RIO TINTO ALCAN INC.

Case COMP/39.230 - Réel/Alcan

Proposed Commitments under Article 9 of Council Regulation (EC) No 1/2003

[...] 2012

Freshfields Bruckhaus Deringer
In accordance with Article 9 of Council Regulation (EC) No. 1/2003, Rio Tinto Alcan Inc. (RTA) hereby gives the following Commitments (the Commitments) to address the competition concerns identified by the European Commission (the Commission) in Case No. COMP/E-2/39.230 – Réel/Alcan. Those concerns are laid out in the Statement of Objections of 20 February 2008 (the Statement of Objections) and the Preliminary Assessment of 11 July 2012 (the Preliminary Assessment) and are based on the Commission’s interpretation of Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).

Consistent with Article 9 of Regulation 1/2003, these Commitments are given by RTA on the understanding that the Commission will adopt a decision pursuant to Article 9 of Regulation 1/2003 that there are no grounds for further action by it. Nothing in these Commitments may be construed as implying that RTA agrees with the competition concerns expressed by the Commission in the Statement of Objections and/or the Preliminary Assessment. RTA nevertheless offers these Commitments pursuant to Article 9 of Regulation 1/2003 to address the Commission’s competition concerns. For the avoidance of all doubt, RTA disagrees strongly with the Commission’s Statement of Objections and Preliminary Assessment and it denies, and these Commitments are given without any admission that, RTA is dominant on any relevant market or has engaged in any conduct contrary to Articles 101 or 102 TFEU or any other aspect of EU competition law. The Commitments are made without prejudice to RTA’s position should the Commission conduct proceedings or commence any other administrative or legal proceedings concerning the competition concerns identified by it in the Statement of Objections and/or the Preliminary Assessment.

1. **COMMITMENTS**

1. RTA commits that from the Effective Date and during the Term of these Commitments:

   (i) it will modify the terms of all TTA entered into after the Effective Date so that any Licensee of the AP Aluminium Smelter Technology who enters into a TTA after the Effective Date will (subject to clause 2 below) be entitled to purchase PTAs from ECL or from a Recommended PTA Supplier (for the relevant AP Aluminium Smelter Technology Family); and

   (ii) it will introduce an objective and non-discriminatory pre-qualification process, which will allow a Third Party PTA Supplier the opportunity to pre-qualify its PTAs as meeting the Specifications for the relevant AP Aluminium Smelter Technology Family such that it can become a Recommended PTA Supplier in accordance with the procedures set forth in these Commitments.
2. A Licensee may select a Third Party PTA Supplier to supply PTAs for a particular Aluminium Smelter Based On AP Aluminium Smelter Technology if the Third Party PTA Supplier has been and remains (see paragraph 6) pre-qualified as a Recommended PTA Supplier for the relevant AP Aluminium Smelter Technology Family prior to signature by that Licensee of the corresponding TTA. If a Recommended PTA Supplier is selected by a Licensee for a particular Aluminium Smelter Based On AP Aluminium Smelter Technology and the PTA has been completed, additional steps in relation to the PTA will be required prior to production line start-up, following industry practice, namely: a design review; a Factory Acceptance Test (FAT); and commissioning. The qualification process is set out in Annex 1 of these Commitments, which describes as well these additional steps.

3. AP will provide Specifications to any Third Party PTA Supplier that requests such access, subject to it having first entered into a non-disclosure agreement which will include a requirement that the Third Party PTA Supplier maintains the confidentiality of the Specifications. However, AP will be entitled to refuse to supply the Specifications to any Third Party PTA Supplier located in, or controlled by an entity in, any IP Sensitive Country.

4. Subject to paragraph 6, the pre-qualification process will only be required to be undertaken once by each Third Party PTA Supplier for PTAs intended by that Third Party PTA Supplier for installation in a smelter constructed using a particular AP Aluminium Smelter Technology Family.

5. The Specifications for each AP Aluminium Smelter Technology Family may change over time as the technology continues to be developed. AP will provide Recommended PTA Suppliers the updated version of the Specifications from time to time, as and when such updates are developed and enter into force.

6. A Recommended PTA Supplier must remain in compliance with the applicable Specifications. If a Recommended PTA Supplier no longer complies with the applicable Specifications, their pre-qualification will no longer be valid, and the pre-qualification process must be repeated.

7. All costs related to the pre-qualification process (and, if applicable, each design review, FAT and commissioning) will be borne by the relevant Third Party PTA Supplier, including, for the avoidance of doubt, such costs as may reasonably be incurred by RTA, the Monitoring Expert or any third party reasonably engaged by them.

