

**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER  
TO AID PUBLIC COMMENT**

*In the Matter of Ball Corporation and Rexam PLC*

*File No. 151-0088*

**I. INTRODUCTION AND BACKGROUND** Order to preserve  
condition that would be lessened as a result of the proposed Acquisition. The Federal Trade  
Commission (“Commission”) has accepted for public comment, subject to final approval, an  
Agreement Containing Consent Order (“Consent Agreement”).

**II. THE PARTIES**

Ball, an Indiana corporation headquartered in Broomfield, CO, is the largest manufacturer of aluminum beverage cans in the both the United States and the world. In 2015, Ball h

Although aluminum can manufacturers often ship Standard Cans several hundred miles and win bids when they are not the closest supplier, it is not common or cost-effective for Standard Cans to ship cross-country. As a result, the Complaint identifies three regional markets in the United States in which substantial competition exists between Ball and Rexam for the sale of Standard Cans: (1) the South/Southeast; (2) the Midwest; and (3) the West Coast, consisting primarily of California.

The Commission often calculates the Herfindahl-Hirschman Index (“HHI”) to assess market concentration. Under the Federal Trade Commission and Department of Justice Horizontal Merger Guidelines, markets with an HHI above 2,500 are generally classified as “highly concentrated,” and acquisitions “resulting in highly concentrated markets that involve an increase in the HHI of more than 200 points will be presumed to be likely to enhance market power.”<sup>1</sup> Absent the proposed remedy, the Acquisition would increase HHIs for Standard Cans by 1,712 points to 4,874 in the South/Southeast; by 2,201 points to 5,050 in the Midwest; and by 1,673 points to 4,680 on the West Coast. As a result, there is a presumption that the proposed merger of Ball and Rexam would substantially lessen competition in each of the regional markets for Standard Cans.

#### **IV. SPECIALTY CANS**

The second relevant line of commerce in which to analyze the Acquisition is an assortment of specialty aluminum beverage cans (“Specialty Cans”), which come in a variety of dimensions that differ from Standard Cans. Specialty Cans include 7.5-ounce and 8-ounce slim cans, which are narrower and shorter than Standard Cans; 12-ounce sleek cans, which are narrower and taller than standard 12-ounce cans; 16-ounce cans, which have the same diameter as Standard Cans but are taller; 24-ounce cans, which are wider and taller than Standard Cans; and other aluminum cans in non-standard shapes and sizes. Specialty Can sales have been growing as beverage producers seek to package their products in new shapes and sizes to reach different consumers and consumption occasions.

Beverage producers package in different types of Specialty Cans for different reasons. For example, carbonated soft drink producers package some of their products in 7.5-ounce slim cans specifically to reach consumers who want a smaller portion in an attractive, sub-100 calorie package. Popular with producers of flavored malt beverages are 8-ounce slim cans. Energy drink producers package in 16-ounce and other “sleek” cans in order to differentiate their products and convey a premium image in ways that cannot be achieved by using Standard Cans. Some tea and energy drink producers further differentiate their products and convey value by packaging in large 24-ounce cans.

Although one type of Specialty Can is not typically a substitute for another, it is appropriate to group or cluster the different Specialty Cans together for the purposes of market definition analysis because each of the products in the assortment is offered under similar

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<sup>1</sup> [2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines § 5.3.](#)

competitive conditions. As such, grouping the many different types of Specialty Cans into a single cluster enables a more efficient evaluation of competitive effects.

Beverage producers would not substitute Standard Cans, glass bottles, plastic bottles, or other container types for Specialty Cans in sufficient quantities to defeat a hypothetical, small but significant and non-transitory increase in the price of Specialty Cans. Beverage producers package in specific shapes and sizes of Specialty Cans to maximize sales and attract certain customers who would not purchase their products in a different package type. Moreover, beverage producers have made substantial investments in infrastructure that are used to fill Specialty Cans and that cannot be used to fill PET bottles or glass bottles.

The relevant geographic market in which to analyze Specialty Cans is the United States.  
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competitive harm from the Acquisition. Considerable entry barriers exist in the manufacture of Standard Cans and Specialty Cans, including, but not limited to, substantial capital costs needed to construct a new aluminum can plant and significant volume requirements necessary to run a plant efficiently. For Standard Cans, a consistent decline in demand has created a further disincentive to entry, which has led to a steady removal of capacity for over 20 years. With respect to Specialty Cans, a new entrant would be at a significant disadvantage if it were to construct new Specialty Can lines compared to incumbent suppliers (led by Ball and Rexam) that can convert Standard Can lines to Specialty Can production at lower cost.

The threat of vertical integration by beverage producers is also unlikely to deter or counteract the competitive harm from the Acquisition. A single beverage can plant requires an annual production volume in the billions of cans to run profitably, which would preclude all but the very largest beverage producers from contemplating vertical integration. Moreover, it is difficult for even the largest beverage producers to make a credible threat of vertical integration because their filling plants are spread throughout the United States in a way that they could never fully supply internally. As a result, even a large, vertically integrated beverage producer would have to continue buying at least some beverage cans from existing suppliers, but at a higher price since it would receive a smaller volume discount, ev7 fuA d pTJ -hc 0.Ianoul0(j -C)--10(, B)7c -rghr a afue

