

**Final Report of the Hearing Officer <sup>(1)</sup>****COMP/39.230 — Réel/Alcan**

(2013/C 89/05)

- (1) This proceeding concerns a contractual tying of aluminium smelting technology with handling equipment for aluminium smelters.
- (2) The case originates from a complaint lodged in 2005 by the Group Réel, a Franco-German manufacturer of specialty cranes for aluminium reduction plants. Following an investigation, the Commission adopted a statement of objections in which it took the view that Alcan <sup>(2)</sup> had infringed Article 82 of the Treaty <sup>(3)</sup> and Article 54 of the EEA Agreement since 1 January 1990. An oral hearing was held in 2008. Subsequently, the Commission undertook a further investigation and prepared a supplementary statement of objections.
- (3) On 11 July 2012, the Commission adopted a preliminary assessment pursuant to Article 9(1) of Regulation (EC) No 1/2003 <sup>(4)</sup> concerning alleged infringements of the international aluminium producer Rio Tinto Alcan ('Alcan').
- (4) According to the preliminary assessment, Alcan's practice of contractually tying the licences of its 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 ECL, may result in an infringement of Articles 101 and 102 of the TFEU and Articles 53 and 54 of the EEA Agreement. According to the preliminary assessment, Alcan has a dominant position on the relevant market for the licensing of aluminium smelting technology. The preliminary assessment expressed the concern that Alcan's contractual practice may produce negative effects on innovation and prices and result in anti-competitive foreclosure on the relevant PTA market.
- (5) In order to meet the concerns expressed by the Commission, Alcan has offered commitments <sup>(5)</sup>. On 10 August 2012, the Commission published a notice in the *Official Journal of the European Union* in accordance with Article 27(4) of Regulation (EC) No 1/2003, summarising the case, the commitments and inviting third parties to submit comments on the proposal <sup>(6)</sup>. The market test indicated that the draft commitments would be suitable to address the Commission's competition concerns, but a number of issues were raised. On November 2012, Alcan offered a revised version of the commitments, addressing these issues.
- (6) In its decision pursuant to Article 9(1) of Regulation (EC) No 1/2003, the Commission makes the commitments offered by the undertakings binding upon them and concludes that in light of the commitments offered, there are no longer grounds for action on its part, and thus the proceedings in this case should be brought to an end.
- (7) I did not receive any request or complaint from any party to the proceedings in the present case <sup>(7)</sup>. In view thereof, I consider that the effective exercise of the procedural rights of all parties in this case has been respected.

Brussels, 29 November 2012.

Michael ALBERS

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<sup>(1)</sup> Pursuant to Articles 16 and 17 of Decision of the President of the European Commission 2011/695/EU of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ L 275, 20.10.2011, p. 29).

<sup>(2)</sup> Alcan Inc., Alcan France SAS, Aluminium Pechiney SAS and Electrification Charpente Levage SASU (ECL).

<sup>(3)</sup> Now Article 102 of the TFEU.

<sup>(4)</sup> 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).

<sup>(5)</sup> The commitments offered by Alcan are available at: [http://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39230/39230\\_1873\\_5.pdf](http://ec.europa.eu/competition/antitrust/cases/dec_docs/39230/39230_1873_5.pdf)

<sup>(6)</sup> Notice published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case COMP/39.230 — Réel/Alcan (notified under document C(2012) 5758) (OJ C 240, 10.8.2012, p. 23).

<sup>(7)</sup> In accordance to Article 15(1) of Decision 2011/695/EU, parties to the proceedings offering commitments pursuant to Article 9 of Regulation (EC) No 1/2003 may call upon the hearing officer at any stage of the procedure in order to ensure the effective exercise of their procedural rights.