

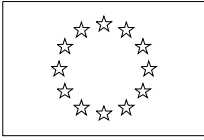
***Case No COMP/M.2542 -
SCHMALBACH-
LUBECA / REXAM***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 28/09/2001

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28/09/2001
SG (2001) D/291593

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

To the notifying party

Dear Sirs,

Subject: Case No COMP/M.2542 – Schmalbach-Lubeca / Rexam

Notification of 30/08/2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 30 August 2001, the Commission received notification of a proposed acquisition by which Schmalbach-Lubeca AG (“Schmalbach”) will acquire control of two beverage can plants of Rexam Plc (“Rexam”), namely the Runcorn plant in the UK and La Ciotat in France (“the acquired business”).
2. After examination of the notification the Commission concluded that the notified operation falls within the scope of the Merger Regulation and that it does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES AND THE OPERATION

3. Schmalbach is active in three different beverage packaging sectors, namely beverage cans, PET (polyethylene tetrathalate) packaging and white cap closures. The beverage cans sector produces two-piece tinfoil and aluminium beverage cans and ends of various sizes for soft drinks, beer, mineral water and other beverages. The PET

container sector produces refillable and disposable PET bottles for carbonated soft drinks, mineral water and other beverages. The white cap closures sector produces metal, plastic and composite closures for oxygen-sensitive, vacuum packaged food products and beverages.

4. Rexam is a packaging group, active in beverage packaging, speciality food packaging, healthcare packaging, beauty packaging, coated films and paper and building and engineering. Rexam's beverage packaging sector manufactures beverage cans.
5. By its decision of 19 July 2000, the European Commission authorised Rexam to acquire control of American National Can, an American corporation involved in the manufacturing of beverage cans.¹ The authorisation was conditional on the divestiture of three beverage can plants, namely the Runcorn plant in the UK, La Ciotat in France and Gelsenkirchen in Germany.
6. On 6 July 2001, Schmalbach and Rexam entered into an agreement pursuant to which Schmalbach will acquire parts of Rexam's business, in particular, the beverage can plants in Runcorn in the UK and in La Ciotat in France. The present decision concerns the acquisition by the notifying party of the former two plants.

II. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than € 2.5 billion² (Schmalbach: [...] million; the acquired business: € [...] million). In each of three Member States, namely France, Spain and the UK, the aggregate turnover of all the undertakings concerned is more than € 100 million (France: € [...] million; Spain: € [...] million; the UK: € [...] million). In each of the above Member States the aggregate turnover of each of Schmalbach and of the acquired business is more than € 25 million (France: Schmalbach € [...] million, the acquired business € [...] million; Spain: Schmalbach € [...] million, the acquired business € [...] million; the UK: Schmalbach € [...] million, the acquired business € [...] million). The aggregate Community-wide turnover of each of Schmalbach and the acquired business is more than € 100 million (Schmalbach: € [...] million; the acquired business: € [...] million). None of Schmalbach or the acquired business achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

III. RELEVANT PRODUCT MARKET (beverage cans)

8. The merging parties are both involved in the manufacturing of beverage cans. In previous Commission decisions,³ beverage cans were found to constitute a relevant

¹ COMP/M.1939 – Rexam/ANC

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

³ Cases IV/M.081 – VIAG/Continental Can and COMP/M.1939 – Rexam/ANC

product market separate from other types of beverage packaging (glass and plastic bottles), to the extent that bottlers did not shift their demand to plastic or glass bottles in case of a small but significant non transitory increase in the price of beverage cans.

9. In addition, previous Commission decisions⁴ considered that owing to the high demand and supply-side substitutability, and with the exception of slim cans (i.e., 15 and 25cl), the different sizes of standard cans (i.e., 27.5, 33, 44, 45, and 50cl) form a single product market. This is so because filling lines can easily be changed to accommodate different-sized cans provided these are of standard-body diameter - that is, not slim cans. On the supply side (can manufacturers), most can manufacturing lines, designed as “swing lines”, facilitate such switching at a reasonable timing and at a reasonable cost. Overall, it appears that a supra competitive increase in the price of cans of a specific size would be defeated by either customers shifting to other sizes, or by can manufacturers producing more cans of that same size.
10. The question whether aluminium and steel beverage cans are substitutable products varies from one geographic market to another. In its decision in the case Rexam/ANC,⁵ the Commission had found that in the Nordic countries and in Greece, only aluminium cans are made available. In these geographic areas aluminium and steel cans do not compete with each other. In the remaining geographic areas, demand and supply-side considerations suggest that aluminium and steel cans form a single product market. This is based, among others things, on identical prices, almost identical end-users’ and consumers’ perceptions, and a cost difference of producing aluminium and steel cans inferior to 2%.

