

***Case No COMP/M.5599 -
AMCOR / ALCAN***

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**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) in conjunction with Art 6(2)
Date: 14/12/2009

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EUROPEAN COMMISSION

Brussels, 14/12/2009
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION IN
CONJUNCTION WITH
ARTICLE 6(2)

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5599 – Amcor/ Alcan
Notification of 23.10.2009 pursuant to Article 4 of Council Regulation
No 139/2004¹**

- 1) On 23 October 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("Merger Regulation") by which Amcor Limited ("Amcor", Australia)² acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of part of the packaging business ("Alcan Packaging") of Alcan Inc ("Alcan", United Kingdom) from Rio Tinto Plc ("Rio Tinto", United Kingdom), by way of purchase of shares and assets.
- 2) In the course of the proceedings, the notifying party submitted undertakings designed to eliminate the serious doubts identified by the Commission, in accordance with article 6(2) of the Merger Regulation. In the light of these modifications, the Commission has concluded that the notified operation which falls within the scope of the Merger Regulation does not raise serious doubts as to its compatibility with the Internal Market and with the functioning of the EEA Agreement.

I. THE PARTIES

- 3) Amcor is a company offering a broad range of plastic, fibre, metal, glass and folding carton packaging products, for a wide range of customers (food, beverage, healthcare, tobacco and other industrial customers) on a global basis.

¹ OJ L 24, 29.1.2004 p. 1.

² Together referred to as the "Parties".

- 4) Alcan is a wholly-owned subsidiary of Rio Tinto, an international mining group headquartered in the United Kingdom. The proposed transaction involves the following sectors of Alcan's packaging business: Food Europe, Food Asia, Global Tobacco and Global Pharmaceutical ("Alcan Packaging")³. Alcan Packaging is a supplier of flexible and other specialty packaging which serves the food, pharmaceutical, medical, tobacco and other sectors.

II. THE OPERATION AND CONCENTRATION

- 5) On 18 August 2009, Amcor made a binding offer to acquire sole control of Alcan Packaging by acquiring 100% of the shares concerned. Therefore the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

- 6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁴ (Amcor: EUR [...] million, Alcan Packaging: EUR [...]). Each of them has a Community-wide turnover in excess of EUR 250 million (Amcor: EUR [...] million, Alcan Packaging: EUR [...] million), and they do not 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.

IV. COMPETITIVE ASSESSMENT

1. Relevant product market

- 7) The Parties activities overlap with respect to (i) flexible packaging; and (ii) folding carton packaging.

a. Flexible packaging

- 8) Flexible packaging involves the conversion and printing of plastic and cellulose films, aluminium foils and papers, which are used separately or in combination, to produce primary and secondary packaging products for a wide variety of end-uses.
- 9) The Parties consider that the relevant product market should be flexible packaging as a whole irrespective of end-use or sector in which the packaging is used and irrespective of packaging type. The Parties submit that flexible packaging is tailor made to customers' requirements and similar products may often be packaged very differently, whilst different products may be packaged with similar packaging. The Parties therefore argue that, on the demand-side, it is not meaningful to subdivide the flexible packaging market into narrower sub-markets.
- 10) On the supply-side, the Parties submit that there is a high degree of substitutability. They argue that manufacturers of flexible packaging displaying one set of characteristics

³ The proposed transaction does not involve the following sectors of Alcan Packaging division: Food Americas and Global Beauty. On 6 July 2009, Alcan announced the sale of the Food Americas business to Bemis (case currently under scrutiny of the US DOJ, not notifiable in the EU). The Global Beauty Business will be retained by Alcan/Rio Tinto.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p.1).

can readily produce flexible packaging displaying a different set of characteristics. All that is generally required according to the Parties is printing, lamination, and slitting equipment. Moreover, they argue that the required machinery and processes are established, standard and widely available and there is no "must-have" intellectual property or proprietary inventions, which could hinder supply-side substitution. The raw materials used to produce flexible packaging are also readily available, according to the Parties.

- 11) The Commission has already in previous decisions investigated the flexible packaging market. Previously, the Commission has found that the market for flexible packaging could be segmented on the basis of end-use applications as follows: (i) food, (ii) medical, (iii) pharmaceuticals, (iv) household products and (v) other non-food.⁵ Within flexible packaging for food products, an even narrower segmentation has been considered, by distinguishing flexible packaging in respect of various categories of food: (a) dairy; (b) beverages; (c) confectionary; (d) fresh; (e) dried; (f) frozen; and (g) pet food. However, the product market definition was ultimately left open.
- 12) The market investigation conducted by the Commission in the present case has demonstrated that the market definition proposed by the Parties is too broad. It has pointed to a similar further delineation of the relevant product market as indicated in the previous Commission decisions based on a distinction according to end-use sectors: (i) food, (ii) medical, (iii) pharmaceuticals, (iv) household products and (v) other non-food. Further delineation of the product market within these end-use sectors is discussed below.
- 13) The results of the market investigation did not confirm supply-side substitution would be effective and immediate. Several competitors put into question the alleged lack of obstacles to switching production between the five different end-use segments, in particular with respect to medical and pharmaceutical flexible packaging. With respect to these two markets, the market investigation showed that specific know-how is required to produce the key packaging products used by these industries. Moreover, customers have very strict requirements concerning their suppliers and require lengthy validation procedures for switching.
- 14) Furthermore, the results of the market investigation indicate that the competitive conditions differ between the five end-use markets. The Parties' own market shares vary significantly between flexible packaging for food, medical, pharmaceutical, household and other non food, and they face partly different competitors according to end-use. Moreover, a number of suppliers seem to have a particular focus on certain end-use markets.
- 15) Consequently, and in line with previous decisions, the Commission considers that the most appropriate approach is to distinguish between the different categories of end-applications listed in para. 12.
- 16) The Commission has further investigated whether within each end-use market narrower flexible packaging sub-markets should be identified. The market investigation has shown that, at least within the food and pharmaceutical flexible packaging markets, a number of segments are characterized by specific competitive conditions, for instance

⁵ COMP/M.2441 – *Amtcor/Danisco/Ahlstrom I*, Commission decision of 11.06.2001; COMP/M.2840 – *Danapack/Teich/JV* Commission decision of 30.08.2002; COMP/M.3049 – *Alcan/Flexpack*, Commission decision of 24.02.2003; COMP/M. 3225 – *Alcan/Pechiney (II)*, Commission decision of 29.09.2003.

higher entry barriers in the form of stricter customer requirements and the level of technical know-how necessary to compete, and may therefore represent separate relevant product markets.