8. These Commitments will not apply: (i) to any TTA for an Aluminium Smelter Based On AP Aluminium Smelter Technology project in which RTA (or the group of companies to which RTA belongs) has a Material Ownership Interest; or (ii) to any TTA for an Aluminium Smelter Based On AP Aluminium Smelter Technology located in a jurisdiction outside the relevant geographic market, which in this case has been considered on a preliminary basis by the Commission to be wider than EEA and likely worldwide excluding China.
2. MONITORING EXPERT

I. Appointment Procedure

9. RTA shall appoint a Monitoring Expert to monitor RTA’s compliance with these Commitments. The Expert shall be independent of RTA (and any other undertaking directly or indirectly controlled or affiliated with RTA) and any competitor of RTA (and any other undertaking directly or indirectly controlled or affiliated with any competitor of RTA), and shall neither have nor become exposed to a conflict of interest and shall possess the necessary qualifications to carry out its mandate, including expertise as a crane manufacturer, for specialised industrial cranes with a technical level of customisation equivalent to that required to manufacture a PTA, and significant operational experience.

10. The Expert shall be remunerated by RTA and/or the Third Party PTA Supplier (as set out elsewhere in this document) in a way that does not impede the independent and effective fulfilment of its mandate; for the avoidance of doubt, remuneration of the Expert for the fulfilment of task 18(a) below will be by the Third Party PTA Supplier, remuneration for the other tasks set out in these Commitments will be by RTA.

Proposal by the Parties

11. No later than one week after the Effective Date, RTA shall submit a list of one or more persons whom RTA proposes to appoint as the Monitoring Expert to the Commission for approval. RTA will initially propose at least two suitable individuals or institutions to act as the Monitoring Expert. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 9 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Expert to fulfil its duties under these Commitments; and

(b) the outline of a plan which describes how the Expert intends to carry out its assigned tasks.

Approval or rejection by the Commission

12. The Commission shall have the discretion to approve or reject the proposed Expert and to approve the proposed mandate subject to any modifications it deems necessary for the Expert to fulfil its obligations. If only one candidate is approved, RTA shall appoint it or cause it to be appointed as Expert, in accordance with the mandate approved by the Commission. If both candidates are approved, RTA shall be free to choose the Expert to be appointed from among the two. The Expert shall be appointed within one week of the Commission’s approval, in accordance with the mandate approved by the Commission.

Replacement, discharge and reappointment of the Expert
13. If the Expert ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Expert to a conflict of interest:

(a) the Commission may, after hearing the Expert, require RTA to replace the Expert; or

(b) RTA, with the prior approval of the Commission, may replace the Expert.

14. If the Expert is removed, the Expert may be required to continue in its function until a new Expert is in place to whom the Expert has effected a full hand over of all relevant information. The new Expert shall be appointed in accordance with the procedure referred to above.

15. Beside the removal according to paragraph 13, the Expert shall cease to act as Expert only after the Commission has discharged it from its duties after all the Commitments with which the Expert has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Expert if it subsequently appears that the relevant commitments might not have been fully and properly implemented.

*New proposal by the Parties*

16. If all of the proposed Experts are rejected or if an Expert is to be replaced in accordance with paragraph 13, RTA shall submit the names of at least two more suitable individuals or institutions within two months of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 9 to 12.

*Expert nominated by the Commission*

17. If all further proposed Experts are rejected by the Commission, the Commission shall nominate an Expert, whom RTA shall appoint, or cause to be appointed, in accordance with an Expert mandate approved by the Commission.

**II. Functions of the Trustee**

*Duties and obligations of the Monitoring Expert*

18. The Monitoring Expert shall:

(a) undertake the tasks assigned to it in the pre-qualification process, as set out in Annex 1;

(b) report any negative pre-qualification decision, and any pre-qualification decision including mitigation measures, to the Commission;

(c) report to the Commission regarding the classification of any country as an IP Sensitive Country;
(d) provide to the Commission, sending RTA a non-confidential copy at the same time, a written report within 6 months of the Effective Date, and every year thereafter, on RTA’s compliance with the Commitments.

Duties and Obligations on RTA

19. RTA shall provide the Monitoring Expert with all such co-operation, assistance and information, as the Monitoring Expert may reasonably require in carrying out his mandate. The Expert shall have full and complete access, subject to reasonable notice, to any of RTA’s books, records, documents, management or other personnel, facilities, sites and technical information, save for legally privileged material, which is necessary for the Expert to fulfil its duties under the Commitments, and RTA shall provide the Expert upon request with copies of any such document. RTA shall be available for meetings in order to provide the Expert with all information that is reasonably necessary for the performance of its tasks.

