat-rolled products, aluminium aerosol cans and aluminium cartridges in the EEA in order to remove any serious doubts that the Commission of the European Communities (the *Commission*) may have with regards to its compatibility with the common market thereby enabling to adopt a decision declaring the Notified Concentration (as defined herein) compatible with the common market and the functioning of the EEA Agreement by adopting a decision pursuant to Article 6(1)(b) of the Merger Regulation (the *Decision*).

These Commitments are given by Alcan without prejudice to its position that the Notified Concentration does not, notwithstanding any serious doubts that the Commission may have, with respect to certain aluminium flat-rolled products (in particular beverage can body sheet, beverage can end sheet and food can body sheet), aluminium aerosol cans and aluminium cartridges, create or strengthen a dominant position within the common market or a substantial part of it and is therefore compatible with the common market and the functioning of the EEA Agreement.

The Commitments shall take effect upon the date of adoption by the Commission of the Decision, provided that if completion of the Notified Concentration does not subsequently take place for any reason and is thereby abandoned, Alcan shall not be bound by these Commitments.

Any term used in these Commitments shall be interpreted in the light of the Commission Notice on remedies acceptable under Council Regulation (EEC) No. 4064/89 and under Commission Regulation (EC) No. 447/98.

1.5. Section A. Definitions

1. In these Commitments, the following expressions shall have the following meanings:

Aerosols Divestment Business means either the Alcan Aerosols Divestment Business or the Pechiney Aerosols Divestment Business, the choice of which shall be made by Alcan at its sole discretion in accordance with paragraph 4;

Affiliated Undertakings means undertakings under the Control of the Parties;

Alcan means Alcan Inc., a Canadian limited liability company established under the laws of Canada with registered number 310145-2 and its principal place of business at 1188 Sherbrooke Street West, Montreal, Quebec H3A 3G2, Canada;

Alcan Aerosols Divestment Business means the aluminium aerosol cans business carried on by a number of Alcan subsidiary companies at plants at Belfaux (CH), Beaupaire (F) and Veenendaal (NL), full particulars of which are set out in **Part A of Schedule 1**;

Alcan Cartridges Divestment Business means the aluminium cartridges business carried on by Alcan Deutschland GmbH (a wholly-owned subsidiary of Alcan) at its Göttingen (D) plant, full particulars of which are set out in **Part A of Schedule 2**;

Alcan Divestment Businesses means the Alcan Aerosols Divestment Business, the Alcan Cartridges Divestment Business and the Alcan FRP Divestment Business;

Alcan FRP Divestment Business means that part of the aluminium flat rolled products business carried on in Germany by Alcan Deutschland GmbH (a wholly-owned subsidiary of Alcan) comprising its entire legal and beneficial shareholding in AluNorf and its Göttingen (D) and Nachterstedt (D) plants and, at the purchaser's option, the Latchford (UK) facility, full particulars of which are set out in **Part A of Schedule 3**, but excluding any other assets or undertakings owned or operated by Alcan Deutschland GmbH;

AluNorf means Aluminium Norf GmbH, a limited liability company established under the laws of the Federal Republic of Germany with registered number HR B 1271 and whose principal place of business is at Koblenzer Straße 120, D-41468 Neuss-Stüttgen, Germany;

Assets means, in relation to each Divestment Business, all tangible and intangible assets (including any relevant intellectual property rights) that are used in the current operation of that Divestment Business; all licences, permits and authorisations issued by any governmental organisation for the benefit of that Divestment Business; all contracts, agreements, leases, commitments and understandings of that Divestment Business; and all customer, credit and other records of that Divestment Business;

Cartridges Divestment Business means either the Alcan Cartridges Divestment Business or the Pechiney Cartridges Divestment Business, the choice of which shall be made by Alcan at its sole discretion in accordance with paragraph 3;

Closing means, in respect of each Divestment Business, the transfer of the legal title of the Divestment Business;

Conditions and Obligations means the conditions and obligations to the Commission's approval of the Notified Concentration as set out in the Decision;

Control means the control by one undertaking of another for the purposes of Article 3 of the Merger Regulation, provided that a Party shall not be deemed to control any undertaking of which it does not have sole or joint control;

Divestment means the disposal by Alcan of its entire legal and beneficial interest in a Divestment Business, whether (a) by way of its sale to an unconnected third party Purchaser pursuant to a binding sale and purchase agreement or (b) by way of its distribution, transfer or sale by way of a dividend, distribution in kind, reduction of capital or other similar transaction, and/or by way of an initial public offering on one or more recognised securities exchanges, and **Divested** and **Divesting** shall be interpreted accordingly;

Divestment Businesses means each of the FRP Divestment Business, the Cartridges Divestment Business and the Aerosols Divestment Business, that Alcan commits to divest or selects for Divestment pursuant to paragraphs 2, 3 and 4, each of which shall include the Assets and the Personnel;

Divestment Trustee means one or more than one natural or legal person, independent from the Parties, that will (subject to prior approval by the Commission pursuant to paragraph 27, be appointed by Alcan pursuant to an exclusive Mandate to sell the Divestment Businesses (or any of them) that have not been Divested by Alcan during the First Divestment Period (or any extension thereof granted pursuant to paragraph 42) to a Purchaser at no minimum price;

Effective Date means [...];

Extended Divestment Period means the period of [...] and any extension thereto pursuant to paragraph 42 commencing on the date of expiry of the First Divestment Period (including any extension thereof pursuant to paragraph 42) within which the Divestment Trustee shall have an exclusive Mandate from Alcan to sell the Divestment Businesses (or any of them) that have not been Divested by Alcan during the First Divestment Period (including any extension thereof pursuant to paragraph 42) at no minimum price;

First Divestment Period means the period of [...] from [...], and any extension thereto pursuant to paragraph 42, within which Alcan may Divest each of the Divestment Businesses;

FRP Divestment Business means either the Alcan FRP Divestment Business or the Pechiney FRP Divestment Business, the choice of which shall be made by Alcan at its sole discretion in accordance with paragraph 2;

Hold Separate Manager means the person employed by each Divestment Business who will be responsible for the day-to-day running of the relevant Divestment Business under the supervision of the Monitoring Trustee;

Key Personnel means all personnel of each of the Divestment Businesses who are identified (subject to the approval of the Commission) by the Monitoring Trustee as being necessary to maintain the viability and competitiveness of the relevant Divestment Business and who are listed by the Monitoring Trustee;

Mandate means the trustee mandate (or mandates) to be entered into between Alcan and each of the Monitoring Trustee and the Divestment Trustee, which shall be substantially in the form of the Commission's Standard Trustee Mandate in the case of divestiture commitments accepted under the Merger Regulation published on 2 May 2003, as from time to time amended;

Monitoring Trustee means one or more than one natural or legal person, independent of the Parties, who will be appointed (subject to prior approval by the Commission pursuant to paragraph 27) by Alcan pursuant to a Mandate to monitor Alcan's compliance with the Conditions and Obligations;

Notified Concentration means Alcan's proposed acquisition of sole control of Pechiney pursuant to public offers announced on 7 July 2003, which was notified to the Commission on Form CO on 14 August 2003;

Parties means Alcan and Pechiney;

Pechiney Aerosols Divestment Business means the aluminium aerosol cans business carried on by a number of Pechiney subsidiary companies at plants at Bellegarde (F), Barcelona (ES), Milano (I), Devizes (GB) and Velim (CZ), full particulars of which are set out in **Part B** of **Schedule 1**;

Pechiney Cartridges Divestment Business means Pechiney's aluminium cartridges business carried on by it at its Saumur (F) plant, full particulars of which are set out in **Part B** of **Schedule 2**;

Pechiney Divestment Businesses means the Pechiney Aerosols Divestment Business, the Pechiney Cartridges Divestment Business and the Pechiney FRP Divestment Business;

Pechiney FRP Divestment Business means Pechiney's aluminium flat rolled products business carried on by Pechiney at its Neuf-Brisach (F), its Rugles (F) plant and, at the purchaser's option, either its Annecy (F) plant and/or, Alcan's Latchford (UK) facility, full particulars of which are set out in **Part A** (in relation to Latchford (UK)) and **Part B** of **Schedule 3**;

Personnel means, in respect of each Divestment Business, the personnel who are employed by and will be retained by that Divestment Business following its Divestment pursuant to these Commitments;

Purchaser means the undertaking that will be approved by the Commission as the acquirer of the Divestment Businesses (or any of them) in accordance with paragraphs 19 to 21 (provided that, for the avoidance of doubt, there may be one or more Purchasers for one or more Divestment Businesses);

Purchaser Requirements means the criteria that a Purchaser must satisfy in order to receive approval from the Commission, as set out in paragraph 19; and

Trustees means the Monitoring Trustee and the Divestment Trustee.