Food

- 17) In previous Commission decisions it has been suggested that a more detailed segmentation within the flexible packaging for food may be appropriate.⁶
- 18) Also in the present case, the Commission investigated whether various food categories should be distinguished within the overall food market. The categories investigated were based on the PCI report "European Flexible Packaging Report 2009".⁷ This report was submitted by the Parties and was the basis of their market share calculations. Based on the PCI report, the following segments were addressed during the market investigation: (i) confectionery⁸; (ii) fresh and processed meat, fish and poultry; (iii) cheese and dairy; (iv) tea, ground coffee and beans; (v) frozen food and ice cream, (vi) crisps, snacks and nuts, (vii) dried and dehydrated foods and cereals, (viii) bread, biscuits and cakes, and (ix) fresh fruits and vegetables.
- 19) The market investigation also demonstrated that, although alternative segmentations could also be considered, the segments used by PCI were generally considered an appropriate starting point for analyzing the food market, and could reflect the existence of potential separate product markets.
- 20) The market investigation showed that, although food flexible packaging converters⁹ are generally active across several product segments, customers find that the converters are often strong in particular segments. This means that the competitive positions of the converters can vary significantly between various segments of the food packaging market. Converters typically possess specific knowledge and experience necessary for certain end-use products, and this gives them an advantage towards customers in these segments as compared to other converters.
- 21) Within the food market, the market investigation pointed to a number of niche areas, where switching supplier was considered particularly demanding from a technical perspective although the results of the market investigation were not conclusive with respect to the extent to which these areas could represent separate product markets. Such niche segments are notably:

⁶ In the case COMP/M.2840 – *Danapack/Teich/JV*, Commission decision of 30.08.2002, para 16, the Commission stated that "there are indications that, within the class of all flexible packaging for food products, it may be appropriate to adopt a deeper segmentation into the following categories; (a) dairy; (b) beverages; (c) confectionery; (d) fresh; (e) dried; (f) frozen; and (g) pet food". See also the case COMP/M.2441 – *Amcor/Danisco/Ahlstrom*, Commission decision of 11.06.2001, para. 12.

⁷ PCI Films Consulting Ltd. is a member of the PCI Consulting Group, consultants to the petrochemicals industry.

⁸ Confectioneries are products rich in sugar, for instance chocolate and cakes.

⁹ The term 'converters' is often used about suppliers of flexible packaging and folding carton packaging. They perform the conversion processes (commonly printing, laminating and coating).

(i) In-line cold seal type of packaging, which consists of flexible packaging materials to which cold sealable coatings are generally applied on an "in-line" basis by the converter at the same time as the material is printed. Cold sealing is then used by customers in order to seal products, where the use of heat sealing could risk leading to melting, damaging or contaminating the packaged products (mainly confectionary products such as chocolate bars/tablets, individual chocolates, individually wrapped candies, chocolate cake bars and ice cream bars). In-line cold seal is also used where the speed of packaging lines is high, as the seal forms faster than when heat sealing is applied.

(ii) PVdC coated materials: this type of films are primarily used for biscuit roll flexible packaging, because of its basic properties which include: (i) good basic sealing properties; (ii) wide sealing range and good hot tack; (iii) ability to modify the surface properties by the addition of waxes and other additives; (iv) high gloss; (v) excellent aesthetics when the coating is applied on the top ink; (vi) moisture and oxygen barrier (but generally this is not a critical property).

(iii) Banderols used to increase the strength of yoghurt cups: the market investigation pointed to a distinction between banderols which are intended to increase the strength of the yoghurt cup, usually made of coated printed paper with hot melt coating applied to the reverse, and purely decorative/informative banderols, applied to pre-formed rigid cups for yoghurt. The mechanical strength that the first type of banderols provides to the cups is critical when the cups are stocked and transported in multiple layers on pallets. Different types, quality and thicknesses of materials will affect the strength of a banderol.

(iv) Non-sliced white moulded soft cheese packaging (this forms a narrow area within the cheese and dairy end-application sub-segment): this category of products includes packaging for varieties of cheese such as camembert, brie and coulommiers. One of the main characteristics for these products is that they must be able to mature inside the pack. The packaging must therefore allow for the exchange of gases and manage water loss and absorption ("breathable" packaging).

(v) Retort food packaging is a particular type of packaging which allows the food to be cooked inside the packaging material (the retort process). The food is first put into the packaging, closed, and then treated with heat and pressure. This type of packaging is used for human food (for example microwaveable rice-based products) but also for pet food (retort food for pets is typically "wet"). Customers require high barrier post-retort process (barrier required to prevent oxidation and dehydration; ambient shelf-life of 12 months), seal integrity (required to maintain hermetic performance) and convenience and ease to use.¹⁰

22) For the purpose of this decision, the precise delineation within the market for flexible packaging for food can be left open since the transaction would not raise serious doubts even under a narrower delineation where the niche areas constitute distinct product markets.

Pharmaceutical

23) In line with the Commission's previous cases, the market investigation in the present case pointed towards a separate market for flexible packaging for pharmaceutical end-

¹⁰ Amcor's submission of 9 October 2009, "Transparent retort materials and processes", page 2.

products. A clear majority of the respondents to the market investigation were of the opinion that pharmaceutical flexible packaging should be considered a separate market. According to the respondents, the pharmaceutical market is characterised by higher hygiene requirements, a number of additional administrative procedures and highly risk-averse customers.¹¹

- 24) The market concentration within pharmaceutical packaging is relatively high and it exceeds significantly the concentration level characterizing the other broad markets within the overall flexible packaging market (food, household) where the supplier base is much more fragmented.¹²
- 25) The market investigation also indicated that profit margins are generally higher in pharmaceutical than in food and other flexible packaging markets. According to the market participants, the higher margins could be explained by higher barriers to entry in the form of higher validation requirements and therefore also higher investment costs. This has led to a more limited number of suppliers in this market than in the other flexible packaging markets and consequently to higher margins being obtainable.
- 26) According to the Parties, supply-side substitution would be easy, also for pharmaceutical packaging. This was not confirmed by the market investigation. On the contrary, when asked if there were any segments of the overall market for flexible packaging competitors would not consider entering, many competitors mentioned the pharmaceutical segment. Furthermore, according to both competitors and customers, knowledge of the pharmaceutical industry is decisive for gaining the trust of customers in this segment, which is built over many years. Specific hygiene requirements are applied for pharmaceutical packaging, and many customers demand a clean room or similarly controlled environment. This all, together with rigorous and lengthy approval processes create very high barriers to entry (for more details see paras 101 -104) of the competitive assessment).
- 27) From the demand-side perspective, pharmaceutical customers clearly have different requirements than customers in other flexible packaging markets. Their main priority is the security of supply, which is also reflected in the fact that contracts tend to be longer than in the food segment for instance. The burdensome and lengthy nature of thorough validation procedures also makes pharma customers less keen on switching than for instance food customers.
- 28) Based on the above, there are strong indications that the pharma segment could be a separate market from the overall flexible packaging market.