3. TERM OF THE COMMITMENTS

20. RTA will implement the Commitments within two months of the adoption of the Commission’s corresponding Article 9 decision.

21. The Commitments will apply to all requests for tender related to the licensing of AP Aluminium Smelter Technology issued to AP within five years from the Effective Date (the Term) even if the relevant TTA is concluded subsequent to the Term expiring. The Commitments will also apply to requests for tender related to the licensing of AP Aluminium Smelter Technology issued before the Effective Date, for as long as the contract has not been awarded before the Effective Date.

4. COMMITMENTS WITH REGARD TO NON-CIRCUMVENTION

22. These Commitments are intended to establish a system whereby Third Party PTA Suppliers which satisfy the Specifications will be able to compete to supply PTAs to Licensees. RTA will not in any way circumvent or attempt to circumvent these Commitments.

5. DEFINITIONS

Aluminium Smelter Based On AP Aluminium Smelter Technology means an aluminium smelter (to be) constructed and operated using an AP Aluminium Smelter Technology in accordance with a licence granted by AP.

AP means Aluminium Pechiney S.A.S., an indirect wholly-owned subsidiary of RTA.

AP Aluminium Smelter Technology means, as relevant for each proposed Aluminium Smelter Based On AP Aluminium Smelter Technology: the technical documentation to be supplied by AP; the technical information relating to the smelter design, construction, start-up and operation to be supplied by AP; the patents and patent applications of AP required for smelter construction and operation; and the process invented and developed by AP for the production of aluminium by electrolytic reduction of alumina using the specified level of electric current, for the
production of aluminium in any country (with the exception of IP Sensitive Countries).

**AP Aluminium Smelter Technology Family** means each “family” of the technology developed by AP for the production of aluminium by the electrolytic reduction of alumina by the Hall-Héroult Process in reduction cells equipped with prebaked anodes available for license to third parties and operating at an amperage of up to 450 kA, commonly known as the AP-18 “family” (including the AP-18, AP-22 and AP-24 variants) and the AP-30 “family” (including the AP-36, AP-37, AP-39 and AP-40 variants), including in each case any increased amperage variants of these respective families that may be developed and made available for licensing to third parties at any time during the Term of these Commitments.

**ECL** means Électrification Charpente Levage – ECL S.A.S.U., an indirect wholly-owned subsidiary of RTA.

**Effective Date** means the date on which RTA implements these Commitments in accordance with clause 8.

**IP Sensitive Country** means any country identified from time to time in the first two categories of priority countries in the IPR Enforcement Report of the Directorate General for Trade of the Commission. The Monitoring Expert (in consultation with RTA) may report to the Commission regarding any additional country which in its view should also be included as an IP Sensitive Country by reason of no or insufficient legal protection for RTA’s intellectual property, including by reason of insufficient legal or other means of enforcement of its intellectual property rights. The Commission will ultimately adjudicate on whether, in view of those reasons and/or alternative reasons, the country in question should be considered an IP Sensitive Country.

**Licensee** means a third party that has entered into a licence agreement with RTA or AP for a licence of the AP Aluminium Smelter Technology to build and operate an aluminium smelter using that licensed AP Aluminium Smelter Technology and to sell aluminium produced at the said aluminium smelter.

**Material Ownership Interest** means a direct or indirect ownership interest of 15% or more (whether by shareholding, quotaholding, partnership interest or otherwise).

**Monitoring Expert** or **Expert** means the expert to be appointed pursuant to section 2 above.

**PTA** means a pot tending assembly for use in an aluminium smelter.

**Recommended PTA Supplier** means a Third Party PTA Supplier which has been and remains (see paragraph 6) pre-qualified to supply PTAs for a particular AP Aluminium Smelter Technology Family in accordance with the procedure set out in these Commitments.

**RTA** means Rio Tinto Alcan Inc. or any of its affiliated undertakings involved into the licensing of the AP Aluminium Smelter Technology to construct and operate an AP
Aluminium Technology Smelter. Affiliated undertakings are the undertakings controlled by Rio Tinto Alcan Inc. and/or by the ultimate parents of Rio Tinto Alcan Inc., whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) N0139/2004 on the control of the concentrations between undertakings.

**Specifications** means the specifications applicable from time to time for a specific AP Aluminium Smelter Technology Family that must be satisfied in order for a model of PTA to be installed and operated within a smelter built using that technology which will be disclosed by AP for the purposes of pre-qualification of a specific model of PTA in relation to each AP Aluminium Smelter Technology Family and which contain sufficient detail for an experienced PTA manufacturer to develop and manufacture a suitable model of PTA, and substantially including the categories of information provided in Annex 2 of these Commitments.