1.6. Section B. The Divestment Business

1.6.1. Commitments to Divest

1.6.1.1.Flat rolled products

2. In order to respond to any serious doubts that the Commission may have with respect to the EEA markets for certain flat-rolled products, in particular beverage can body stock, beverage can end stock and food can body stock, Alcan commits to ensure that the Alcan FRP Divestment Business and the Pechiney FRP Divestment Business cease to be under common ownership and control by Alcan which will be accomplished by Divesting, or procuring the Divestment of, the FRP Divestment Business as a going concern in accordance with these Commitments. Alcan will confirm at its absolute discretion at any time prior to the end of the First Divestment Period, which of either the Alcan FRP Divestment Business or the Pechiney FRP Divestment Business will be the FRP Divestment Business, and shall notify any selection in writing to the Commission and to the Monitoring Trustee.

1.6.1.2.Aluminium cartridges

3. In order to respond to any serious doubts that the Commission may have with respect to the EEA market for aluminium cartridges, Alcan commits to ensure that the Alcan Cartridges Divestment Business and the Pechiney Cartridges Divestment Business cease to be under common ownership and control by Alcan which will be accomplished, by Divesting, or procuring the Divestment of, the Cartridges Divestment Business as a going concern in accordance with these Commitments. Alcan will confirm at its absolute discretion at any time prior the end of the First Divestment Period, which of either the Alcan Cartridges Business or the Pechiney Cartridges Divestment Business will be the Cartridges Divestment Business, and shall notify any selection in writing to the Commission and to the Monitoring Trustee.

1.6.1.3.Aluminium aerosol cans

4. In order to respond to any serious doubts that the Commission may have with respect to the EEA market for aluminium aerosol cans, Alcan commits to ensure that the Alcan Aerosols Divestment Business and the Pechiney Aerosols Divestment Business cease to be under common ownership and control by Alcan which will be accomplished by Divesting, or procuring the Divestment of, the Aerosols Divestment Business as a going concern in accordance with these Commitments. Alcan will confirm at its absolute discretion at any time prior to the end of the First Divestment Period which of either the Alcan Aerosols Divestment Business or the Pechiney Aerosols Divestment Business will be the Aerosols Divestment Business, and shall notify any selection in writing to the Commission and to the Monitoring Trustee.

1.6.2. The First Divestment Period

5. Alcan undertakes to use its reasonable efforts to fulfil its undertakings contained in each of paragraphs 2, 3 and 4 within the First Divestment Period.

6. Alcan shall be deemed to have complied with its undertaking in paragraph 5 if, within the First Divestment Period (and any extension thereof granted pursuant to paragraph 42), it has finalised and entered into a binding sale and purchase agreement or any other necessary documentation for the Divestment of the relevant Divestment Business, provided

that Closing takes place no later than [...] after the Commission's approval of the Divestment, the Purchaser and sale and purchase agreement or other documents necessary for the Divestment, or any longer such period as may be agreed by the Commission upon the making of a reasoned request by Alcan.

1.6.3. The Extended Divestment Period

7. Should Alcan be unable to fulfil its undertakings in each of paragraphs 2, 3 and 4 (or any of them) in the First Divestment Period (including any extension thereof pursuant to paragraph 42), the Extended Divestment Period shall apply from the date of the expiry of the First Divestment Period. Alcan undertakes to give the Divestment Trustee an exclusive Mandate to sell within the Extended Divestment Period and at no minimum price such of the Divestment Businesses that Alcan has not divested within the First Divestment Period (or any extension thereof) in order to give effect to Alcan's undertakings in each of paragraphs 2, 3 and 4, as the case may be.

8. In order to maintain the structural effect of these Commitments, Alcan shall, for a period of [...] after [...], not acquire direct or indirect influence over the whole or part of any of the Divestment Businesses that are divested to give effect to the undertakings contained in each of paragraphs 2, 3 and 4 without the prior consent of the Commission, which it shall give if the structure of the relevant markets has changed to such an extent that the absence of influence by Alcan over the Divestment Businesses is no longer necessary to render the Notified Concentration compatible with the common market.

1.6.4. Structure and definition of each Divestment Business

9. The present legal and functional structure of each of the potential Alcan Divestment Businesses and potential Pechiney Divestment Businesses as operated to date by them is described in Schedule 1 (with respect to the Alcan Aerosols Divestment Business and the Pechiney Aerosols Divestment Business), Schedule 2 (with respect to the Alcan Cartridges Divestment Business and the Pechiney Cartridges Divestment Business) and Schedule 3 (with respect to the Alcan FRP Divestment Business and the Pechiney FRP Divestment Business). Each Schedule identifies all the relevant functions of the relevant potential Divestment Business. Each Divestment Business, as described in the relevant Schedule, includes:

- (a) the Assets; and
- (b) the Personnel; and
- (c) where relevant, the benefit for a transitional period of up to [...], at the purchaser's sole discretion, after Closing and on terms and conditions equivalent to those afforded to the Divestment Business as of [...], of certain arrangements between the Divestment Business and Alcan or Pechiney (as the case may be) for the supply and/or purchase of products or services, as particularised in Schedules 1, 2 and 3 as appropriate, unless otherwise agreed with the Purchaser of the relevant Divestment Business.

1.7. Section C. Related commitments

1.7.1. Preservation of viability, marketability and competitiveness of the Divestment Businesses

10. Alcan undertakes until Closing of the Divestment of each Divestment Business:
- (a) to use its reasonable efforts to preserve the full economic viability, marketability and competitiveness of each Divestment Business in accordance with good business practice and as monitored by the Monitoring Trustee;
 - (b) to minimise as far as reasonably possible any risk of loss of competitive potential of each Divestment Business, provided that Alcan shall only be obliged to do so to the extent that this is within its control;
 - (c) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of each Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of each Divestment Business;
 - (d) to make available reasonably sufficient resources for the development of each Divestment Business, on the basis and continuation of the existing business plans for each Divestment Business; and
 - (e) to take all reasonable steps, including appropriate investment schemes (based on industry practice), to encourage all Key Personnel of each Divestment Business to remain with it, including Key Personnel at Eschborn and Voreppe or Neuhausen (as appropriate) which belong to the Divestment Business (see Schedule 3 below),

provided that prior to the selection by Alcan of the businesses that shall be the Aerosols Divestment Business, the FRP Divestment Business and the Cartridges Divestment Business and the notification of these selections to the Commission and the Monitoring Trustee, the obligations of this paragraph 10 shall apply to each of the Alcan Aerosols Divestment Business, the Pechiney Aerosols Divestment Business, Alcan FRP Divestment Business, the Pechiney FRP Divestment Business, the Alcan Cartridges Divestment Business and the Pechiney Cartridges Divestment Business.

1.7.2. Hold-separate and ring fencing obligations

11. Each of the obligations contained in the following paragraphs 12, 13 and 14 shall apply only as from the date of closing of the Notified Concentration until Closing, provided that following the selection by Alcan of the businesses that shall be the Aerosols Divestment Business, the FRP Divestment Business and the Cartridges Divestment Business and the notification of these selections to the Commission and the Monitoring Trustee, the obligations of paragraphs 12, 13 and 14 shall cease to apply after the Closing (x) to the Pechiney FRP Divestment Business, if the Alcan FRP Divestment Business is selected as the FRP Divestment Business, (y) in relation to the Cartridges Divestment Business, that of the Alcan Cartridges Divestment Business and the Pechiney Cartridges Divestment Business that has not been selected as the Cartridges Divestment Business, and (z) in relation to the Aerosols Divestment Business, that of the Alcan Aerosols Divestment Business and the Pechiney Aerosols Divestment Business that has not been selected as the Aerosols Divestment Business.

12. Alcan undertakes in relation to each of the Pechiney FRP Divestment Business, the Alcan Aerosols Divestment Business, the Pechiney Aerosols Divestment Business, the Alcan Cartridges Divestment Business and the Pechiney Cartridges Divestment Business:

- (a) to operate it separately from and not to integrate it with any business that Alcan is retaining, including for this purpose only the Alcan FRP Divestment Business;
- (b) to ensure that its Key Personnel, including its Hold Separate Manager, have no involvement in any other business that Alcan is retaining and vice-versa, including for this purpose only the Alcan FRP Divestment Business; and
- (c) to take reasonable steps to ensure that its Personnel do not report to any individual outside the relevant Divestment Business including for this purpose only the Alcan FRP Divestment Business.