Further segmentation of pharmaceutical flexible packaging

- 29) Within the pharma market it appears that a distinction can be made between four main sub-segments, each of them displaying unique competitive features.

¹¹ As primary pharmaceutical packaging is in direct contact with the pharmaceutical substance (and affects its shelf life or even its characteristics), very careful testing, validation and regulatory procedures have to be conducted. Typically, stability tests and detailed specifications are included in the administrative approval process for the end-product.

¹² According to the Parties' estimates, the top 10 suppliers together account for only half of the market in the food segment, whereas top 10 pharmaceutical flexible packaging players have a combined market share of more than 90%.

30) The main end-products within the pharmaceutical flexible packaging market are blister packaging (used mainly for solid tablets) and laminated sachets (which are commonly used e.g. for medicines in powder form, which are then dissolvable in water). The supply of blister materials can be split further into: (i) blister lidding and (ii) blister base, the latter one being again divided in two categories: cold-form and plastic-based blister bases, as explained below. Based on the market investigation, the pharmaceutical flexible packaging market could be thus divided into the four main segments: laminated sachets, cold-form blister bases, plastic-based blister bases and blister lidding.¹³

Blister bases – cold formable blisters

31) There are two basic types of blister bases – one is made out of plastic materials and is thermo-formable i.e. the filling machine uses heat to form the cavity pocket (some customers refer to this as 'rigid' plastic base). The other type is the so-called cold-form blister, which is made out of aluminium-based materials which are formed without heat (cold-formable).

32) The Parties submit that cold-formable blister bases are fully substitutable by consumers (pharmaceutical companies) with plastic-based blister bases and refer to a previous Commission decisions.¹⁴ In that case, the Commission indicated that some plastic-based blister bases such as COC and Aclar had equally good barrier properties to the aluminium based blister bases. Whilst this may be true for some products, the investigation in the present case has not confirmed the Parties' claims of full substitutability between the two groups. Customers explained that, although in theory equally good properties could be obtained, and that plastic based blister bases could in some instances substitute the aluminium blister bases, substitution is not realistic for all pharmaceutical products. Substitutability seems to depend on the final pharmaceutical product being packaged and for certain products customers would not consider substituting cold-form material with plastic bases.¹⁵ The market investigation indicates that it would not be common for customers to be open to both material types when organising a tender, and the material choice would depend much more on the technical feasibility and suitability. In addition, customers explained that substituting the materials used for existing pharmaceutical products (from aluminium to plastics) would be very burdensome and would require a complete re-evaluation of the regulatory files (including tests on stability of the pharmaceutical product), which makes the customers very reluctant to switch. Furthermore, although the Parties claim that the same packing machines can in principle be used for cold-form and plastic materials, this could not be confirmed within the first phase investigation. One customer explained that his "*tablet*

13 As the Parties' activities in the area of blister lidding overlap only to a very limited extent, this segment will not be addressed further in this decision. In the blister lidding segment, Alcan has a [20-30%] market share, but Amcor is achieving only [0-5%] market share; main competitors of Alcan are Constantia and Aluberg plus some smaller suppliers.

14 The Parties refer to the previous Case COMP/M.3049 – *Alcan/Flexpack*, Commission decision of 24 February, 2003. The pharmaceutical segment was also treated in case M.3225 – *Alcan/Pechiney (II)*

15 One customer explained that the substitution possibility would depend on the product packaged and that there are some differences in the barrier properties of two types of material, ie cold form has the highest barrier properties for light and vapour transmission. Alcan material for example does not necessarily have the same barrier protection properties against light according to this customer. Also, the packaging type may react differently with the pharmaceutical substance (for some more sensitive pharmaceutical products), so a change of the packaging material would be considered, if at all, only after very thorough testing.

manufacturing lines are different between cold form and PVC based materials. A change from Cold Form to PVC type material would require investment in new assembly equipment".¹⁶ There are, therefore, strong indications that cold-form aluminium based materials are not fully substitutable with plastic bases for customers and a separate demand indeed exists for cold-formable blister bases.

- 33) When looking at the supply-side of the market, it is apparent that the producers of aluminium-based (cold-form) and plastic based materials are clearly different. Plastic-based blister bases are primarily supplied by specialist suppliers Klöckner, Ineos and Perlen (who together supply around 80% of the total demand). These players are essentially not active in any other area of pharmaceutical flexible packaging. The investigation indicated that this specialisation is due to the different processes, materials, machinery, and know-how, which makes this area quite distinct from the other segments from a producers' point of view. Indeed, cold-form producers are completely different companies. The supplier base is very limited with Alcan being by far the leading supplier, followed at great distance by Constantia, Aluberg and Amcor.
- 34) Based on the above, there are thus indications that cold-formable aluminium-based blister bases may constitute a separate product market. However, the question whether cold-form blisters form a separate market may be left open in this case as serious doubts have been identified both on this potential (sub-)market and on the overall market for pharmaceutical flexible packaging.

Laminate sachets for pharmaceutical use

- 35) Laminate sachets are small disposable pouches (square or rectangular pockets) made typically of several layers of laminated material combinations (such as plastic films, paper, aluminium). In the pharmaceutical industry, they are commonly used for packaging a single-dose unit of a pharmaceutical, for instance for medicines in powder or granules form which may be dissolvable in water).
- 36) It seems that from customers' point of view, pharmaceutical sachets are clearly distinct products from blister packaging, and this packaging is particularly suited for certain medicine formats where blisters could not be an option. This is not contested by the parties, but according to them, the potential market of laminate sachets for pharmaceutical use should also comprise food and cosmetic/personal care sachets.
- 37) This was not confirmed by the market investigation, which indicated that customers in the pharmaceutical segment have higher requirements related to hygiene standards, validation procedures and certifications of their suppliers. They are therefore not able to easily switch to manufacturers of food or cosmetic/personal care sachets, who are not already active in the pharma segment. Before being able to be supplied by a manufacturer of flexible packaging, pharmaceutical customers typically go through very strict procedures involving the validation of machinery, production processes, raw materials, and stability testing (as the packaging may have an influence on the pharmaceutical product itself, or affect its shelf life). The investigation indicates that this process can take a significant time (1-2 years). In addition to the heavy procedures, the pharmaceutical sector of flexible packaging is characterised by very high barriers to entry, which would make for instance food sachets suppliers supplying pharmaceutical sachets in a sufficiently timely and likely manner (on barriers to entry see in paras. 101)

¹⁶ See minutes of telephone call with [pharmaceutical customer] of 30 November 2009.

