

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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

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<b>In the Matter of</b>	)	
	)	
<b>BALL CORPORATION,</b>	)	
<b>    a corporation;</b>	)	
	)	<b>Docket No. C-4581</b>
<b>    and</b>	)	
	)	
<b>REXAM PLC,</b>	)	
<b>    a public limited liability company</b>	)	
_____	)	

**COMPLAINT**

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Ball Corporation (“Ball”), a corporation subject to the jurisdiction of the Commission, agreed to acquire Respondent Rexam PLC (“Rexam”), a public limited liability company subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

**I. RESPONDENTS**

1. Respondent Ball is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana with its headquarters and principal place of business located at 10 Longs Peak Drive, Broomfield, Colorado.
2. Respondent Rexam is a public limited liability company organized, existing, and doing business under and by virtue of the laws of the United Kingdom with its headquarters and principal place of business located at 4 Millbank, London, United Kingdom.

## **II. JURISDICTION**

3. Respondents, and each of their relevant operating subsidiaries and parent entities, are, and at all times relevant herein have been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

## **III. THE PROPOSED ACQUISITION**

4. Pursuant to a Recommended Cash and Share Offer (the “Merger Agreement”) dated as of February 19, 2015, Ball proposes to purchase all issued and outstanding common stock of Rexam in a transaction valued at approximately \$8.4 billion (“the Acquisition”), including the assumption of debt.

## **IV. THE RELEVANT PRODUCT MARKETS**

5. The relevant lines of commerce in which to analyze the effects of the Acquisition are standard 12-ounce aluminum beverage cans (“Standard Cans”), and specialty aluminum beverage cans (“Specialty Cans”), which come in a variety of dimensions that differ from Standard Cans.

6. Standard Cans are used to package beverages such as carbonated soft drinks, beer, tea, and sparkling water in 12-ounce containers. Standard Cans are sold to consumers primarily for future consumption in multipacks, but are also sold for immediate consumption in vending machines and other establishments. Standard Cans are the most widely available and consumed beverage cans and represent approximately 75% of beverage cans produced in the United States today.

7. Beverage producers would not switch from Standard Cans to other package types such as Specialty Cans, polyethylene terephthalate (“PET”) bottles, or glass bottles in response to a small but significant and non-transitory increase in price in Standard Cans. Beverage producers have made substantial investments in infrastructure that specializes in filling Standard Cans and cannot be used to fill PET bottles or glass bottles. Moreover, beverage producers package in Standard Cans to meet consumer demand, and would risk a loss in sales if they switched to other packaging substrates.

8. Specialty Cans consist of an assortment of beverage cans in different shapes and sizes, including 7.5-ounce slim cans, 8-ounce slim cans, 12-ounce sleek cans, 16-ounce cans, 24-ounce cans, and others. Beverage producers purchase Specialty Cans to reach different consumers and consumption occasions than Standard Cans. For example, carbonated soft drink companies use 7.5-ounce cans to reach consumers who prefer a more convenient, portion-controlled product in a sub-100 calorie package. Similarly, many energy drink producers have adopted the 16-ounce can to differentiate their products from competition and appeal to their target customers.

9. Although one type of Specialty Can is not a substitute for another, it is appropriate to evaluate the Acquisition's likely effects through an analysis of the assortment of Specialty Cans because each of the products in the assortment is offered under similar competitive conditions. Grouping the many different types of Specialty Cans into an assortment, or cluster, enables the efficient evaluation of competitive effects.

10. Beverage producers would not switch from Specialty Cans to other package types such as Standard Cans, PET bottles, or glass bottles in response to a small but significant and non-transitory increase in price in 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 used to fill Specialty Cans and that cannot be used to fill PET bottles or glass bottles.

## **V. THE RELEVANT GEOGRAPHIC MARKETS**

11. The relevant geographic markets in which to analyze the competitive effects of the Acquisition for Standard Cans are regional. Driven by high freight costs and large production volumes, customers purchase Standard Cans from suppliers that are located within the same general region as the customers' filling plants. There are at least three regional markets in the United States in which competition between Ball and Rexam would be lessened for the sale of Standard Cans: (1) the South/Southeast; (2) the Midwest; and (3) the West Coast, consisting primarily of California. Imports of Standard Cans from outside the United States would not be a viable option because of the significant shipping times and shipping costs that imports would entail.

12. The relevant geographic market in which to analyze the competitive effects of the Acquisition on Specialty Cans is the United States. Specialty Cans are shipped much greater distances than Standard Cans, sometimes even cross country, because Specialty Cans have lower volumes and significantly fewer supply locations than Standard Cans. Imports of Specialty Cans into the United States would not be a viable option for customers because of the significant shipping times and shipping costs that such imports would entail.

## **VI. ENTRY CONDITIONS**

13. Entry into the relevant markets would not be timely, likely, or sufficient to prevent or deter the expected anticompetitive effects of the Acquisition. Considerable entry barriers exist in the manufacture of aluminum beverage cans, including significant volume requirements necessary to manufacture efficiently; high capital costs to construct a can plant; and length of time to begin manufacturing aluminum beverage cans efficiently. Moreover, there would be little incentive for new entry given a consistent decline in demand for aluminum beverage cans in the United States, which has led to a steady removal of beverage can production for over 20 years.

14. Likewise, the threat of vertical integration by beverage producers would not be timely, likely, or sufficient to prevent or deter the expected anticompetitive effects of the Acquisition. A typical beverage can plant must produce over a billion Standard Cans and/or Specialty Cans a year in order to be competitive, which precludes the vast majority of beverage producers from contemplating vertical integration because they would not have the necessary scale. Even for the largest beverage producers, vertical integration would not be a credible threat due to significant capital costs and technical requirements, and the fact that they would have to continue to rely on incumbent beverage can manufacturers for at least part of their Standard Can and Specialty Can needs.

## **VII. EFFECTS OF THE ACQUISITION**

15. The Acquisition, if consummated, is likely to substantially lessen competition in the relevant lines of commerce in the following ways, among others:

- a. by eliminating direct and substantial competition between Respondents Ball and Rexam;
- b. by increasing the likelihood that Ball will unilaterally exercise market power; and
- c. by increasing the likelihood of coordinated interaction among competitors in the relevant markets.

16. The ultimate effects of the Acquisition would be to increase the likelihood that prices of Standard Cans and Specialty Cans will rise, and that quality, selection, service, and innovation will be lessened.

## **VIII. VIOLATIONS CHARGED**

17. The allegations contained in Paragraphs 1 through 16 above are hereby incorporated by reference as though fully set forth here.

18. The Acquisition described in Paragraph 4, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

19. The Acquisition described in Paragraph 4, if consummated, would constitute a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

20. The Merger Agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

**WHEREFORE, THE PREMISES CONSIDERED,** the Federal Trade Commission on this \_\_\_\_ day of \_\_\_\_\_, 2016, issues its complaint against said Respondents.

By the Commission.

Donald S. Clark  
Secretary

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