13. Alcan shall assist the Monitoring Trustee during the term of its Mandate in ensuring that each of the Pechiney FRP Divestment Business, the Alcan Aerosols Divestment Business, the Pechiney Aerosols Divestment Business, the Alcan Cartridges Divestment Business and the Pechiney Cartridges Divestment Business is managed as a distinct and saleable entity separate from the businesses that Alcan is retaining. Alcan shall appoint a Hold Separate Manager for each of these potential Divestment Businesses who shall be responsible for the management of the relevant Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the relevant Divestment Business independently and in the best interest of the business with a view to ensuring its continued viability, marketability and competitiveness and its independence from the businesses that Alcan is retaining.

14. Alcan shall conduct itself so as not to transfer any confidential or proprietary business secrets, know-how, commercial information, or similar information from the Alcan FRP Divestment Business to the Pechiney FRP Divestment Business, the Alcan Aerosols Divestment Business, the Pechiney Aerosols Divestment Business, the Alcan Cartridges Divestment Business and the Pechiney Cartridges Divestment Business. The Monitoring Trustee shall ensure that Alcan's obligations in this regard are fully observed. Alcan shall also conduct itself so as not to obtain any confidential or proprietary business secrets, know-how, commercial information, or similar information in relation to the Pechiney FRP Divestment Business, the Alcan Aerosols Divestment Business, the Pechiney Aerosols Divestment Business, the Alcan Cartridges Divestment Business and the Pechiney Cartridges Divestment Business. In particular, the participation of these businesses in Alcan's central information technology networks (as the case may be) shall, where this is considered by the Monitoring Trustee to be reasonably necessary, be limited (whether by structural or logical separation or other means) to the extent reasonably possible within a reasonable time period, without compromising their viability. Notwithstanding the foregoing, Alcan may obtain confidential or proprietary business secrets or commercial or similar information relating to these businesses if it is reasonably necessary for it to do so for the purposes of fulfilling its obligations in these Commitments (including without limitation paragraphs 2, 3, 4, 5, 16, 17, 18, 20, 21, 35 and 36) or if disclosure to Alcan is reasonably necessary in order to enable Alcan to comply with any statutory, tax, legal, regulatory or similar obligation.

15. If the Alcan FRP Divestment Business is selected by Alcan as the FRP Divestment Business pursuant to paragraph 2, the provisions of paragraphs 11, 12, 13 and 14 shall apply mutatis mutandis to the Alcan FRP Divestment Business immediately following such

selection. For the avoidance of doubt, the provisions of paragraph 10 relating to the preservation of the viability, marketability and competitiveness of the Divestment Businesses apply to the Alcan FRP Divestment Business from the date of the adoption of the Decision. The Monitoring Trustee shall ensure Alcan's compliance with the obligations of this paragraph 15, in accordance with the provisions of paragraphs 31 and 32 below.

1.7.3. Non-solicitation of employees

16. Alcan undertakes not to solicit, and to procure, to the extent that it is lawfully able, that Affiliated Undertakings do not solicit, the Key Personnel transferred with each of the Divestment Businesses for a period of [...] after [...], provided that this shall not apply to the recruitment of any such Key Personnel or who were not employed during the last six months by the relevant Divestment Business.

1.7.4. Due Diligence

17. Alcan shall, in order to enable potential purchasers to carry out reasonable due diligence on each Divestment Business, and subject to customary confidentiality assurances and dependent on the stage of the divestment process:

- (a) provide to potential purchasers reasonably sufficient information as regards each Divestment Business; and
- (b) provide to potential purchasers reasonably sufficient information relating to the Key Personnel of each Divestment Business and allow them reasonable access to such Key Personnel.

1.7.5. Reporting

2. No later than 10 days after the end of every calendar month following [...] (or otherwise at the Commission's request), Alcan shall submit written reports in English to the Commission and the Monitoring Trustee on developments on any negotiations with potential purchasers of each Divestment Business and progress generally in effecting the divestment of each Divestment Business that is to be divested.

18. Alcan shall inform the Commission and the Monitoring Trustee on the process for the divestment of each Divestment Business, including the preparation of the data room documentation (if any), the information memorandum (if any) and the due diligence procedure (if any). If Alcan produces an information memorandum, prospectus or similar document in respect of the Divestment Businesses (or any of them) to provide to potential purchasers and other third parties, it shall submit a copy of the relevant draft documents to the Commission and the Monitoring Trustee, for the Commission's prior approval to allow it to verify the consistency of each document with the terms of these Commitments.

2.1. Section D. The Purchaser

19. In order to ensure the immediate restoration of competition in the event of the Divestment of any or all of the Divestment Businesses, the Purchaser must, in order to be approved by the Commission, meet the following Purchaser Requirements:

- (a) be independent of and neither directly or indirectly controlled or influenced by Alcan nor have, directly or indirectly, control or influence over Alcan;

- (b) have the financial resources, proven expertise and incentives to maintain and develop the relevant Divestment Businesses as a viable and active competitive force in competition with Alcan and other competitors and, in relation to the FRP Divestment Business in particular, have a strategic commitment to the competitiveness and development of the FRP Divestment Business, including as to flat rolled product development and R&D. Any assessment of such strategic commitment may be made on the basis of the Purchaser's past and present activities, its prior and existing expertise and experience, and its future plans for the FRP Divestment Business; and
- (c) its acquisition of the Divestment Business must neither be likely to create, on the basis of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed and, in particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant competition and other regulatory authorities for the acquisition of the relevant Divestment Business.

20. Alcan must be able to demonstrate to the Commission that the Purchaser meets the Purchaser Requirements and that the relevant Divestment Businesses are being Divested in a manner consistent with the Conditions and Obligations.

21. When Alcan has entered into, or is about to enter into, definitive documentation with respect to the Divestment of the Divestment Businesses (or any of them), it shall submit to the Commission and the Monitoring Trustee a fully documented and reasoned proposal, including either a copy of any sale and purchase agreement and any ancillary contractual documentation or other documentation that is necessary to effect the Divestment (*the Proposal*). The Proposal shall enable the Commission to verify that the Purchaser Requirements with regard to the Purchaser are fulfilled and that each Divestment Business is being Divested in a manner consistent with the Conditions and Obligations.

22. The Divestment of each Divestment Business shall be conditional on the Commission's approval. The Commission may approve the Divestment of a Divestment Business without one or more of the Assets and/or without some or all of the Personnel, provided that this does not affect the viability and competitiveness of the relevant Divestment Business after Closing, taking account of the proposed Purchaser and the extent to which it already possesses equivalent assets, personnel and/or other resources that can be employed in the relevant Divestment Business. The verification that each Divestment Business is being Divested in a manner consistent with the Conditions and Obligations shall include the Commission's approval of the Purchaser and of the sale and purchase agreement (if any), any ancillary contractual documentation or other documentation necessary to give effect to the Divestment.

2.2. Section E. Trustees

2.2.1. Appointment Procedure

23. Alcan shall appoint a Monitoring Trustee to carry out its functions specified in these Commitments.

24. Alcan shall appoint a Divestment Trustee to carry out the functions specified in these Commitments for a Divestment Trustee, if, one month before the end of the First Divestment Period (including any extension thereof pursuant to paragraph 42), it has not entered into a binding sale and purchase agreement (if any), other ancillary contractual

documentation and other documentation necessary to effect the Divestment of the Divestment Business or if the Commission has rejected the Purchaser proposed by Alcan at that time or thereafter. The Appointment of the Divestment Trustee shall take effect upon the commencement of the Extended Divestment Period.

25. Each Trustee shall be independent of Alcan, possess the necessary qualifications to carry out its Mandate, and shall neither be nor become exposed to a conflict of interest. Alcan shall remunerate each Trustee in a way that does not impede its independence and effectiveness in fulfilling their duties under their respective Mandates. In particular, where the remuneration package of the Divestment Trustee includes a success premium that is linked to the final sale value of a Divestment Business, the fee should be linked to a timely divestment within the Extended Divestment Period.

2.2.1.1.Proposal by Alcan

26. No later than one week after the date of the Decision, Alcan shall submit to the Commission for its approval a list of one or more persons whom Alcan proposes to appoint as the Monitoring Trustee in respect of each Divestment Business. Should the circumstances set forth in paragraph 24 be applicable, Alcan shall, no later than one month before the end of the First Divestment Period (including an extension thereof pursuant to paragraph 42), submit a list of one or more persons whom Alcan proposes to appoint as Divestment Trustee in respect of each Divestment Business that Alcan has not Divested in the First Divestment Period to the Commission for approval. Alcan's proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 26 and shall include:

- (a) the full terms of the proposed Mandate, which shall be drawn up taking due account of the Commission's Standard Trustee Mandate and shall include all provisions necessary to enable the Trustee to fulfil its functions set out in these Commitments;
- (b) an outline of a work plan which describes how the Trustee intends to carry out the tasks assigned to it under these Commitments and the Mandate; and
- (c) an indication of whether the proposed Trustees are to act as both Monitoring Trustee and Divestment Trustee or whether different persons are being proposed for the two functions and the Divestment Business in respect of which the appointment is to be made.