- 104) of the competitive assessment). Therefore, it appears that laminated sachets for pharmaceutical use are a distinct market from laminated sachets for food and cosmetic/personal care use.

- 38) As a result, it appears that sachets for pharmaceutical use constitute a separate product market. However, for the purpose of this decision, whether pharmaceutical sachets form a separate market may be left open as serious doubts have been identified both on such a potential market and on the overall market for pharmaceutical flexible packaging.

b. Folding carton

- 39) Folding cartons are multi-layered paperboard cartons which are printed/coated and cut into carton blanks. The carton blanks also incorporate creases, which enable the carton to be formed for packaging the customer's product. Folding carton packaging is sold to producers of food and non-food consumer products to be used to pack a wide range of products from cosmetics and tobacco to cereals, pharmaceuticals and chocolates.
- 40) The Parties consider the relevant market to comprise the market for the production and supply of folding carton packaging without any need to sub-divide the market into narrower markets. Segmentation by end-use would not be relevant, according to the Parties, since customer requirements can be and frequently are the same or similar across different end-use categories, while they will also frequently vary significantly within the same end-use category. The Parties also submit that customers play a strong role in directing the conversion process. They are said to often negotiate the prices of the raw materials themselves and to determine the printing process as well as the final product characteristics.
- 41) On the supply-side, the Parties submit that there is a high degree of substitutability as the converters of folding carton packaging can easily switch their production in order to offer folding cartons for any end-use customer. According to the Parties there are no entry and expansion restrictions related to production processes or key inputs. Moreover, customers would be able to easily facilitate substitution as they prefer to split volumes between a number of suppliers. They would not, according to the Parties, hesitate to switch between competitors, including sponsoring expansion of an existing competitor.
- 42) In Case COMP/M.1792 – *Ahlstrom/Capman/Folding Carton Partners*, the Commission considered the market for converting folding carton packaging. The decision also discussed some segments (tobacco and medical/pharmaceutical packaging) where switching is more restricted, as specifications are stricter than in the rest of the market. However, the precise product market definition was left open.
- 43) The Parties argue that a potential market segmentation as suggested in Case COMP/M.1792 – *Ahlstrom/Capman/Folding Carton Partners* would not be justified. They submit that the equipment and materials required to produce any type of folding carton, including for tobacco end-use, is not different from that required for other end-uses. The Parties also submit that required barrier properties vary according to a customers' requirement and do not provide sufficient differentiation to warrant segmentation of the market by end-use.
- 44) The market investigation has clearly indicated that a distinction can be made for certain segments, where switching is more restricted as specifications are stricter than in the rest

of the market, for instance tobacco. Also, the supply and demand side of the market looks very different according to end-application, in particular in the market for the production and sale of folding carton for tobacco. Both Alcan and Amcor are almost exclusively active in the tobacco segment, and so are other competitors of the Parties. According to market participants, the manufacturing process demands a high level of specialization.

- 45) Although there are very strong indications that the production and sale of folding carton for tobacco is a distinct product market, in the present case, the exact product market definition can be left open as the proposed transaction would not raise serious doubts on a broad folding carton market or a potential tobacco sub-market.

2. Geographic market definition

a. Flexible packaging

- 46) The Parties submit that the relevant geographic market is at least EEA-wide if not wider, since there is a substantial degree of imports/exports between different countries within the EEA and to/from third countries. Also, customers are increasingly purchasing on an international basis, and transport costs relative to the value of the product are apparently low.

- 47) In Case COMP.M/3225 - *Alcan/Pechiney (II)*, the Commission considered the geographic market to be limited to the EEA. The market investigation conducted in the present case showed that customers mainly source within Europe and imports play only a minor role. However, a number of market participants considered that imports from outside the EEA would be of increasing importance in the coming years.

- 48) However, for the purposes of this case it is not necessary to define the exact scope of the relevant geographic market as the results of the competitive assessment are the same, irrespective of whether the relevant markets are EEA-wide or wider.

b. Folding carton

- 49) The Parties consider the market for folding carton packaging to be at least EEA-wide in scope, but submit that for the purposes of this case it is not necessary to exactly define the relevant geographic market. In Case COMP/M.1792 – *Ahlstrom/Capman/Folding Carton Partners*, the Commission considered the relevant geographic market to comprise the EEA. This has been confirmed by the market investigation. However, for the purposes of this case, it is not necessary to exactly define the relevant geographic market as the proposed concentration would not raise serious doubts as to its compatibility with the Internal Market irrespective of whether the relevant markets are EEA-wide or wider.

3. Competitive assessment

a. Flexible packaging

- 50) The Parties' activities overlap in all five end-use markets.

(i) Food

51) In the overall market for supply of flexible packaging to food customers, the Parties hold a combined market share of [20-30%] (Amcor [5-10%], Alcan [10-20%]). The market shares of the Parties in each of the food segments based on the categories used in the PCI report mentioned above would be the following.

Table 1: The Parties' EEA-wide market shares in food segments, 2008

| Product segment | Market share, Amcor | Market share, Alcan | Combined market share |
|--|---------------------|---------------------|-----------------------|
| Confectionery | [10-20%] | [10-20%] | [20-30%] |
| Fresh and processed meat, fish and poultry | [0-5%] | [0-5%] | [0-5%] |
| Cheese and dairy | [10-20%] | [10-20%] | [30-40%] |
| Tea, ground coffee and beans | [20-30%] | [5-10%] | [30-40%] |
| Frozen foods and ice cream | [0-5%] | [0-5%] | [5-10%] |
| Crisps, snacks and nuts | [10-20%] | [20-30%] | [40-50%] |
| Dried and dehydrated foods and cereals | [0-5%] | [5-10%] | [10-20%] |
| Bread, biscuits and cakes | [5-10%] | [0-5%] | [10-20%] |
| Fresh fruit and vegetables | [20-30%] | [0-5%] | [20-30%] |

52) As shown in the table, five of the overall food segments based on the PCI categorisation would be horizontally affected markets, and the combined market share of the Parties would be above 25% in these markets (i.e. confectionery, cheese and dairy, tea, ground coffee and beans, crisps, snacks and nuts and fresh fruit and vegetables). These market segments, as well as the niche segments within them which were raised in the market investigation, are discussed in detail below.

53) In the segments for fresh and processed meat, fish and poultry, frozen foods and ice cream, dried and dehydrated foods and cereals and bread, biscuits and cakes, the combined market shares of the Parties remain below 25%. Since no concerns were raised in these segments during the market investigation, the proposed transaction is not likely to raise serious doubts in any of these segments.

