

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

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

_____)
In the Matter of)
)
BALL CORPORATION,)
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)
and) **Docket No. C-4581**
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REXAM PLC,)
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)
_____)

ORDER TO MAINTAIN ASSETS

E. “Decision and Order” means the:

1.

Aluminum Beverage Cans Business to be divested and to the Retained Business or other products or businesses and cannot be segregated in a manner that pres

Business, and all amendments, exhibits, attachments, agreements, and schedules thereto that have been approved by the Commission.

- L. “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 the Decision and Order.
- M. “Employee Access Period” means one (1) year from the Divestiture Date.
- N. “Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph III of the Decision and Order.
- O. “Monitor Agreement” means the Monitor Agreement dated February 25, 2016, between ING Financial Markets LLC, and Ball Corporation. The Monitor Agreement is attached to the Decision and Order as Public Appendix E.
- P. “Orders” means the Decision and Order and the Order to Maintain Assets.
- Q. “Remedial Agreement(s)” means:
 - 1. Any agreement between Respondents and an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, and divested, transferred, delivered, or otherwise disposed of

2. Any agreement entered into between Respondents and an Acquirer (or the Divestiture Trustee and an Acquirer) for the provision of Transition Services.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective:

- A. Respondents shall take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Aluminum Beverage Cans Business, to minimize any risk of loss of competitive potential for such Aluminum Beverage Cans Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Aluminum Beverage Cans Business except for ordinary wear and tear. Respondents shall not sell, transfer, encumber, or otherwise impair the Aluminum Beverage Cans Business (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the related Aluminum Beverage Cans Business.
- B. Respondents shall maintain the operations of the Aluminum Beverage Cans Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such business) and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors; customers; employees; and others having business relations with the Aluminum Beverage Cans Business. Respondents' responsibilities shall include, but are not limited to, the following:
 1. Providing the Aluminum Beverage Cans Business with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business, and to carry on, at least at their scheduled pace, all Bus1(w)4(ith)1(s)1(s)

5. Providing the Aluminum Beverage Cans Business with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the Aluminum Beverage Cans Business;
6. Providing such support services to the Aluminum Beverage Cans Business as

- f. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly-situated employees; and
 - g. at a proposed Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant Aluminum Beverage Cans Designated Employee(s);
2. No later than ten (10) days after a request from a proposed Acquirer, Respondents shall provide the proposed Acquirer with:
- a. an opportunity to meet, personally and outside the presence or hearing of any employee or agent of Respondents, with any Aluminum Beverage Cans Designated Employee;
 - b. an opportunity to inspect the personnel files and other documentation relating to any such employee, to the extent permissible under applicable laws; and
 - c. to make offers of employment to any Aluminum Beverage Cans Designated Employee;
3. Respondents shall (i) not interfere, directly or indirectly, with the hiring or employing by a proposed Acquirer of any Aluminum Beverage Cans Designated Employee, (ii) not offer any incentive to any Aluminum Beverage Cans Designated Employee to decline employment with a proposed Acquirer, (iii) not make any counteroffer to any Aluminum Beverage Cans Designated Employee who receives a written offer of employment from a proposed Acquirer, and (iv) remove any impediments within the control of Respondents that may deter any Aluminum Beverage Cans Designated Employee from accepting employment with a proposed Acquirer, including, but not limited to, any non-compete or 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*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee.
- E. Respondents shall provide reasonable financial incentives to the Aluminum Beverage Cans Divestiture Employees as needed to facilitate the employment of such employees by the Acquirer; *PROVIDED, HOWEVER*, (i) if the proposed Acquirer has made a written offer of employment to an Aluminum Beverage Can Divestiture Employee, and (ii) such employee has declined employment with the proposed Acquirer, then Respondents, in consultation with the Monitor (if one is appointed), shall make available a substitute employee with substantially the same skills and job function to the Acquirer for employment.

- I. Respondents shall enforce the confidentiality terms of this Order to Maintain Assets and the Decision and Order as to any Person other than the Acquirer of the Aluminum Beverage Cans Business and take such action as is necessary to cause each such Person to comply with these terms, including training of Respondents' employees and all other actions that Respondents would take to protect its own trade secrets and proprietary information.
- J. Respondents shall adhere to and abide by the Remedial Agreements (which agreement shall not vary or contradict, or be construed to vary from or contradict, the terms of the

7. Respondents shall report to the Monitor in accordance with the requirements of the Orders 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 the Orders 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 the Orders 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 necessary to permit the substitute Monitor to monitor Respondent's compliance with the terms of the Orders and the Remedial Agreements in a manner consistent with the purposes of the Orders.
- H. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders and the Remedial Agreements.

IV.

I.
IT IS FURTHER ORDERED that:

- A. Within five (5) days of the Acquisition Date, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Respondents shall submit to the Commission and, if appointed, the Monitor, a verified written report setting forth in detail the manner and form in which it intends to comply, are complying, and have complied with this Order:
 - 1. Within thirty (30) days after the date this Order to Maintain Assets becomes final;
 - 2. Every thirty (30) days thereafter until Respondents have fully divested, licensed, transferred and/or granted the Aluminum Beverage Cans Business to an Acquirer; and
 - 3. Every three (3) months thereafter so long as Respondents have a continuing obligation under this Order and/or the Remedial Agreements to render services to the Acquirer or otherwise to comply with this Order;

PROVIDED, HOWEVER, THAT, AFTER THE PROPOSED Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as the reports required to be submitted by Respondents pursuant to the Decision and Order.

V.

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.

VI.

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,