2.2.1.2.Approval or rejection by the Commission

27. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed Mandates subject to any modifications it deems necessary for the Trustee to fulfil the tasks assigned to it. If only one proposed Trustee is approved, Alcan shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the Mandate approved by the Commission. If more than one proposed Trustee is approved, Alcan shall be free to choose the Trustee to be appointed from among the individuals or institutions approved. Alcan shall appoint the Trustee within one week of the Commission's approval, in accordance with the draft Mandate approved by the Commission.

2.2.1.3. New proposal by Alcan

28. If all the proposed Trustees are rejected, Alcan shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements set out in paragraph 25 for approval by the Commission in accordance with paragraph 26.

2.2.1.4. Trustee nominated by the Commission

29. If the Commission rejects all further proposed Trustees, the Commission shall nominate a Trustee, whom Alcan shall appoint, or cause to be appointed, in accordance with a Mandate approved by the Commission.

2.2.2. Functions of the Trustee

30. The Trustee shall assume its specified duties in order to ensure Alcan's compliance with the Conditions and Obligations. The Commission may, on its own initiative or at the request of the Trustee or Alcan, give any orders or instructions to the Trustee in order to ensure Alcan's compliance with the Conditions and Obligations.

2.2.3. Duties and obligations of the Monitoring Trustee

31. Following its appointment and subject to and in accordance with all other terms of these Commitments, the Monitoring Trustee shall assume its specified duties in order to ensure Alcan's compliance in good faith with the Conditions and Obligations on behalf of the Commission, taking account of the legitimate interests of Alcan.

32. Subject to and in accordance with paragraph 31, the Monitoring Trustee shall:

- (a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor Alcan's compliance with the Conditions and Obligations;
- (b) oversee the on-going management of each Divestment Business with a view to ensuring their continued economic viability, marketability and competitiveness and monitor compliance by Alcan with the Conditions and Obligations;
- (c) in consultation with Alcan, monitor:
 - (i) the preservation of the economic viability, marketability and competitiveness of each Divestment Business pursuant to paragraph 10;
 - (ii) Alcan's compliance with its the holding separate obligations in accordance with paragraph 12;
 - (iii) Alcan's compliance with its obligations under paragraph 13;
- (d) in consultation with Alcan, determine appropriate measures to ensure that Alcan complies with its obligations under paragraph 14, monitor Alcan's compliance with these obligations and ensure that no information within the scope of those obligation is disclosed to Alcan or Affiliated Undertakings except where permitted by paragraph 14;
- (e) monitor:

- (i) the management and operation of each Divestment Business in the normal course of business in order to report on their continued viability, marketability and competitiveness; and
 - (ii) to the extent required, the splitting of Assets and the allocation of Personnel between each Divestment Businesses and the retained businesses of Alcan or its Affiliated Undertakings, including relevant R&D personnel and equipment to be transferred to the Alcan FRP Divestment Business and the Pechiney FRP Divestment Business from the Neuhausen and Voreppe centres respectively;
- (f) assume the other functions assigned to the Monitoring Trustee under the Conditions and Obligations;
- (g) propose to Alcan such measures as the Monitoring Trustee considers to be necessary to ensure Alcan's compliance with the Conditions and Obligations, in particular the maintenance of the full economic viability, marketability or competitiveness of each Divestment Business and the non-disclosure of competitively sensitive information;
- (h) provide to the Commission (with a simultaneous non-confidential copy to Alcan) a written report within 15 days after the end of every month concerning the monitoring of the operation and management of the Divestment Businesses, so that the Commission can assess whether each Divestment Business is being held in a manner consistent with the Conditions and Obligations and the progress of the divestment process, as well as potential purchasers of the Divestment Businesses. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission (with a simultaneous non-confidential copy to Alcan) if it concludes on reasonable grounds that Alcan is failing to comply with the Conditions and Obligations;
- (i) review and assess potential purchasers of the Divestment Business and the progress of the divestment process and verify that, dependent on the stage of the divestment process:
 - (i) whether potential purchasers have received sufficient information relating to the Divestment Business and the Personnel of the Divestment Business, in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process; and
 - (ii) potential purchasers have been granted reasonable access to the Personnel; and
- (j) within one week after receipt of the Proposal submitted by Alcan pursuant to paragraph 20, submit to the Commission a reasoned opinion as to whether the proposed Purchaser meets the Purchaser Requirements and as to whether the Divestment Business will be Divested in a manner consistent with the Conditions and Obligations, in particular, if relevant, whether the Divestment of the Divestment Businesses without one or more Assets or not all of the Personnel would affect the viability of the Divestment Businesses after the Divestment, taking account of the identity and resources of the proposed purchaser.

2.2.4. Duties and obligations of the Divestment Trustee

33. Within the Extended Divestment Period, the Divestment Trustee shall sell at no minimum price each of the Divestment Businesses that Alcan has not divested during the First Divestment Period to a Purchaser that fulfils the Purchaser Requirements, provided that the Commission has approved both that Purchaser and the final binding sale and purchase agreement and ancillary agreements in accordance with the procedures laid down in paragraphs 20 to 22. The Divestment Trustee shall include in the sale and purchase agreement such terms and conditions as it considers are reasonably required for an expedient sale. In particular, the Divestment Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. In doing so, the Divestment Trustee shall protect the legitimate financial interests of Alcan, and in particular shall take all reasonable steps to avoid any unnecessary loss of value for Alcan, subject to Alcan's unconditional obligation to Divest the Divestment Businesses at no minimum price in the Extended Divestment Period.

34. Following the commencement of the Extended Divestment Period (or otherwise at the Commission's request) the Divestment Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestment process. Such reports shall be submitted within 15 calendar days after the end of every month. The Monitoring Trustee shall be provided a simultaneous copy and Alcan shall be provided with a simultaneous non-confidential copy of these reports.

2.2.5. Duties and obligations of Alcan

35. Alcan shall provide the Trustees with all such cooperation, assistance and information, including copies of all relevant documents, as the Trustees may reasonably require in performing their duties under their Mandates. The Trustees shall have full and complete access to the books, records, documents, personnel, facilities, sites and technical information of Alcan and Pechiney where this is necessary for the fulfilment of their duties under their Mandates. Upon request by the Trustees, Alcan shall make available to the Trustees one or more than one offices on its premises and shall be available for meetings with the Trustees in order to provide the Trustees with all information necessary for the performance of their duties under their Mandates.

36. Alcan shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Businesses. This shall include all administrative support functions relating to the Divestment Businesses that are currently carried out at headquarters level. Alcan shall provide and shall cause its advisers to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Alcan shall inform the Monitoring Trustee of possible purchasers that it has identified, submit to it a list of potential purchasers and inform it of developments in the divestment process. Alcan shall inform the Monitoring Trustee about meetings with potential purchasers of the Divestment Businesses and permit the Monitoring Trustee to attend such meetings.

37. In order to accomplish the Divestment of the Divestment Business in the Extended Divestment Period, Alcan shall grant a comprehensive power of attorney, duly executed, to the Divestment Trustee for the Divestment of the relevant Divestment Business and Closing, including the power to take all actions and declarations which the Divestment

Trustee considers to be necessary or appropriate to achieve the Divestment and Closing, including the appointment of external professional advisers to assist with the Divestment process. This power of attorney will take effect only at such time as the Divestment Trustee's Mandate takes effect. Upon request by the Divestment Trustee, Alcan shall cause the documents required to effect the Divestment and the Closing to be duly executed by it or any Affiliated Undertaking.

38. Alcan shall enter into an indemnification agreement with the Trustees that indemnifies and holds harmless each Trustee and its employees and agents (each an **Indemnified Party**) for, any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Trustee's duties pursuant to the Conditions and Obligations. This shall include reasonable fees of counsel or other expenses incurred in connection with the preparation for, or defence of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from an Indemnified Party's intentional act, wilful default, recklessness, negligence or bad faith.

39. At the expense of Alcan, the Trustees may if they consider it to be reasonably necessary or appropriate for the performance of their duties, appoint external professional advisers (such as corporate finance, legal or expert technical advisers), provided that any fees and other expenses incurred by the Trustees are reasonable and reasonably incurred. The appointment of any external professional adviser shall be subject to Alcan's prior approval, which shall not be unreasonably withheld or delayed. Should Alcan refuse to approve the external professional advisers proposed by the Trustee, the Commission may approve the appointment of such advisers. Only the Trustee shall be entitled to issue instructions to any advisers appointed by it. In the Extended Divestment Period, the Divestment Trustee may, subject to any conflict of interest or other applicable rule or obligation that would prevent this, use advisers who advised Alcan during the First Divestment Period if the Divestment Trustee considers this to be in the best interest of an expedient Divestment.

