

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

Notice published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case 39.230 — Réel/Alcan

(notified under document C(2012) 5758)

(Text with EEA relevance)

(2012/C 240/08)

1. INTRODUCTION

(1) According to Article 9 of Council Regulation (EC) No 1/2003⁽¹⁾, the Commission may decide — in cases where it intends to adopt a decision requiring that an infringement is brought to an end and the parties concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment — to make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the Commission. According to Article 27(4) of the same Regulation, the Commission shall publish a concise summary of the case and the main content of the commitments. Interested parties may submit their observations within the time limit fixed by the Commission.

2. SUMMARY OF THE CASE

(2) On 11 July 2012, the Commission adopted a preliminary assessment, pursuant to Article 9(1) of Regulation (EC) No 1/2003, concerning alleged infringements of the international aluminium producer Rio Tinto Alcan ('Alcan').

(3) According to the preliminary assessment, Alcan's practice of contractually tying the licences of its Aluminium Pechiney ('AP') aluminium smelting (reduction) technology to the purchase of certain speciality cranes for aluminium reduction plants, so-called pot tending assemblies (PTAs), supplied by Alcan's subsidiary Electrification Charpente Levege SASU ('ECL'), may result in an infringement of Articles 101 and 102 of the TFEU and Articles 53 and 54 of the EEA Agreement. In its preliminary assessment, the Commission considered that Alcan has a dominant position on the relevant market for the licensing of aluminium smelting technology. For the purpose of this case, this market has been considered to be wider than

EEA and likely worldwide excluding China ('the relevant geographic market'). The preliminary assessment expressed the concern that Alcan's contractual practice may produce negative effects on innovation and prices and result in anticompetitive foreclosure on the relevant PTA market.

3. THE MAIN CONTENT OF THE OFFERED COMMITMENTS

(4) Alcan does not agree with the Commission's preliminary assessment. It has nevertheless offered commitments pursuant to Article 9 of Regulation (EC) No 1/2003 to meet the Commission's competition concerns. The key elements of the commitments are as follows:

(5) Alcan will modify the terms of its technology transfer agreements ('TTAs') entered into after the entry into force of the commitments, so that any licensee of the AP aluminium smelting technology will be entitled to purchase PTAs from ECL or from any recommended PTA supplier that has been determined to meet certain technical specifications for the relevant AP technology family.

(6) Alcan will also introduce an objective and non-discriminatory pre-qualification process, which will give third party PTA suppliers the opportunity to become a recommended PTA supplier. This pre-qualification process is described in more detail in Annex 1 to the commitments.

(7) Alcan will provide the technical specifications for pre-qualification to any third party PTA supplier upon request, subject to it having first entered into a non-disclosure agreement protecting the confidentiality of the specifications. Alcan will be entitled to refuse to supply the specifications to a PTA supplier located in, or controlled by an entity in, any IP sensitive country as defined in the text of the commitments.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1) ('Regulation (EC) No 1/2003').

- (8) Subject to continued compliance with the applicable technical specifications, the pre-qualification process will only have to be undertaken once by each third party PTA supplier for PTAs intended for installation in smelters for which a particular AP aluminium smelting technology family is used in construction.
- (9) The commitments will apply to all families of the technology developed by Alcan/AP for the production of aluminium through the electrolytic reduction of alumina by the Hall-Heroult 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 the commitments.
- (10) The commitments will not apply to aluminium smelter projects based on AP aluminium smelting technology in which Alcan (or the group of companies to which Alcan belongs) has an ownership interest of 15 % or more or to projects located in a jurisdiction outside the relevant geographic market.
- (11) The commitments will apply to all requests for tender related to the licensing of AP aluminium smelting technology addressed to AP within five years from the commitments becoming effective ('the term'), even if the relevant TTA is concluded after the end of the term.
- (12) The commitments are published in full in English on the website of the Directorate-General for Competition at:

http://ec.europa.eu/competition/index_en.html

4. INVITATION TO MAKE COMMENTS

- (13) The Commission intends, subject to market testing, to adopt a decision under Article 9(1) of Regulation (EC) No 1/2003 declaring the commitments summarised above and published on the Internet, on the website of the Directorate-General for Competition, to be binding. If there are substantial changes to the commitments, a new market test will be launched.
- (14) In accordance with Article 27(4) of Regulation (EC) No 1/2003, the Commission invites interested third parties to submit their observations on the proposed commitments. If possible, comments should be reasoned and should set out the relevant facts. If a problem is identified, the Commission explicitly invites the respondent to submit a proposal for a solution.
- (15) All observations must reach the Commission not later than one month following the date of this publication. Interested third parties are also requested to submit a non-confidential version of their comments, in which any information they claim to be business secrets and other confidential information should be deleted and replaced as required by a non-confidential summary or by the words 'business secrets' or 'confidential'.
- (16) Observations can be sent to the Commission under reference number COMP/E-2/39230 — Réel/Alcan either by e-mail (COMP-GREFFE-ANTITRUST@ec.europa.eu), by fax (+32 22950128) or by post, to the following address:

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