1. Confectionery

54) In the overall segment for packaging to customers in the confectionery sector, the Parties hold a combined market share of [20-30%] (Amcor [10-20%], Alcan [10-20%]). Other competitors in this segment include Constantia ([5-10%]), Chemosvit ([5-10%]), Mondi ([5-10%]), Nordenia ([5-10%]) and Printpack ([0-5%]). Besides these companies, at least 15 other competitors are active in this segment, including Huhtamaki, Wipak, Bemis, Clondalkin and Gerosa.

- 55) Given the presence of numerous competitors in this segment, the proposed transaction does not raise serious doubts in the overall segment for confectionery products.
- 56) However, during the market investigation, concerns were raised with respect to certain packaging types used in the confectionery sector, namely **in-line cold seal materials and PVdC in-line coating**. Therefore, the Commission investigated these niche segments very carefully.
- 57) In the overall segment for **in-line cold seal materials**, the Parties hold an estimated combined market share of [30-40%] (Amcor [20-30%], Alcan [10-20%]). A number of alternative suppliers are present in this segment, for instance Constantia ([5-10%]), Chemosvit ([5-10%]), Mondi ([5-10%]), Nordenia ([5-10%]), Printpak ([0-5%]), Huhtamaki ([0-5%]), Bak Ambalaj ([0-5%]), Goglio ([0-5%]), Clondalkin ([0-5%]), Gerosa ([0-5%]), and, Wipak ([0-5%]).¹⁷
- 58) Despite the high number of suppliers for in-line cold seal material, some customers expressed concerns regarding a reduction in the number of alternative suppliers. However, they all stated that they would continue to have alternative options in the market, and one of the complainants listed as many as 7 other suppliers to which the company could turn. Although some customers consider switching time consuming due to validation procedures, it appeared that all respondents have at least 10 already validated suppliers in their portfolio and some even have more than 25 validated suppliers, although the actual supplier base may be more limited.¹⁸
- 59) According to the Parties, barriers to entry are low in this segment. The technology is commonly available and so are the different inputs required.
- 60) When asked during the market investigation, some of the large customers in this segment mentioned that they were expecting more companies to enter this segment within the next 1-2 years, in particular companies from Turkey, India and China. Also, a number of competitors already active in this segment are currently expanding their capacity for in-line cold seal materials. The proposed transaction is viewed by them as an opportunity to gain volumes as customers seek to spread their purchases and maintain price pressure.
- 61) Given the above, the proposed transaction does not raise serious doubts in this segment.
- 62) In the segment of **PVdC in-line coating materials**, the Parties hold a combined market share of [40-50%] (Amcor [20-30%], Alcan [20-30%]).
- 63) The main competitors in this segment at present are Danapak ([10-20%]), Printpack ([10-20%]) and EBR/Interflex ([0-5%]). Nordenia and a range of other suppliers together hold the remaining ([10-20%]) market share in this segment.
- 64) One customer raised concerns related to this segment, as it considered there to be only a limited number of suppliers available. The company was, however, aware of the

¹⁷ The Parties have not been able to estimate any shares of supply specifically for in-line cold seal. The market shares presented here are therefore estimates based on shares of supply of the Parties and their competitors in relation to confectionery who are known to produce in-line cold seal.

¹⁸ One customer raised concerns about a specific segment for in-line cold seal materials produced on flexo presses. However, according to the Parties, neither Amcor nor Alcan produce in-line cold seal materials on flexo presses.

concentration that would take place following the proposed transaction and was currently looking for alternative suppliers, also outside the EEA and provided a list of 5 credible future suppliers.

- 65) Besides, as mentioned in the product market definition, there are other materials available which provide similar properties to PVdC. This is also illustrated by the fact that PVdC is mainly used in the UK. In the rest of the EEA, customers with similar requirements have preferred other solutions due to environmental concerns related to the production of PVdC. The possibility to substitute the PVdC in-line coating material by other materials was also acknowledged by the customer who raised concerns.¹⁹
- 66) In view of the above, the proposed transaction does not raise serious doubts in the segment of PVdC in-line coating materials.

2. Cheese and dairy

- 67) In the cheese and dairy segment, the combined market share of the Parties is [30-40%] (Amcor [10-20%], Alcan [10-20%]). However, a large number of competitors are active in the cheese and dairy segment and would be capable of maintaining competitive pressure on the Parties post-transaction. The main competitors include Constantia ([10-20%]), Wipak ([10-20%]), Linpac ([10-20%]), Klöckner ([5-10%]) and Bemis ([5-10%]).
- 68) Given the presence of numerous competitors in this segment, the proposed transaction does not raise serious doubts in the overall segment for cheese and dairy flexible packaging. However, in certain niche segments, namely yoghurt banderols and non-sliced white moulded cheese packaging, concerns were raised in the market investigation. The Commission therefore investigated these niche segments very carefully.
- 69) One customer raised concerns in a particular segment within packaging materials for the dairy sector: **yoghurt banderols**. The concern was related to the type of banderol which has the purpose of strengthening the yoghurt cup. The Parties hold a combined market share of [40-50%] in this segment (Amcor [20-30%], Alcan [20-30%]). A number of suppliers are active and have strong positions in this segment, for instance Emsur ([20-30%]), Constantia ([10-20%]), Roland, Huhtamaki and Rotopack. Other manufacturers considered potential suppliers include Gerosa and Centroplast. These competitors would generally have spare capacity for a potential expansion.
- 70) According to this customer, there would be only a limited number of suppliers in this segment, and the alternatives to Amcor and Alcan were not considered to be sufficiently able to supply this customer, due to the large volumes required by this customer.
- 71) However, the respondent raising concerns mentioned four current suppliers and stated that the company would be able to switch supplier in case a current supplier would increase prices by 5% (which was also the case for a clear majority of other customers in this segment²⁰). 2-3 suppliers were in general validated for each product. The choice not to multi-source was a commercial choice made by this customer, while the majority of

¹⁹ The customer mentioned acrylic coated flexible structures as an alternative type of packaging.

²⁰ Only one customer replied "maybe" to the question of whether the company would switch supplier in case of a 5% price increase from one of its current suppliers.

other customers in this segment has chosen to have several active suppliers for each end-product.