2.2.6. Replacement, discharge and reappointment of a Trustee

40. If a Trustee has not acted in accordance with its duties under these Commitments or its Mandate or for any other good cause, the Commission may, after hearing the Trustee, require Alcan to remove and replace the Trustee or Alcan may remove the Trustee with the prior approval of the Commission. The Trustee may be required to continue in its function until a new Trustee has been appointed in accordance with the procedure referred to in paragraphs 24 to 29 to which the Trustee has effected a full delivery of all relevant information.

41. A Trustee shall cease to act only after the Commission has discharged it from its duties, following a request from the Trustee or Alcan after Alcan has complied with the Conditions and Obligations in respect of which the Trustee has been appointed. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant Conditions and Obligations might not have been fully and properly implemented by Alcan.

2.3. Section F. The Review Clause

42. The Commission may, where appropriate, in response to a request from Alcan showing good cause and accompanied by a report from the Monitoring Trustee and/or hearing the Monitoring Trustee and/or the Divestment Trustee:

- (a) grant an extension of the First Divestment Period and/or the Extended Divestment Period, provided that Alcan has submitted a request to the Commission no later than, save in exceptional circumstances, one month before the expiry of the relevant period, showing good cause; or
- (b) allow the Divestment of a Divestment Business, at the request of the proposed Purchaser and in accordance with paragraph 22, without some or all of:
 - (i) the Assets; and/or
 - (ii) the Personnel; and/or
 - (iii) the other arrangements referred to in paragraph 9; or
- (c) waive or modify, in exceptional circumstances, one or more of the Conditions and Obligations, in particular (but without limitation) if events subsequent to the adoption of the Decision should render the Divestment of one or more of the Divestment Businesses unnecessary.

.....
duly authorised for and on behalf of Alcan Inc.

Brian W. Sturgell
Executive Vice-President

26 September 2003

2.3.1.1.1.

2.3.1.1.2.SCHEDULE 1

2.3.1.1.3.DIVESTMENT RELATING TO ALUMINIUM AEROSOL CANS

2.3.2. Part A - The Alcan Aerosols Divestment Business

2.3.3. Ownership structure

The Alcan subsidiaries that comprise the Alcan Aerosols Divestment Business (known as the **Boxal Group**) are set out below, together with their principal commercial function. All are indirect subsidiaries of Alcan. It would be intended that the divestment be effected by a sale of Alcan's entire direct or indirect shareholdings in each of Boxal (Suisse) SA, Boxal Netherlands BV, Boxal (France) SAS and Copal SNC.

Subsidiary	% ownership	Jurisdiction of incorporation	Principal function
Boxal (Suisse) SA ²⁵	100	Switzerland	Manufacture of aluminium slugs at Belfaux (CH)
Boxal Netherlands BV ²⁶	100	Netherlands	Manufacture of aluminium aerosol cans at Veenendaal (NL)
Boxal Sales GmbH	100	Germany	Sales office at Bergheim (D)
Boxal (France) SAS ²⁷	100	France	Manufacture of aluminium aerosol cans at Beaufort (F)
Copal SNC ²⁸	49	France	Manufacture of aluminium slugs at Beaufort (F)

²⁵ Immediate holding company is Alcan Holdings Switzerland AG.

²⁶ Immediate holding company is Alcan Nederland BV. Boxal Netherlands BV holds 100% of the shares in Boxal Sales GmbH.

²⁷ Immediate holding company is Alcan Holdings France SA.

²⁸ Interest is held by Alcan Holdings France SA. Other 51% is held (indirectly) by Pechiney.

2.3.4. *Financial data (2002)*

[...]

2.3.5. *Management structure*

The Boxal Group is managed substantially autonomously from the remainder of the Alcan group. It has its own decentralised management, consisting of a Group Managing Director and Finance Director (both of whom also have responsibilities for the management of certain local subsidiaries in the Boxal Group) and local management teams in each of the Netherlands, France and Switzerland.

The Copal slug manufacturing joint venture is managed separately from the Boxal Group.

2.3.6. *Production and other assets (tangible and intangible)*

The Boxal Group has two plants that manufacture aluminium aerosol cans, Beaurepaire (F) and Veenendaal (NL). Both plants are owned freehold. The Beaurepaire plant also manufactures tinplate (steel) aerosol cans. Expansion is possible at both plants. A sales office in Germany is leased from a third party.

The Belfaux (CH) plant manufactures aluminium slugs (from aluminium ingot) that are then converted into aerosol cans. These slugs are mainly supplied to the Veenendaal plant, with some production being sold to third parties. This plant is owned freehold.

The Copal aluminium slug plant at Beaurepaire (F) is adjacent to Boxal's aerosols plant and is operated as a production joint venture with Pechiney, on a maximum capacity, zero margin basis, with each party supplying aluminium ingot for processing at cost. Boxal's share of production is consumed at Beaurepaire.

[...]

The Boxal Group uses Alcan's IT network (through servers located at Singen (D)). However, the Boxal Group's IT systems (based on SAP and IBM platforms) are operated on a stand-alone basis and can be separated.

2.3.7. *Principal contracts that will be transferred to the purchaser*

The principal customers of the Boxal Group are Lever Fabergé/Unilever, L'Oréal, Schwarzkopf & Henkel, and Beiersdorf. To the maximum extent legally possible, all principal contracts with customers and suppliers will be transferred to the purchaser.²⁹ As the divestment will be by way of a share sale, it is expected that all principal contracts should be transferred as a matter of law.

2.3.8. *Principal governmental licences, permits and authorisations*

All Boxal Group plants possess the necessary licences, permits and authorisations required under applicable legislation.

²⁹ Alcan has not yet been able to ascertain the transferability of all principal contracts, but does not anticipate any difficulty in doing so.

2.3.9. Raw material and other inputs

The principal raw material is aluminium ingot. Boxal Group sources ingot principally from third parties [...] at prevailing world market prices, through Alcan's metals trading business; small volumes are sometimes sourced from Alcan's own smelters as well as from its joint venture with Pechiney, Copal. The Boxal Group will continue to be entitled to its present share of Copal's output. Other raw materials and utilities are procured on the open market from third parties.

2.3.10. Intellectual property rights

Boxal Group uses three trademarks: BOXAL, ROLLBAG and DUOPACK. It exploits a number of patents and design rights relating to certain types of can. These will be assigned to the purchaser, if Boxal Group companies do not already own them.

2.3.11. Employees

The number of Boxal Group employees is set out below by location and function. All employees will be transferred to the purchaser. [...]

2.3.12. Anticipated transitional arrangements

Given the autonomous nature of the Boxal Group, the divestment should be accomplished without difficulty, with few (if any) transitional arrangements being required.

All raw materials (including aluminium ingot and slugs) are or can be obtained on the open market. At the request of the purchaser, Alcan is prepared to enter into an agreement on normal commercial terms and at prevailing market rates whereby its metals trading business would continue to procure aluminium ingot from the existing suppliers. Alternatively, the new owner of Boxal Group could enter into new arrangements directly with these or other suppliers.

Other transitional services (e.g. IT, pending total severance of the Boxal IT system from Alcan's IT system) can be provided on request by the purchaser and on normal commercial terms.

2.3.13. Any assets/personnel that will not be included

For the avoidance of doubt, Pechiney's 51% interest in Copal will not be divested.

2.3.14. Part B - The Pechiney Aerosols Divestment Business

Cebal Aerosols Europe manufactures a wide range of aluminium aerosol cans and bottles for the cosmetics, healthcare, food, home products and leisure products industries.

2.3.15. Ownership structure

The Pechiney Aerosols Divestment Business is owned by Cebal Aerosols Europe, a division of Cebal SAS, a wholly owned subsidiary of Pechiney.

2.3.16. Management structure

This is not known by Alcan. However, Cebal Aerosols Europe is understood to operate as an autonomous unit within the Pechiney group.

2.3.17. Production and other assets (tangible and intangible)

The Pechiney Aerosols Divestment Business' production assets are located at Cebal's industrial facilities at Bellegarde (F), Barcelona (ES), Milano (I), Devizes (GB) and Velim (CZ). It is believed that each of these sites is operated as a standalone facility. It is not known if the Pechiney Aerosols Divestment Business operates from other locations, although Cebal Aerosols Europe has additional premises in Paris (F), Brussels (B), Nuremburg (D) and Hanko (FIN).

The Pechiney Aerosols Divestment Business includes Pechiney's 51% shareholding in Copal SAS, a joint venture with Alcan that manufactures aluminium slues that are then processed into aerosol cans (see Part A of this Schedule 1).

