UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ALCAN ALUMINIUM LIMITED, ALCAN ALUMINUM CORPORATION, and ATLANTIC RICHFIELD COMPANY, Defendants.	Civil Action No.: C-84-1028-L-A Filed: 10/5/84

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendants under Section 15 of the Clayton Act (15 U.S.C. § 25), as amended, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act (15 U.S.C. § 18), as amended.

2. Alcan Aluminium Limited, through its subsidiary Alcan Aluminum Corporation, transacts business and is found within the Western District of Kentucky.

3. Atlantic Richfield Company maintains offices, transacts business, and is found within the Western District of Kentucky.

II.

DEFINITIONS

4. As used herein:

a. The term "body stock" means a rolled aluminum product used to manufacture the bottoms and sides of cans for beer and soft drinks.

b. The term "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2+30^2+20^2+20^2=2,600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

III.

THE DEFENDANTS

5. Alcan Aluminium Limited ("Alcan") is made a defendant herein. Alcan is a corporation organized and existing under the laws of Canada, with its principal offices in Montreal, Canada. Alcan is one of the largest producers of aluminum products in the world and is engaged in all phases of the aluminum business. In 1983, Alcan had revenues of $5.2 billion, more than three-fourths of which came from the sale of aluminum products.

6. Alcan Aluminum Corporation ("Alcancorp") is made a defendant herein. Alcancorp is a corporation organized and existing under the laws of the State of New York, with its principal offices in Cleveland, Ohio. Alcancorp is a wholly-owned subsidiary of Aluminum Company of Canada, Limited, a Canadian corporation which is in turn a wholly-owned subsidiary of Alcan. Alcancorp operates rolling mills and other fabricating facilities in the United States owned by its immediate parent and acts as sales agent for Alcan aluminum products manufactured in other countries.

7. Atlantic Richfield Company ("Arco") is made a defendant herein. Arco is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal offices in Los Angeles, California. Arco is primarily engaged in the petroleum industry and had 1983 revenues of

$26.3 billion. Arco entered the aluminum industry in 1977 with its acquisition of Anaconda Aluminum Company. Arco's aluminum business is operated through Arco Aluminum Company, a division of Arco Metals Company, which is in turn a division of Arco. Arco Metals Company and Arco Aluminum Company are headquartered in Rolling Meadows, Illinois. Arco Aluminum Company's sales and marketing personnel are at offices in Louisville, Kentucky. Arco's 1983 revenues from the sale of aluminum products were $718 million.

IV.

TRADE AND COMMERCE

8. The production of aluminum begins with the mining of bauxite ore. Bauxite is refined by a chemical process into alumina, which is further reduced by electrolysis into primary aluminum. Primary aluminum is converted into fabricated or semi-fabricated aluminum products by one of four processes: rolling, extruding, drawing, or forging. Each is a distinct procedure used to make specific types of aluminum products.

9. Approximately half of all primary aluminum is converted into flat rolled products, which are generally classified by thickness as plate, sheet, or foil. In the rolling process aluminum is cast into a rectangular shape, or ingot, and its thickness is reduced by forcing it through sets of rollers that apply pressure to the top and bottom of the metal.

10. A typical rolling mill contains a hot mill, which performs the initial reduction of the ingot, one or more cold mills, which finish the metal to the desired thickness and width, and a variety of ancillary equipment. A rolling mill may also contain only cold mills, in which case it must obtain partially processed sheet from a facility with a hot mill. Rolling mills fabricate a wide range of products, including plate used for trailer trucks, siding for houses, sheet for making cooking utensils, and household foil.

11. Can stock used in making beer and soft drink cans accounts for nearly half of all sales of rolled aluminum products. Different types of can stock, containing different alloys, are used to make the bodies, ends, and tabs of aluminum beverage cans.

12. Alcancorp operates three rolling mills in the United States, located in Oswego, New York, Warren, Ohio, and Fairmont, West Virginia. Alcancorp currently produces body stock at its mill in Oswego.

13. Arco has four rolling mills in the United States, three of which it proposes to sell to Alcan. Those three are located in Terre Haute, Indiana, Louisville, Kentucky, and Logan County, Kentucky. The Logan County mill was completed in October 1983 at a cost of more than $400 million. It is currently being phased into production. Arco will produce body stock at its Logan County mill.

14. Body stock is sold to can manufacturers in large coils. As the body stock is fed into can-making machines, a circular piece of aluminum is stamped out and formed into a small cup. A machine then "draws" the cup to the desired height of the can and "irons" the surface to make it smooth and of even thickness. The can is later sealed with a lid made of end stock and an easy-open tab made of tab stock.