- 72) No other yoghurt manufacturers raised concerns related to this segment, and one of the large customers in this segment considered Constantia to be a particularly strong supplier and the preferred option to either of the Parties.
- 73) Based on the above, the proposed transaction does not raise serious doubts in the segment of yoghurt banderols.
- 74) Within flexible packaging for cheese, two customers raised concerns with respect to **flexible packaging used for non-sliced white moulded cheese**. According to these customers, Amcor and Alcan are two very important suppliers and the only alternative suppliers would be small companies such as Brodart and Richard Laleu.
- 75) In the segment of non-sliced white moulded cheese, the Parties hold a combined market share of [30-40%] (Amcor [10-20%], Alcan [10-20%]). A number of other suppliers are active in this segment and will be able to maintain competitive pressure on Amcor post-transaction. The main competitors include Brodart ([10-20%]), Richard Laleu ([10-20%]), Constantia ([5-10%]), Leeb ([5-10%]), Compagnie Franco Suisse ([5-10%]) and Danapak ([0-5%]). Further competitors active in this segment include, Chemosvit, Schmid Folien and La Vitrocelle.
- 76) During the market investigation, other competitors also showed interest in entering the segment of non-sliced white moulded cheese, while existing competitors declared themselves capable and willing to increase capacity in this segment if approached by a customer.
- 77) In view of the above, the proposed transaction does not raise serious doubts with respect to flexible packaging for non-sliced white moulded cheese.

3. Tea, ground coffee and beans

- 78) The combined market share of the Parties in the sub-segment of tea, ground coffee and beans is [30-40%] (Amcor [20-30%], Alcan [5-10%]). A number of other large suppliers are present in this segment such as Goglio ([10-20%]), Bischof & Klein ([5-10%]), Nordenia ([5-10%]), Huhtamaki ([5-10%]) and Gerosa ([0-5%]), while Brodart, Wipf, Safta, United Flexibles, Chemosvit and others also have activities in this segment.
- 79) Given the presence of numerous large and small competitors in this segment and given that no concerns were raised during the market investigation, the proposed transaction does not raise serious doubts in the segment for tea, ground coffee and beans.

4. Crisps, snacks and nuts

- 80) In the segment of crisps, snacks and nuts, the Parties hold a combined market share of [40-50%] (Amcor [10-20%], Alcan [20-30%]). The main competitors in this segment are Mondi ([5-10%]), Printpack ([5-10%]), Chemosvit ([0-5%]), Bak Ambelaj ([0-5%]) and Korozo ([0-5%]). ASAS, Gerosa, Huhtamaki, EBR, Wipak, SIT and Goglio are also active in this market.
- 81) In this segment there are a few very large customers who induce suppliers to compete fiercely for these accounts. In the market investigation examples were given how

suppliers lost volumes if prices were not considered competitive by the customers. No concerns were raised with respect to this segment during the market investigation.

- 82) Given the large number of alternative suppliers, the presence of large customers and the absence of any concerns by customers, the proposed transaction does not raise serious doubts in the segment of flexible packaging for crisps, snacks and nuts.

5. Fresh fruit and vegetables

- 83) The Parties hold a combined market share of [20-30%] (Amcor [20-30%], Alcan [0-5%]) in the sub-segment of fresh fruit and vegetables. Other large suppliers in this segment are present and will be able to maintain competitive pressure on Amcor post-transaction, for instance Paragon Flexibles ([10-20%]), Ultimate ([10-20%]), BPI ([5-10%]), St Andre Plast ([5-10%]) and Clondalkin ([5-10%]). Other suppliers such as Maag, Q4, Scandiflex, Acsa, Linpac and Compagnie Franco Suisse are also present in this segment. No concerns were raised during the market investigation.

- 84) In view of the limited presence of Alcan in this segment and the large number of alternative suppliers, the proposed transaction does not raise serious doubts in the segment of flexible packaging for crisps, snacks and nuts.

6. Retort food

- 85) Retort food is not a segment considered separately in the PCI report, as the end-products packed in this material are captured by a number of the already listed segments. However, some respondents to the market investigation indicated that this type of packaging could be considered a separate product market due to its specific characteristics. Therefore, it is addressed here independently of the other segments listed in Table 1.

- 86) In the overall segment of retort food, the Parties hold a combined market share of [40-50%] (Amcor [5-10%], Alcan [30-40%]). The main competitors in this overall segment include Huhtamäki ([30-40%]), Mondi ([5-10%]), United Flexibles ([5-10%]), CLP ([0-5%]) and Goglio ([0-5%]).

- 87) Further, a distinction can be considered between retort human food and retort pet food. In the segment of retort human food, the Parties hold a combined market share of [30-40%] (Amcor [20-30%], Alcan [10-20%]). A range of competitors are active in the segment of retort human food, for instance Huhtamäki ([20-30%]), CLP ([10-20%]), and Goglio ([5-10%]). No concerns were raised during the market investigation with respect to this segment.

- 88) In the segment of retort pet food, concerns were raised by one customer. However, as Amcor has minimal (if any) sales of retort pet food, the concern was not related to a strengthening of the position of the company's present supplier, but the concern expressed was more general and related to the risk of Amcor closing certain production facilities post-transaction which could then force the customer to look for alternative suppliers. However, the customer was of the opinion that there would still be other suppliers present in the market to which the company could turn.²¹

²¹ The main competitors in this segment include Huhtamäki ([30-40%]), Mondi ([5-10%]), United Flexibles ([5-10%]) and Wipf ([0-5%]).

- 89) The customer also emphasized that Amcor and Alcan were the main suppliers its company would turn to for product development. However, also in this respect this customer considered there to be other alternatives present in the market, for instance Huhtamaki and Mondi.
- 90) It should be noticed that the customer-side of the flexible packaging for retort pet food is highly concentrated. For instance, [a very high proportion] of [a leading supplier's] sales are made to the same customer. Such concentration induces fierce competition between suppliers for these key customers.
- 91) Given the above, the proposed transaction does not raise serious doubts in the segment of retort food or its potential sub-segments.

Conclusion - food

- 92) Based on the above, the proposed transaction does not raise serious doubts in the market for flexible packaging or any of the potential sub-segments within this market.

(ii) Household

- 93) In a potential market for flexible packaging for household end-uses, the Parties would hold a combined market share of [10-20%] (Amcor [5-10%], Alcan [10-20%]). The main competitors in this market include Bischof & Klein ([5-10%]), Nordenia ([5-10%]) and Safta ([5-10%]). Other suppliers such as Pawag, Skymark, Parkside, Leipa Georg Leinfelder, Kobusch Sengewald, Huecograbados Fina and Plastienvase are also present in this market.
- 94) Given the Parties' relatively low market shares in the overall market for flexible packaging for household end-uses and the presence of numerous alternative suppliers in this segment, the proposed transaction does not raise serious doubts in the market for flexible packaging for household products.