2.3.18. Financial data (2002)

Alcan does not have access to this information, although publicly available information suggests that in 2002 Cebal Aerosols Europe made sales of € 89 million, and sold 440 million units (Cebal website: www.cebal.pechiney.com).

2.3.19. Principal contracts that will be transferred to the purchaser

Principal customers include Elida-Fabergé (Unilever) and L'Oréal group. To the maximum extent legally possible, all principal contracts with customers and suppliers will be transferred to the purchaser.³⁰ As the divestment will likely be by way of a share sale, it is expected that all contracts should be transferred as a matter of law.

2.3.20. Principal governmental licences, permits and authorisations

Not known.

³⁰ Given the nature of the notified concentration, Alcan has not yet been able to ascertain the transferability of all principal contracts.

2.3.21. Raw material and other inputs

The principal raw material for manufacturing aluminium aerosol cans is an aluminium slug, which is then extruded (by forcing it through a die) to produce the aerosol can. It is not known from where the Pechiney Aerosols Divestment Business sources its raw materials, other than a proportion of its requirements for aluminium slugs, which are sourced from the Copal joint venture. Cebal will continue to be entitled to its present share of Copal's output.

2.3.22. Intellectual property rights

It is not known whether the Pechiney Aerosols Divestment Business has any intellectual property, although the nature of the aluminium aerosol can business makes it likely that it does own certain design rights, trade marks and possibly patents. These will be assigned to the purchaser.

R&D facilities are located at Bellegarde (F), and Barcelona (ES). Cebal claims that more than 3% of its turnover is devoted to R&D.

2.3.23. Employees

The number of employees of the Pechiney Aerosols Business is estimated to be approximately 600, according to information on Cebal's website (www.cebal.pechiney.com).

2.3.24. Anticipated transitional arrangements

Transitional arrangements may be required in relation to various services previously provided on a group basis, for example, telecommunications/IT services and/or raw materials supply. Any such services that the purchaser may require will be provided to the purchaser on a transitional basis on normal commercial terms.

2.3.25. Any assets/personnel that will not be included

For the avoidance of doubt, Alcan's 49% interest in Copal will not be divested.

2.3.25.1.1.SCHEDULE 2

2.3.25.1.2.DIVESTMENTS RELATING TO ALUMINIUM cartridges

2.3.26. Part A - The Alcan Cartridges Divestment Business

2.3.27.

2.3.28. Ownership structure

Alcan Deutschland GmbH, a wholly owned subsidiary of Alcan, owns the Alcan Cartridges Divestment Business and is part of a wider Industrial Goods Business carried on by Alcan at the Göttingen site (the **GIG Business**). As well as aluminium cartridges, the GIG Business also manufactures various other industrial products made from aluminium.

2.3.29. Management structure

The GIG Business has its own business manager, although it presently forms part of Alcan's Rolled Products Europe business group, with which it presently shares various management and administrative functions, due to its small size.

2.3.30. Production and other assets (tangible and intangible)

The GIG Business is operated from distinct premises located at Alcan's facility at Göttingen (D). The production facilities occupy one floor of a building on the Göttingen site; administration functions are situated in an office block on the same site. The purchaser of the GIG Business will be provided with a lease of (or equivalent right to occupy) the production premises and will also be permitted to occupy designated office space on the Göttingen site.

The GIG Business has a maximum production capacity of approximately [...] cartridges per annum, using [...] production lines. The GIG Business uses a number of pressing and reforming machines to process aluminium slugs. There are no research and development activities.

2.3.31. *Financial data (2002)*

[...]

2.3.32. *Principal contracts that will be transferred to the purchaser*

To the maximum extent legally possible, all principal contracts with customers and suppliers (including for the supply of aluminium slugs) will be transferred to the purchaser.³¹

As Göttingen is an integrated industrial site, Alcan Deutschland will provide the purchaser with site services (utilities, security, staff canteen, site safety services etc) on a commercial basis that is normal for the provision of such services on a multi-operator site basis.

2.3.33. *Principal governmental licences, permits and authorisations*

The GIG Business has all necessary governmental licences, permits and authorisations.

2.3.34. *Raw material and other inputs*

The principal raw material for manufacturing aluminium cartridges is an aluminium slug, which is then extruded (by forcing it through a die) to produce the cartridge. The same extrusion process is also used to produce the other products manufactured by the GIG Business. The GIG Business purchases aluminium slugs from a third party, [...].

2.3.35. *Intellectual property rights*

There are no intellectual property rights (patents, trade marks, copyrights, design rights etc) associated with the GIG Business. Additionally, no research and development is carried on.

2.3.36. *Employees*

The number of employees of the GIG Business is set out below. All staff are based at [...]

2.3.37. *Anticipated transitional arrangements*

Various site services and telecommunications/IT services may need to be provided to the purchaser on a transitional basis.

2.3.38. *Any assets/personnel that will not be included*

None.

³¹ Alcan has not yet been able to ascertain the transferability of all principal contracts, but does not anticipate any difficulties.

2.3.39.

2.3.40. *Part B - The Pechiney Cartridges Divestment Business*

2.3.41. *Ownership structure*

The Pechiney Cartridges Divestment Business (hereinafter referred to in this Schedule 2 as the **SC Business**) is owned by Cebal Aerosols Europe, a division of Cebal SAS, a wholly owned subsidiary of Pechiney.

2.3.42. *Management structure*

This is not known by Alcan. However, the SC Business is probably run as a unit within Cebal Aerosols Europe.

2.3.43. *Production and other assets (tangible and intangible)*

The SC Business' production assets are located at Cebal's industrial facility at Saumur, in Western France.

The purchaser of the SC Business will be provided with a lease of (or equivalent right to occupy) the premises from which the SC Business operates.

2.3.44. *Financial data (2002)*

Alcan does not have access to this information, but (given its market share), the output of the SC Business is slightly greater than that of the GIG Business.

2.3.45. *Principal contracts that will be transferred to the purchaser*

To the maximum extent legally possible, all principal contracts with customers and suppliers will be transferred to the purchaser.³²

As Saumur is an integrated industrial site, Alcan will procure that Cebal will provide the purchaser with site services (utilities, security, staff canteen, site safety services etc) on a commercial basis that is normal for the provision of such services on a multi-operator site basis.

2.3.46. *Principal governmental licences, permits and authorisations*

Not known.

2.3.47. *Raw material and other inputs*

The principal raw material for manufacturing aluminium cartridges is an aluminium slug, which is then extruded (by forcing it through a die) to produce the cartridge. It is not known from where the SC Business sources its raw materials.

³² Given the nature of the notified concentration, Alcan has not yet been able to ascertain the transferability of all principal contracts.

2.3.48. Intellectual property rights

It is not known whether the SC Business has any intellectual property, although the nature of the aluminium cartridge business makes it unlikely that it does.

2.3.49. Employees

All relevant employees will be transferred to the purchaser.

2.3.50. Anticipated transitional arrangements

Transitional arrangements may be required in relation to various services, telecommunications/IT services and/or raw materials. Any such services that the purchaser may require will be provided to the purchaser on normal commercial terms.

2.3.51. Any assets/personnel that will not be included

None.

2.3.51.1.1.SCHEDULE 3

2.3.51.1.2.DIVESTMENTS RELATING TO flat rolled products

2.3.52. *Part A – The Alcan FRP Divestment Business*

2.3.53. *Ownership structure*

Alcan Deutschland GmbH (**AD GmbH**), a wholly owned subsidiary of Alcan, owns the Alcan FRP Divestment Business. The Alcan FRP Divestment Business will comprise:

- AD GmbH's 50% shareholding in Aluminium Norf GmbH (**AluNorf**), a joint venture with Hydro Aluminium Deutschland GmbH (**HAD**, a subsidiary of Norsk Hydro ASA);
- AD GmbH's rolling mill and associated facilities at Göttingen (D);
- AD GmbH's rolling mill and associated facilities at Nachterstedt (D);
- relevant research and development employees and facilities located at Neuhausen (CH);
- relevant sales, marketing, administrative employees and facilities located at Eschborn (D); and
- at the purchaser's option, the Latchford (UK) recycling and ingot casting facility.

AluNorf operates the Norf rolling mill complex at Neuss (D), which is the world's largest aluminium rolling mill. AluNorf is operated as a time-sharing joint venture. It owns the Norf complex (real property, equipment and movable property) and employs its own workforce, with its own management (nominated by the parent companies). AluNorf processes (on a tolling basis) primary and secondary aluminium supplied by each of AD GmbH and HAD. AD GmbH and HAD are each entitled to 50% of the available capacity ("time at mill") of the rolling mills. Each parent must specify the products that are to be manufactured for it. AD GmbH and HAD share the facility's fixed costs and are responsible for the variable costs incurred in producing their own products.