15. Body stock differs from all other beverage container materials, including steel, glass, and plastic, in its physical characteristics, means of production, and pricing. The aluminum industry and purchasers of body stock consider it a product distinct from other beverage container materials. Steel, glass, and plastic are not satisfactory competitive substitutes for aluminum can stock in beer and soft drink containers. Aluminum end and tab stock are made of harder alloys and require more powerful mills and more mill time to produce than body stock. End, tab, and body stock differ in their prices and their end uses. Some companies that produce body stock do not have the capability of manufacturing end or tab stock. The manufacture and sale of body stock constitutes a separate line of commerce.

16. Body stock is sold throughout the United States, and manufacturers of body stock compete for sales to customers throughout the United States. Alcancorp sells body stock nationwide and Arco plans to do so. The United States constitutes a geographic market for the sale of body stock.

17. In 1983, sales of body stock in the United States were approximately $2 billion. Imports accounted for approximately five percent of those sales. Since information concerning available capacity, including available foreign capacity, is not sufficiently certain, sales are the most appropriate basis for calculating market shares.

18. The body stock market is highly concentrated. In 1983, the four largest manufacturers accounted for 87.9 percent of all sales of body stock in the United States, and the HHI was approximately 2300. Only seven domestic companies made body stock last year. Arco will be the eighth domestic producer.

19. In 1983, Alcancorp accounted for 13.5 percent of total body stock sales in the United States, an increase from its market share of 7.7 percent in 1979.

20. Arco's new Logan County rolling mill was designed to make aluminum can stock for beverage containers. The Logan County mill has state-of-the-art technology to allow it to meet the most stringent requirements of body stock purchasers. The Logan County facility is the only rolling mill built in the United States in at least ten years. Arco will be an important producer of body stock, and its entry will substantially deconcentrate the body stock market and have other significant procompetitive effects.

21. There are high barriers to entry into the production of body stock. The acceptable margin for error in meeting customer specifications for body stock is very small, and the production of body stock is a sophisticated and technologically-demanding process compared to the production of most other rolled aluminum products. Rolling mills must be specifically designed or modified to produce body stock. The modification of an existing mill or construction of a new facility is costly and takes at least a year. In addition, a new entrant into body stock manufacturing must "qualify" with each can-making plant of each customer before it will be accepted as a supplier at that plant. Qualification is a multi-step process that takes between three and fifteen months.

22. There are no other potential domestic or foreign entrants who are as well situated or as likely to enter the United States body stock market on a large scale as Arco. No other potential entrant would have as significant a procompetitive effect on the body stock market.

23. Alcancorp, Alcan through Alcancorp, and Arco sell and ship substantial quantities of aluminum products from locations in one state or outside the United States to locations in other states throughout the United States. Alcan, Alcancorp, and Arco are engaged in interstate commerce.

V.

VIOLATION ALLEGED

24. On March 9, 1984, Alcan and Arco entered into an agreement whereby Alcan would acquire Arco's rolling mills in Terre Haute, Indiana, Louisville, Kentucky, and Logan County, Kentucky, and other assets. The fixed assets located in the United States would be transferred by Arco to a newly-formed corporation, and the new corporation then would be merged with Alcancorp. The other assets being acquired, including working capital, would be purchased directly by Alcan.

25. The effect of the acquisition alleged in paragraph 24, if consummated in the form specified in the March 9 agreement, may be substantially to lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

a. Potential competition between Alcan, including Alcancorp, and Arco in the manufacture and sale of body stock will be eliminated; and

b. Competition generally in the manufacture and sale of body stock may be substantially lessened.

PRAYER

WHEREFORE, Plaintiff prays:

1. That a permanent injunction be issued preventing and restraining the defendants and all persons acting on their behalf from consummating the agreement alleged in paragraph 24

or any other plan or agreement to sell part or all of Arco's Logan County rolling mill to Alcan, except on such terms and conditions as may be agreed to by plaintiff and the Court.

2. That the proposed acquisition be adjudged a violation of Section 7 of the Clayton Act.

3. That the plaintiff have such other and further relief as the nature of this case may require and as this Court may deem just and proper.

4. That the plaintiff recover the costs of this action.

Dated:

J. Paul McGrath by MFF
J. PAUL MCGRATH
Assistant Attorney General

Angela L. Hughes by SCD
ANGELA L. HUGHES

Mark Leddy
MARK LEDDY

Frank Seales, Jr by RSN
FRANK SEALES, JR.

Steven C. Douse
STEVEN C. DOUSE

Richard S. Nicholson
RICHARD S. NICHOLSON

Attorneys for the
United States

United States Department
of Justice

Attorneys for the
United States

United States Department
of Justice
Antitrust Division
Washington, D.C. 20530
(202) 724-6486

RONALD E. MEREDITH
United States Attorney
Western District of Kentucky