IV. GEOGRAPHIC MARKET

11. Consistently with previous Commission decisions, referred to above, the geographic market for the manufacturing of beverage cans is considered as regional. Different factors such as the customers’ location relative to beverage cans plants, transport costs, national legislation, and the demand-side structure, do influence the geographic scope of competition. The notified transaction has a bearing on the following geographic markets:
 - (i) The UK
 - (ii) Southern Europe (including Spain/Portugal/Italy/Southern France), and
 - (iii) Northern Europe (including Germany/Austria/Northern France/Benelux/the UK).
12. The location of the customers relative to the plants making the supplies limits the number of plants which can economically supply customers. Just-in-time deliveries and the security of supply may be compromised if a supplier is located far away from its customer. Close customer liaison may be needed because of possible quick and late modifications in shape, size and decoration of beverage cans. These factors influence the patterns of supply which are thus organised along regional rather than national boundaries.

⁴ See *supra*

⁵ Case COMP/M.1939

13. In its Rexam/ANC decision, the Commission regarded the UK as a separate market. There are no imports from the Northern part of Europe into the UK while prices in the latter may be up to 40% higher than in the rest of Northern Europe. However, there exists a substantial trade flow of beverage cans from the UK to Northern Europe. Conditions of competition in the latter are thus substantially influenced by production capacity located in the UK. As a consequence, when assessing the impact of the transaction in Northern Europe, the UK plants should be included in the relevant geographic market whereas the opposite does not appear to be the case.

V. COMPETITION ASSESSMENT

14. In Northern Europe the combined market share of the merged firm will be [35-45%] (Schmalbach: [35-40%]; the acquired business: [0-5%]). The remaining competitors in this market are Rexam [25-35%]), Carnaud-Metalbox ([15-20%]), Gelsenkirchen ([0-10%]) and Canpack ([0-10%]).
15. In the UK, the combined market share of the merged firm will be [30-40%] (Schmalbach: [25-30%]; the acquired business: [5-10%]). The remaining competitors in this market are Rexam ([30-40%]), Carnaud-Metalbox ([10-20%]), and Canpack ([0-5%]).
16. In Southern Europe the combined market share of the merged firm will be [10-20%] (Schmalbach: [0-5%]; the acquired business: [10-15%]). The remaining competitors in this market are Rexam ([50-60%]), Carnaud-Metalbox ([15-25%]), and Tubettificio Lecco([0-5%]).
17. In Northern Europe, the operation raises no concerns as to the creation of a dominant position by the merged firm. The addition of market share following the proposed concentration is relatively low, that is [0-5%]. The combined market position of the merged entity ([35-45%]) is likely to be constrained by the existence of vigorous competitors such as Rexam and Carnaud-Metalbox which can be viewed as a competitive alternative to customers in case of a unilateral price increase. These competitors are credible, as can be seen from their sales market shares ([25-35%] and [15-20%] respectively) and their spare capacity levels [...]. In addition to Rexam and Carnaud-Metalbox, the pricing behaviour of the merged firm may be constrained by the presence of two smaller competitors, namely Gelsenkirchen ([0-10%]) and Canpack ([0-5%]).
18. In the UK market, the market share of the merged entity ([30-40%]) raises no doubt as to the creation of a single dominant position. The Commission has also examined whether this [30-40%] market share, in conjunction with Rexam's [30-40%] market share, could give rise to any doubts as to the creation of a duopolistic dominant position held by these two companies. In its previous decision in case COMP/M.1993 – Rexam/ANC, the Commission had considered that beverage cans are generally identified as homogeneous products, that the industry is not characterised by any high level of technical change and that as a result of a repetitive bidding process the market was relatively transparent. However, despite these features, the asymmetric distribution of the suppliers' capacity and spare capacity indicates the absence of an oligopolistic market equilibrium, which would make collusive behaviour unsustainable over the medium to long term. The level of capacity utilisation among the suppliers is unevenly distributed [...] whereas the third supplier in this market has a significant amount of spare capacity available [...]. This asymmetry and the existence of considerable spare

capacity outside the alleged duopoly may be an incentive for deviation from the tacit common conduct. Moreover, it may adversely affect any coercion and/or retaliation mechanism that would otherwise be required for the duopoly to engage in co-ordinated behaviour and maintain supra-competitive collusive prices.

19. In Southern Europe, the operation raises no concerns as to the creation of a dominant position. With a post-merger market share of [10-20%], the merged entity is a new entrant in this geographic market, ranking third behind Rexam ([50-60%]) and Carnaud-Metalbox ([15-25%]). In these circumstances, the merged entity will not have the ability to behave independently by charging supra-competitive prices.

VII. CONCLUSION

20. In the light of the above, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6 (1) (b) of Council Regulation (EEC) No. 4064/89.

For the Commission

Signed by Mario MONTI,
Member of the Commission