2.3.54. *Management structure*

The Alcan FRP Divestment Business is presently part of the Alcan Rolled Products Europe (**RPE**) business group, which is headquartered in Zürich (CH), with sales, marketing and administrative offices at Eschborn (D). Senior management staff of RPE are based at Zürich, except for the head of sales and marketing, who is located at Eschborn. Sales, marketing and administration staff are based at Göttingen, Nachterstedt and Eschborn. The Göttingen and Nachterstedt plants are managed by their respective works managers, who presently report to the RPE Vice-President, Manufacturing. The controlling, finance and accounting functions of the Alcan FRP Divestment Business presently report to the RPE Vice-President, Finance.

AluNorf has its own management structure. It has two managing directors, one appointed by each shareholder. Each shareholder also appoints three members of the board of directors, with a further two directors being appointed as representatives of the employees.

2.3.55. Production and other assets (tangible and intangible)

The Alcan FRP Divestment Business comprises the Göttingen and Nachterstedt facilities and AD GmbH's 50% interest in AluNorf. In addition, it has non-production facilities at Eschborn (sales, marketing and administrative offices).

The Alcan FRP Divestment Business's third party sales of FRPs in 2002 are set out below.

[...]

In 2002, the Alcan FRP Divestment Business supplied [...] of FRPs to third parties, with beverage and food can sheet and lithographic sheet being the main FRPs sold to third parties. In 2002, a further [...] of FRPs (mainly hot coil and cold rolled "re-roll", i.e. semi-finished products) were supplied to other Alcan manufacturing plants: [...]. In total, these accounted for a further [...] of Western European production of standard FRPs, giving a total share of Western European production of all FRPs of 15.7%. In addition, a further [...] of hot coil and cold re-roll coil were transferred internally from Norf to Göttingen and Nachterstedt for further rolling and finishing, with small volumes also being transferred between Göttingen and Nachterstedt.

The mill capacities of Norf (Alcan share), Göttingen and Nachterstedt are set out below. The Göttingen and Nachterstedt cold mills are used to finish semi-finished products that have been hot rolled and/or partially cold-rolled at Norf.

[...]

The Norf plant (owned by AluNorf) was opened in 1968 and has been extended and upgraded on several occasions since then, most recently in 1997. The Göttingen plant (owned by AD GmbH) was opened in 1970 and was most recently upgraded in 1992. The Nachterstedt plant (owned by AD GmbH) was acquired by Alcan in the early 1990s and has subsequently been upgraded.

Norf, Göttingen and Nachterstedt comprise the following production assets:

[...]

In addition to the above production assets, Norf has one high rack storage warehouse and three administration buildings. Göttingen has four high rack warehouses and four administration buildings. Nachterstedt has one] administration building.

Product and process research and development activities are predominantly carried out at the rolling mills and customer technical support staff are based either at the rolling mills or at sales offices. AD GmbH carries out research and development into rolling process development at Göttingen. All R&D staff and facilities located at the plants that will be divested will be included in the Alcan FRP Divestment Business. Certain research and product and process development functions are presently carried out at Alcan's central R&D facility at Neuhausen (CH). In relation to these activities, Alcan will transfer to the Alcan FRP Divestment Business prior to its divestment all personnel and necessary equipment and other assets at Neuhausen that are presently used by Alcan to support the Alcan FRP Divestment Business and, if required, will establish a separate a distinct building for them. This shall include the contract for services presently provided by Innoval Technology Limited (an independent third party supplier of research and development services) to the Alcan FRP Divestment Business on a contract basis. This will ensure that the Alcan FRP Divestment Business has full ownership of all necessary R&D activities presently used by it. The identification and transfer of the relevant personnel, buildings, equipment and other assets at Neuhausen shall be undertaken by Alcan under the supervision of the Monitoring Trustee in accordance with paragraph 32(e)(ii).

2.3.56. Financial data (2002)

[...]

2.3.57. Principal contracts that will be transferred to the purchaser

AluNorf operates the Norf rolling mill independently; accordingly, there are no AluNorf-related contracts to be transferred to the purchaser.

As the divestment will be by way of the sale of shares in AD GmbH, contracts to which it is a party will transfer automatically by operation of law. To the maximum extent legally possible, all principal contracts with customers and suppliers (including gas, electricity, water and wastewater, aluminium ingot and other raw materials) will be transferred to the purchaser. Where this is not legally possible, Alcan shall use its best efforts to propose a suitable alternative.³³ Where possible, a number of contracts for the procurement of primary metal will be transferred to the Alcan FRP Divestment Business. However, certain of these contracts were entered into at the Alcan group level, so new arrangements (whether a new contract with the supplier or a sub-supply arrangement) will need to be entered into before the divestment is effected. Contracts with third party customers (such as [...]) will also be transferred to the purchaser, where this is legally possible.

³³ Alcan has not yet been able to ascertain the transferability of all principal contracts, but does not anticipate any difficulties in this regard.

2.3.58. Principal governmental licences, permits and authorisations

AD GmbH has all governmental licences, permits and authorisations required to operate the facilities comprising the Alcan FRP Divestment Business. AluNorf has all governmental licences, permits and authorisations required to operate the Norf rolling mill. Alcan does not anticipate any difficulties in transferring these governmental licences, permits and authorisations.

2.3.59. Raw material and other inputs

The principal raw material for manufacturing flat rolled aluminium is primary or secondary aluminium, usually in the form of an ingot or slab. The Alcan FRP Divestment Business supplies these raw materials to AluNorf for rolling into various FRPs.

The Alcan FRP Divestment Business presently obtains primary, secondary and slab aluminium from Alcan's smelters in Europe, its recycling facilities at Latchford in the UK and from third party smelters, including [...].

At the request of the purchaser of the Alcan FRP Divestment Business, Alcan will offer the purchaser an option to purchase Alcan's recycling and ingot casting facility at Latchford (UK), which has a capacity of [...] tonnes. Contracts with third party ingot suppliers will, to the fullest extent possible, be transferred to the Alcan FRP Divestment Business; if they are not transferable, alternative arrangements will be put in place. Other significant raw material inputs are purchased from third parties. Alcan will also enter into a transitional agreement to supply ingot to the Alcan FRP Divestment Business at the purchaser's request.

2.3.60. Intellectual property rights

There are some patents relating to the Norf plant; however, AluNorf owns these patents and therefore these patents are part of the Alcan FRP Divestment Business. To the extent that intellectual property rights owned by Alcan are currently used by the Alcan FRP Divestment Business, Alcan will grant the purchaser, in conformity with normal industry practice, a non-exclusive licence to continue to exploit such intellectual property within (but limited to) the Alcan FRP Divestment Business.

2.3.61. Employees

As at 31 December 2002, the Alcan FRP Divestment Business had [...] employees, as set out below. This does not include:

- employees of AluNorf; or
- the staff presently employed at Neuhausen in relation to the Alcan FRP Divestment Business (who represent approximately [...] persons), who will be transferred to the purchaser; or
- the staff presently employed at Eschborn in relation to the Alcan FRP Divestment Business (who represent approximately [...] persons), who will be transferred to the purchaser.

[...]

AluNorf employs its own labour force, of approximately [...].

All relevant employees will be included with the Alcan FRP Divestment Business. Senior management within the RPE business division will not be transferred to the purchaser, although equivalent positions will be created within the Alcan FRP Divestment Business where appropriate, which will depend upon the identity of the purchaser, which may already have appropriate management.

2.3.62. Anticipated transitional arrangements

A number of transitional contractual relationships will need to be entered into between AD GmbH and the retained Alcan businesses, to formalise previously internal supplies between the Alcan FRP Divestment Business and other Alcan group businesses. These will cover the supply of primary metal (from Alcan's primary and/or secondary metal production sites) and scrap (from Alcan's retained rolling mills) to the Alcan FRP Divestment Business, and the supply of FRPs from the Alcan FRP Divestment Business to Alcan's retained businesses. It is anticipated that the downstream supply agreements will be entered into for a period of three years' duration, for fixed tonnages of hot coil and/or cold coil re-roll product and/or finished FRPs.

No other transitional arrangements are anticipated to be required, other than possibly certain short-term telecommunications, IT and office-sharing arrangements, whilst staffs of the retained Alcan businesses (for example, accounts, IT and administration staff based at Göttingen) that are not employed by the Alcan FRP Divestment Business are transferred to new premises.

The identification and transfer of the relevant personnel, buildings, equipment and other assets to be transferred to the Alcan FRP Divestment Business shall be undertaken by Alcan under the supervision of the Monitoring Trustee in accordance with paragraph 32(e)(ii).