**Third Party PTA Supplier** means a supplier of PTAs other than ECL.

**TTA** means a Technology Transfer Agreement entered into between RTA or AP and a Licensee for the licensing of the AP Aluminium Smelter Technology to construct and operate an Aluminium Smelter Based On AP Aluminium Technology.

Signed on […] 2012
For and on behalf of

**Rio Tinto Alcan Inc.**

[Name]
[Title]
Annex 1

Qualification process and additional steps prior to production line start up

(1) Pre-qualification and risk review process

1. A Monitoring Expert will evaluate the Third Party PTA Supplier’s past experience, considering similar applications and comparing the Third Party PTA Supplier’s existing equipment with the Specifications. Such analysis typically includes site visits and measurement campaigns, as well as sending design, technology, operation and maintenance experts to perform a complete assessment of the Third Party PTA Supplier’s capabilities.

2. Next, a risk review process will be performed by the Monitoring Expert, with the assistance of AP and/or RTA (but excluding ECL).

3. On the basis of this pre-qualification and the risk review process, the Monitoring Expert will issue a decision whether or not the Third Party PTA Supplier qualifies as a Recommended PTA Supplier, including mitigation measures if required. A negative decision or a decision including mitigation measures shall be adequately reasoned.

4. The Monitoring Expert and RTA will undertake their best efforts so that this pre-qualification and risk review process takes no longer than three to six months.

5. In the event of a negative decision, the Third Party PTA Supplier in question may, not sooner than 6 months after the negative decision, re-submit a request for pre-qualification. In such instance, the above procedure will be repeated.

(2) Additional steps prior to production line start-up, according to industry practice

(2.1) Design review

6. If a Recommended PTA Supplier is selected by a Licensee for a particular Aluminium Smelter Based On AP Aluminium Smelter Technology, once the design of the equipment has been completed a team of AP technical, operational and maintenance experts will review the design of the equipment against AP’s specifications for that Aluminium Smelter Based On AP Aluminium Smelter Technology project, together with representatives of the relevant Engineering Procurement and Construction Management firm (if applicable) and the Aluminium Smelter Based On AP Aluminium Smelter Technology project owner. The design review phase is completed by a report recommending the design for fabrication or requesting some modifications to ensure compliance with AP’s specifications.

7. RTA will undertake its best efforts so that this design review takes no longer than two weeks.
(2.2) Factory Acceptance Test (FAT)

8. Once the design review is complete, and the equipment has been manufactured to AP’s specifications, the AP experts will undertake the FAT; the FAT typically addresses the functionality of sub-assemblies and is performed at the Third Party PTA Supplier’s manufacturing workshop.

9. RTA will undertake its best efforts so that this FAT takes no longer than two weeks.

Commissioning

10. Once the FAT has been successfully completed, the equipment is then shipped to the smelter site and erected in the Aluminium Smelter Based On AP Aluminium Smelter Technology, following which pre-operational verifications (POVs) are performed. After completion of the POVs, AP experts will witness the commissioning of the equipment. Upon successful completion of commissioning, the equipment is then ready for start-up and the production line can be energized.

11. RTA will undertake its best efforts so that this commissioning takes no longer than two to four weeks.
### Annex 2

**Outline of the Specifications**

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|      |   - Changing the anode  
|      |   - Metal tapping  
|      |   - Installing anode beam raising frame  
|      |   - Feeding fluoride alumina |
| 1.8  | - Minimum availability rate of the PTA |
| 1.9  | - Electrical insulation architecture and control mode |
| 1.10 | - Operating procedures |
| 1.11 | - Metal tapping weighing device performance |
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| 1.13 | - Environmental working conditions:  
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<td>- Crust breaker feeder</td>
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*Note* Specifications only given in general form

2 Set of drawings

2.1 - Potline building section  
- General pot assembly  
- Anode assembly

*Note* Specifications only given in general form

3 General Regulatory Compliance

3.1 - Electrical compliance (power voltage, control voltage, network, programmable logic controller (PLC), variable frequency drive (VDF))  
- Mechanical compliance  
- Compliance regarding certain minor components

4 Safety Requirements

4.1 - Verify PTA complies with local and national safety regulations  
- Verify PTA complies with RTA’s and/or customer’s safety standards for operation and maintenance

5 PTA tracking (data acquisition)

5.1 - Operation tracking  
- Default tracking  
- Maintenance tracking

6 Level of PTA automation

7 Maintenance Procedures

7.1 - Maximum available time to change major equipment

8 Equipment test procedure

8.1 - POV (Pre-Operational Verification)  
- NOV (Normal Operation Verification)  
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