(iii) Medical

- 95) In the market for flexible packaging for medical end-uses, the Parties would hold a combined market share of [40-50%] (Amcor [30-40%], Alcan [0-5%]). The other main suppliers present in this segment include Wipak ([10-20%]), Bemis ([5-10%]), Vereinigte Papierwarenfabriken ([5-10%]), Steripack ([5-10%]) and Kobusch Sengenwald ([5-10%]). Other suppliers such as Südpack, Westfield, Safta, Sealed Air and Renolit are also present in this market. Although the Parties' market share appears relatively high, no concerns were raised by customers, who appeared to have a sufficient number of alternative suppliers.
- 96) Given the presence of numerous alternative suppliers in the EEA, the low increment in market share brought up by the transaction and the fact that no significant concerns were raised during the course of the market investigation, the proposed transaction does not raise serious doubts in the segment of flexible packaging for medical products.

(iv) Pharmaceutical

Market shares

- 97) In flexible packaging for pharmaceutical use, Alcan is the historic market leader in Europe. According to Amcor's estimates, Alcan achieved an EEA market share of [30-

40%] in 2008. The merger would combine Alcan with the number four competitor in the market, Amcor, holding a [5-10%] market share according to Amcor. The combined entity would, according to these estimates, have almost [40-50%] EEA market share ([30-40%]) on that market. According to indications in the Commission's investigation, it is not excluded that this figure is slightly higher.²²

- 98) The other four main competitors active in the pharmaceutical flexible packaging market are the following: the number two competitor is Klöckner ([10-20%]), the number three competitor is Constantia ([10-20%]), followed by Perlen ([5-10%]) and Ineos ([0-5%]).²³ These top 6 suppliers (Amcor, Alcan and the four competitors mentioned above) combined have [80-90%] of the total market.

Competitive constraint exercised on Alcan by other competitors

- 99) The Parties argue in the Form CO that the remaining competitors active in pharmaceutical flexible packaging would continue to exert significant pressure on the merged entity. However, during the market investigation, market players consistently pointed to the fact that three out of the four remaining main pharmaceutical flexible packaging suppliers are not really competing with the Parties as they are active in a different segment of the pharmaceutical flexible packaging market. In fact, Klöckner, Ineos and Perlen are specialized in supplying plastic-based blister bases, a distinct segment where Alcan is not active at all (and Amcor has very limited sales). The market investigation indicated that these players are heavily focused on this area of their special expertise and are expected to continue doing so.

- 100) Out of the remaining main suppliers on the market, it is thus essentially only Constantia (besides Amcor) who would to be significantly competing with the leading supplier Alcan. Other fringe competitors on the pharmaceutical flexible packaging market are much smaller and all have a market share of around or less than [0-5%].²⁴ In this respect, it is important to bear in mind that pharmaceutical customers are often international players who value suppliers with a certain size and geographic footprint.

Entry barriers are high

- 101) The investigation indicated that the barriers to entry into the pharmaceutical market/segment of flexible packaging are particularly high. The PCI report – an independent report which the Parties generally consider as a reliable source of market knowledge – states the following: "*Lengthy and rigorous approvals and documentation procedures for new suppliers and new material specifications create high entry barriers on packaging for both OTC [over-the-counter] and prescription pharmaceuticals. Packaging supplier / customer relationships are typically built up over many years with customers generally very reluctant to switch suppliers.*"²⁵ The above statement is fully

²² The information gathered during the first phase market investigation was not sufficient to make a market reconstruction. However, it showed some overestimation of competitors' sales, which may accordingly lead to slight overestimation of the total market.

²³ All market shares figures are Amcor's estimates.

²⁴ According to Amcor's estimates, the next competitor Aluberg has a [0-5%] share, Galazzi [0-5%] and all other competitors have less than [0-5%] market share.

²⁵ PCI report on the European Flexible packaging market 2009 (July 2009), page 308.

in line with the results of the market investigation. Market participants stress that the know-how and experience on the pharmaceutical market and knowledge about customers' specific requirements is key to success. This know-how, customer knowledge and credibility on the market is built over years.

- 102) As mentioned above, regulatory and customer evaluation/validation procedures are *lengthy and rigorous* in the sector and constitute an important barrier to entry. As primary flexible packaging products can affect the stability of the pharmaceutical substance, very strict internal procedures and testing are conducted by pharmaceutical companies. Packaging also forms part of the file for regulatory approvals for medicines. Although the Parties argue that validation procedures can be completed within 3-6 months, the feedback from the market investigation indicates that switching suppliers of pharmaceutical flexible packaging may take significantly longer. Some customers mentioned that depending on various factors, and in accordance with their internal requirements, switching suppliers can take even more than 2 years. The investigation revealed examples of such lengthy switching in the past. It also indicated that the customers are generally reluctant to switch.²⁶
- 103) Market participants also indicate that one of the key differences between pharmaceutical packaging and other areas such as food are very strict hygiene requirements and controlled production environment which prevents contamination of the packaging (in a 'clean room' or similar high production standards). Although the Parties specifically contest that a clean room is a necessity in the market, many customers mention a clean room at the producers' production plants as their requirement or something they prefer. Amcor itself sees in its internal strategy documents [...].²⁷
- 104) Pharmaceutical companies are very rigorous in choosing their suppliers. This is partly driven by evaluation/validation procedures, but also by their need to minimize potential risks of a failure which can cost them huge reputational damage. Because stability and risk reduction is very important for these customers, the lack of a proven track record and experience in the pharmaceutical field can be a significant disadvantage and barrier for potential new entrants. Investments and efforts associated with trying to enter the pharmaceutical flexible packaging market may possibly bring returns only after a few years, since it takes a lot of time from the development efforts, over the qualification and approvals procedures, until sales are effectively achieved (presupposing that the customer actually chooses to work with the entrant). It is therefore not surprising that significant entry into the market has been essentially pursued via acquisitions of suppliers active in this segment rather than own internal growth. Even Amcor, one of the worldwide largest suppliers of flexible packaging, basically managed to significantly enter the pharmaceutical segment by acquiring smaller established companies active in this area.²⁸

²⁶ Even though pharmaceutical companies are often large and sophisticated buyers, the investigation suggests that many customers would very thoroughly consider switching suppliers in case of a 5-10% price increase. Customers explain that the benefits would have to be weighted against additional costs (and time) of switching which can be quite high in the pharmaceutical industry and would depend on a number of specific factors (such as product sensitivity, administrative procedures, necessity for further testing, etc.).

²⁷ [...].

²⁸ Notably via the acquisition of Tobepal in Spain, acquired by Amcor in 2002.

Merger removes Amcor as a significant competitive constraint on the market

105) As already shown above, Amcor is one of the two main suppliers with a more significant market share on the market (besides Constantia) who is actually in direct competitive interaction with the market leader Alcan. Indeed, as will be explained in more detail in paragraphs. 107)-119), the market investigation revealed that the Parties are considered to be particularly close substitutes and the two leading suppliers in the laminate sachet segment. Also, Amcor is a new entrant and one of the few competitors that could potentially challenge Alcan's [70-80%] position in the cold formable blister segment (see below, in paragraphs.113) - 119)). The merger would thus remove Amcor as a significant competitive force on the market for pharmaceutical flexible packaging in general, with particular effects in the sachet and cold-form segments.