2.3.63. Part B – The Pechiney FRP Divestment Business

2.3.64. Ownership structure

The Pechiney FRP Divestment Business comprises:

- Pechiney’s rolling mill and associated facilities at Neuf-Brisach (F);
- relevant research and development employees and facilities located at Voreppe (F);
- Pechiney’s aluminium foil mill and associated facilities located at Rugles (F); and
- at the purchaser’s option, Pechiney’s rolling mill and associated facilities at Anney (F) and/or Alcan’s Latchford (UK) recycling and ingot casting facility.

2.3.65. Management structure

The Neuf-Brisach rolling mill is part of Pechiney’s Aluminium Conversion business sector, which is headquartered in Paris, although it is believed that there are additionally management located at Neuf-Brisach. The Anney and Rugles facilities are both part of Pechiney’s Foil and Strip/Specialities business sector.

2.3.66. Production and other assets (tangible and intangible)

In addition to the production facilities at Neuf-Brisach, Anney and Rugles, the relevant Pechiney businesses are believed to have non-production (management and administration) facilities at Paris (F).

The production of each plant in 2002 (as estimated by CRU) is set out below. .

Product	Neuf-Brisach (000 tonnes)	Annecy (000 tonnes)	Rugles (000 tonnes)	Total (all three plants) (000 tonnes)	Share of Western European production (all three plants) (%)
All FRPs	363	25	0	388	10.3
All standard FRPs (incl. painted sheet)	110	25	0	110	5.2
Automotive	14	0	0	14	<1*
Brazing sheet	13	0	0	13	8.8
Bright sheet	0	0	0	0	0
Beverage can body	141	0	0	141	39.5
Beverage can end	64	0	0	64	26.6
Food can body	21	0	0	21	32.3
Lithographic sheet	0	0	0	0	0
Painted sheet	9	10	0	19	6.0
Aerospace	0	0	0	0	0
Other (foil (non-FRP))	0	0	45	45	n/a***
Hot mill capacity	533	0	0	533	11.7
Cold mill capacity	334	34	0**	423	9.5

Source: CRU.

* steel and aluminium automotive FRPs.

** Rugles has rolling capacity of 55,000 tonnes for production of aluminium foil.

*** Rugles' share (2002) of Western European foil production is 6.7% (2002).

2.3.66.1. Neuf-Brisach

The Neuf-Brisach facility, which was established in 1965, has hot and cold rolling mills and finishing assets. It also has an on-site sheet ingot casting facility for remelting scrap and used aluminium.

Neuf-Brisach's hot mill has an annual capacity of 533,000 tonnes (11.7% of Western European hot mill capacity). Its cold mill has an annual capacity of 334,000 tonnes (8.7% of cold mill capacity). Total production in 2002 was (according to CRU) 363,000 tonnes (9.8% of Western European production), of which 85% was sold to third parties. Internal sales were an estimated 30,000 tonnes of hot coil supplied to Annecy for further cold rolling and finishing, and an estimated 55,000 tonnes of foilstock supplied to Pechiney's foil rolling and packaging operations (notably Rugles). In November 2002, a new duplex furnace was opened at Neuf-Brisach, with an additional production capacity of 53,000 tonnes per annum.

2.3.66.2. Annecy

The Annecy rolling mill has both a hot mill and a cold mill, with an annual capacity of around 34,000 tonnes. Some hot coil and/or cold coil re-roll is sourced from Neuf-Brisach. Annecy produces mainly circles (estimated capacity 20-25,000 tonnes) and painted sheet (estimated capacity 10,000 tonnes). All output is sold to third parties, and represents approximately 0.7% of Western European production of FRPs.

2.3.66.3. Rugles

The Rugles facility produces aluminium foil (approximately 45,000 tonnes per annum). It has a cold mill and a continuous caster for producing hot coil for cold rolling to produce aluminium foil. Rugles' share of Western European aluminium foil production was approximately 6.7% in 2002.

2.3.66.4. Research and development

Product and process research and development activities are believed to be predominantly carried out at the rolling mills and customer technical support staff are based either at the rolling mills or at sales offices. All R&D staff and facilities located at the plants that will be divested will be included in the business transferred to the purchaser. Certain research and product and process development functions are presently carried out at Pechiney's central R&D facility at Voreppe (F). In relation to these activities, Alcan will transfer to the Pechiney FRP Divestment Business, prior to its divestment, all personnel and necessary, equipment and other assets at Voreppe that are presently used by Pechiney to support the Pechiney FRP Divestment Business and, if required will establish a separate a distinct building for them. This will ensure that it has full ownership of all necessary R&D activities. The identification and transfer of the relevant personnel, buildings, equipment and other assets at Voreppe shall be undertaken by Alcan under the supervision of the Monitoring Trustee in accordance with paragraph 32(e)(ii).

2.3.67. Financial data (2002)

According to Pechiney's 2002 Form 20-F, in 2002, Pechiney's "cans, automotive and standard rolled products" division had sales of € 721 million and shipped 307,000 tonnes of product (including intra-group shipments). Annecy shipped approximately 25,000 tonnes of product in 2002, including 16,000 tonnes of circles. Rugles shipped approximately 50,000 tonnes of product in 2002, principally aluminium foil. Total sales are therefore in the order of € 800 million.

2.3.68. Principal contracts that will be transferred to the purchaser

To the maximum extent legally possible, all principal contracts with customers and suppliers (including for gas, electricity, water and wastewater, aluminium ingot and other raw materials, including contracts with other Aluminium Pechiney businesses to be retained by Alcan) will be transferred to the purchaser. Where this is not legally possible, Alcan shall use its best efforts to propose a suitable alternative.³⁴ If this is not possible, alternative arrangements will be put in place to ensure a continued supply of primary and secondary aluminium to the Pechiney FRP Divestment Business.

³⁴ Alcan has not yet been able to ascertain the transferability of all principal contracts.

2.3.69. Principal governmental licences, permits and authorisations

It is believed that the Neuf-Brisach, Annecy and Rugles plants each has all necessary governmental licences, permits and authorisations for their operations. Alcan does not anticipate any difficulties in transferring these governmental licences, permits and authorisations.

2.3.70. Raw material and other inputs

The principal raw material for manufacturing flat rolled aluminium is primary or secondary aluminium, usually in the form of an ingot or slab.

It is believed that Neuf-Brisach, Annecy and Rugles presently purchase primary aluminium ingot and slab from Pechiney smelter at Dunkerque (F), but possibly also from its smelters at Lannemezan (F), Saint-Jean-de-Maurienne (F), Saint-Nicolas (GR) and Vlissingen (NL). Rugles sources some of its foilstock requirements from Neuf-Brisach and the remainder from third parties, including Alcan. Other significant raw material inputs are believed to be purchased from third parties.

At the request of the purchaser of the Pechiney FRP Divestment Business, Alcan will offer the purchaser an option to purchase Alcan's recycling and ingot casting facility at Latchford (UK), which has a capacity of 150,000 tonnes. Existing arrangements with Pechiney group smelters and Alcan will be continued on a transitional basis, at the purchaser's request.

2.3.71. Intellectual property rights

It is not known if the Pechiney FRP Divestment Business owns or exploits any intellectual property rights at Neuf-Brisach, Annecy and/or Rugles. Any such rights that Pechiney owns that are exploited by the Pechiney FRP Business will be licensed to the purchaser, in conformity with normal industry practice, to enable it to continue to exploit such intellectual property within (but limited to) the Pechiney FRP Divestment Business.

2.3.72. Employees

It is estimated that the number of employees of the Pechiney FRP Divestment Business is approximately 1,740 (1,500 at Neuf-Brisach and 240 at Annecy); this does not include the staff presently employed at Voreppe in relation to the Pechiney FRP Divestment Business (who represent approximately 50 persons), who will be transferred to the purchaser. The number of employees at Rugles is not known, but is estimated to be in the order of 200. All relevant employees will be included with the Pechiney FRP Divestment Business, including all sales, marketing, administrative and other staff.

2.3.73. Anticipated transitional arrangements

If the purchaser so requests, transitional aluminium ingot supply agreements will be put in place with Pechiney's smelters (for a period of up to 3 years) and with Alcan (should Rugles be acquired), as will an agreement for Pechiney's downstream foil mills (other than Rugles) to purchase a quantity of FRP for further processing to produce aluminium foil. Arrangements may also be required for the supply of aluminium foil from Rugles to the packaging businesses of Pechiney and/or Alcan where there are existing supply relationships. No other transitional arrangements should be necessary, other than short-term telecommunications, IT, administration services and office space occupancy (for example, at Paris).

The identification and transfer of the relevant personnel, buildings, equipment and other assets to be transferred to the Pechiney FRP Divestment Business shall be undertaken by Alcan under the supervision of the Monitoring Trustee in accordance with paragraph 32(e)(ii).