

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney**

_____)	
In the Matter of)	
)	
BALL CORPORATION,)	
a corporation,)	
)	
and)	Docket No. C-
)	
REXAM PLC,)	
a public limited company.)	
)	
_____)	

**DECISION AND ORDER
[Public Record Version]**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Ball Corporation (“Ball”) of the voting securities of Respondent Rexam PLC (“Rexam”), collectively “Respondents,” and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed

8. All Business Records relating to

agreement between Respondent Rexam and an Acquirer and made a part of a Divestiture Agreement including, but not limited to, the Aluminum Beverage Cans Divestiture Employees.

- K. “Aluminum Beverage Cans Divestiture Employees” are certain employees working at or out of the Aluminum Beverage Cans Corporate Facility and the Aluminum Beverage Cans Technical and Engineering Facility, and are identified in Non-Public Confidential Appendix C attached to this Order.
- L. “Aluminum Beverage Cans

O. "Ardagh" means Ardagh Gr

information; correspondence; referral sources; supplier and vendor files and lists;

- c. Was available, or becomes available, to Respondent Ball on a non-confidential basis, but only if, to the knowledge of Respondent Ball, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information;
 - d. Is information the disclosure of which is consented to by the Acquirer;
 - e. Is necessary to be exchanged in the course of consummating the Acquisition or the transaction under the Divestiture Agreement or any Remedial Agreement;
 - f. Is disclosed in complying with the Order;
 - g. Is information the disclosure of which is necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries, and decisions of Government Entities; or
 - h. Is disclosed in obtaining legal advice.
- X. “Direct Cost” means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service.
- Y. “Divestiture Agreement” means:
- 1. the Equity and Asset Purchase Agreement by and among Ardagh Group S.A., Ball Corporation, and Rexam PLC, dated April 22, 2016, and all amendments, exhibits, attachments, agreements, and schedules thereto, attached to this Order as Non-public Confidential Appendix A; or
 - 2. any agreement that receives the prior approval of the Commission between Respondents (or between a Divestiture Trustee appointed pursuant to Paragraph IV. of this Order) and an Acquirer to purchase the Aluminum Beverage Cans Business, and all amendments, exhibits, attachments, agreements, and schedules thereto that have been approved by the Commission.
- Z. “Divestiture Date” means the date on which Respondent Rexam (or a Divestiture Trustee) closes on the divestiture of the Aluminum Beverage Cans Business as required by Paragraph II (or Paragraph IV) of this Order.
- AA. “Employee Access Period” means one (1) year from the Divestiture Date.

- BB. “Fairfield Facility” means the aluminum beverage cans manufacturing plant located at 2433 Crocker Circle, Fairfield, CA 94533.
- CC. “Fremont Facility” means the aluminum beverage cans manufacturing plant located at 2145 Cedar Street, Fremont, OH 43420; PROVIDED, HOWEVER, assets (including Intellectual Property) exclusively related to the

and labeling and all other information related to the manufacturing process, and supplier lists;

6. licenses including, but not limited to, third party software, if transferrable, and sublicenses to software modified by RBCC;
 7. formulations and a description of all ingredients, materials, or components used in the manufacture of products; and
 8. any other intellectual property used in the past by RBCC in the design, manufacture, and sale of products from the Aluminum Beverage Cans Business.
- GG. “Monitor” means any monitor appointed pursuant to Paragraph III of this Order or Paragraph III of the Order to Maintain Assets.
- HH. “Monitor Agreement” means the Monitor Agreement dated February 25, 2016, between ING Financial Markets LLC, and Ball Corporation. The Monitor Agreement is attached as Appendix E to this Order.
- II. “Olive Branch Facility” means the aluminum beverage cans manufacturing plant located at 10800 Marina Drive, Olive Branch, MS 38654.
- JJ. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- KK. “Patents” means pending patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Acquisition Date, and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.
- LL. “Person” means any in004 Tc 0.004(r)3(de)2onsmy ia4gF5e004(r)3(de)2onsmy ia4n”ns an4n”catinvedn4

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UU. “Valparaiso Facility” means the

Specialty Aluminum Beverage Cans Products on substantially the same terms as the Arizona-Rexam Supply Agreement.

- C. If Respondents (or a Divestiture Trustee) enters into an Arizona Contract Manufacturing Agreement with the Acquirer, Respondents shall:
1. Purchase a supply of Specialty Aluminum Beverage Cans Products from the Acquirer: (i) at the same price set forth in the Arizona-Rexam Supply Agreement; (ii) at substantially the same quality as such Specialty Aluminum Beverage Cans Products are currently manufactured; and (iii) as supplied from the manufacturing locations that are geographically close to Arizona's facilities as specified in the Arizona-Rexam Supply Agreement;
 2. Terminate, on reasonable notice and without cost or penalty to the Acquirer, the Arizona Contract Manufacturing Agreement if: (i) Arizona terminates the Arizona-Rexam Supply Agreement; or (ii) the Acquirer enters into a new agreement with Arizona for the supply of Specialty Aluminum Beverage Cans Products; and
 3. Implement procedures to ensure that Confidential Business Information pertaining to any volumes Respondents purchase from the Acquirer pursuant to the Arizona Contract Manufacturing Agreement shall not be used, disclosed, or shared with any of Respondents' Retained Business Firewalled Employees; **PROVIDED, HOWEVER,** Respondents may use or disclose this Confidential Business Information as necessary to comply with Paragraph II.F.
- D. At the request of the Acquirer, for a period not to exceed eighteen (18) months from the Divestiture Date, Respondents shall provide, at no greater than Direct Cost, Transition Services from knowledgeable employees of Respondents to assist the Acquirer in the transfer of the Aluminum Beverage Cans Business from Respondents to the Acquirer in a timely and orderly manner pursuant to the Transitional Services Agreements.
- E. Within ten (10) days of the Divestiture Date, Respondents shall submit to the Acquirer, at Respondents' expense, all Business Records of the Aluminum Beverage Cans Business, in good faith, and in a manner that ensures their completeness and accuracy and that fully preserves their usefulness; **PROVIDED, HOWEVER,** pending complete delivery of all such Business Records of the Aluminum Beverage Cans Business to the Acquirer, Respondents shall provide the Acquirer, and the Interim Monitor with access to all such Business Records of the Aluminum Beverage Cans Business and employees who possess or able to locate such information for the purposes of identifying the books, records, and files directly related to the Aluminum Beverage CaenWithin ff(f)c 0551(O)

- a. name, job title or position, date of hire and effective service date;
- b. a specific description of the employee's responsibilities;
- c. the base salary or current wages;
- d.

confidentiality provisions of employment or other contracts with Respondents that would affect the ability of such employee to be employed by a proposed Acquirer;

PROVIDED, HOWEVER,

- C. The Monitor shall serve until the later of (1) eighteen (18) months after the Divestiture Date or (2) the termination of all Respondents' obligations under all Remedial Agreements; PROVIDED, HOWEVER, the Commission may extend or modify this period as may be necessary to accomplish the purposes of this Order and the Order to Maintain Assets.
- D. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission, including, but not limited to:
 - a. Assuring that Respondents expeditiously comply with all of their obligations and performs all of their responsibilities as required by this Order, the Order to Maintain Assets, and the Remedial Agreements;
 - b. Monitoring any Transition Services Agreements; and
 - c. Assuring that Confidential Business Information is not received or used by Respondents or the Acquirer, except as allowing in this Order and in the Order to Maintain Assets;
 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of this Order, the Order to Maintain Assets, and the Remedial Agreements;
 4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with its obligations under this Order, the Order to Maintain Assets, and the Remedial Agreements. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order, the Order to Maintain Assets, and the Remedial Agreements;

5. The Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission;
 6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph III, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph III.D.5 of this Order.;
 7. Respondents shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by the Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under this Order, the Order to Maintain Assets, and the Remedial Agreements;
 8. Within one (1) month from the date the Monitor is appointed pursuant to this Paragraph, every sixty (60) days thereafter, and otherwise requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondents' of their obligations under this Order, the Order to Maintain Assets, and the Remedial Agreements;
 9. Respondents may require the Monitor and each of the Monitors consultants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; PROVIDED, HOWEVER, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor.
- G. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the proposed substitute Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed substitute Monitor, Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor. Not later than ten (10) days after appointment of a substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the substitute Monitor all the rights and powers d-2(g)10(o)-10(t)2(i6(o)-4(r

- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondents shall execute an agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or transfer required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to enter into Transitional Services agreements;
 2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court; **PROVIDED, HOWEVER** that the Commission may extend the divestiture period only two (2) times;
 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the

time for divestiture under this Paragraph IV in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; **PROVIDED, HOWEVER,** if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; **PROVIDED FURTHER, HOWEVER,** that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval;
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order;
8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture;
9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assista

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondents;
- B. Any proposed acquisition, merger, or consolidation of Respondents; or
- C. Any other change in the Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, with respect to any matter contained in this Order, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents related to compliance with the Consent Agreement and/or this Order, which copying services shall be provided by Respondents at the request of the authorized representative of the Commission and at the expense of Respondents; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present.

IX.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date it becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

NON-PUBLIC APPENDIX C

ALUMINUM BEVERAGE CANS DIVESTITURE EMPLOYEES

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX D
ARIZONA CONTRACT MANUFACTURING AGREEMENT

PUBLIC APPENDIX E
MONITOR AGREEMENT