Conclusion on the pharmaceutical flexible packaging

106) For the above reasons, it is thus concluded that the transaction raises serious doubts as to the compatibility with the Internal Market on the potential market for pharmaceutical flexible packaging. The two segments of particular concern are analysed in more detail below.²⁹

1. Laminated sachets for pharmaceutical use

Amcor and Alcan are the two principal suppliers and the main driving force of competition

107) In the segment of laminated sachets for pharmaceutical use (accounting for EUR [...] million of the EUR 614 million pharmaceutical flexible packaging market), Amcor and Alcan are the two leading suppliers and they are seen as the main alternatives for customers. According to the Parties' estimates, their market shares are [40-50%] for Alcan and [20-30%] for Amcor (combined market share of [60-70%]), and this unrivalled position has remained stable in the last years.

108) The investigation indicates that Amcor and Alcan are indeed the main alternatives in this segment, and that the role of the smaller competitors is often limited to being a second or third back-up source. Pharmaceutical customers seem to prefer Alcan or Amcor as their main sources, and both companies are seen as global, established and proven suppliers of pharmaceutical sachets with multiple production sites and are capable of serving the full range of customers' needs.

109) The importance of competition between the Parties on this market segment is also reflected in Amcor's own strategic document in which it is stated that [...]³⁰. The

²⁹ The investigation pointed to the existence of four main segments of the market for pharmaceutical flexible packaging (see definition of relevant product market in paras 29) - 38)). According to the Parties' estimates, the total market sizes of these four segments are the following: laminated sachets – EUR [...] million, cold-form blister base – EUR [...] million, plastic blister base – EUR [...] million and blister lidding tops – EUR [...] million. Serious doubts are raised in relation to the first two segments (sachets and cold-form blisters). In the plastic base segment, the Parties are only marginally present with a combined market share of below [0-5%], the segment being mainly served by Klöckner, Perlen and Ineos. In the blister lidding segment, Alcan has a [20-30%] market share, but Amcor is achieving only [0-5%] market share; main competitors of Alcan are Constantia and Aluberg plus some smaller suppliers. All figures are Parties' estimates.

³⁰ [...].

investigation indeed indicates that the Parties were the closest competitors in this segment and their competitive interaction was the main force driving the market.

Other smaller competitors or new entrants are unlikely to challenge the unrivalled leadership of the Parties

- 110) The Parties mention that the presence of smaller suppliers of pharmaceutical sachets such as Safta, Gascogne, Leipa, Constantia, Brodart and Enteco³¹ However, these market players have a different market profile They are not only much smaller in size, but the product range they offer is more limited. Some suppliers (and in particular Constantia) was mentioned as not capable offering the full range of pharmaceutical sachets and being absent from the main bulk of the segment.³² Brodart and Enteco were not mentioned at all as suppliers of pharmaceutical sachets by pharmaceutical customers participating in the market investigation. Apart from Constantia, these smaller players on the pharmaceutical sachets market are smaller-sized undertakings (often family owned) with typically only one plant. This can be a disadvantage as large pharmaceutical companies typically prefer to rely on stable partners with sufficient guarantees for smooth and long-term security of supply.³³ It appears that the existing smaller suppliers do not have the necessary scale, product offering range and market outreach to present a sufficient alternative competitive force to Alcan and Amcor, who have for the last years continued to serve [60-70%] of the market.
- 111) The Parties argue that entry into the pharmaceutical sachets market/segment would be easy, in particular for companies producing sachets for personal care (eg. wipes, magazine sachets) or food applications (e.g. tomato ketchup). In fact, the Parties argue that pharmaceutical sachets should be seen as part of a larger segment comprising all these other sachets. Even in such a larger segment, the Parties are the by far strongest suppliers with a combined market share of [40-50%], others including Safta ([10-20%]), Gascogne ([5-10%]), Constantia ([5-10%]), Brodart ([0-5%]) or Enteco ([0-5%]).³⁴ All these players were already mentioned by the Parties as suppliers of pharmaceutical sachets (they were discussed in the previous paragraph) and they have not managed to significantly develop on the market. Although the investigation indicated that other companies active in food segments may be interested in entering the pharmaceutical market and that some customers may be looking for such alternatives, significant entry from food into the pharmaceutical businesses can not be expected in a reasonable time frame. In light of the very high entry barriers as explained above, it is doubtful that competitors would be able to enter or expand so as to successfully challenge the position

³¹ The Parties estimated market share ranges of the main smaller competitors (Safta [10-20%], Gascogne [5-10%], Constantia [5-10%], Brodart [0-5%], Enteco [0-5%]), but these estimates have proven to be significantly overstating the sales of most of these players.

³² It appears that for suppliers not offering a range of products based on a different technology than they use (such as extrusion lamination compared to adhesive lamination), developing these products and related expansion into this area would involve some significant investment (into machinery, know-how, development) and would take time, so that there are doubts as to whether an expansion could be sufficiently likely and timely.

³³ It was indicated by market participants, for example, that operating multiple plants reduces the risk for the customer, as the suppliers having more validated plants can offer a back-up solution in case of possible production ruptures.

³⁴ All figures are based on the Parties' estimates.

of the merged entity and to offset the significant loss of competition between the two market leaders in a sufficiently likely, timely and effective way.

Conclusion on laminated sachets for pharmaceutical use

112) For the above reasons, it is thus concluded that the transaction raises serious doubts as to the compatibility with the Internal Market on the potential market for pharmaceutical laminated sachets.

2. Cold-form blisters

113) In the market for cold-form blisters, Alcan is the clear market leader. According to the Parties' estimates, it had an EEA market share of [70-80%] in 2008. The segment is very concentrated, with only very few players active on the market: Constantia with [20-30%], Aluberg with [5-10%], Amcor with [0-5%] and Carcano with [0-5%] market share, according to the Parties' estimates.³⁵

114) Amcor is currently not seen as a major supplier on the market for cold-form blisters and its position is still quite minor. However, it is one of the few companies which managed to enter this market segment. Amcor entered the cold-form market in 2002 by acquiring the Spanish company Tobepal. From 2002 to 2008, it gradually developed the business and multiplied the sales from EUR [...] in 2002 to EUR [...] in 2008.

115) Despite Amcor's market share of only [0-5]%, Amcor may still be one of the very few competitors that may challenge Alcan's very strong position on the market. Amcor is one of the largest flexible packaging suppliers with a global presence and with a significant R&D potential and significant experience in pharmaceutical packaging. Through its activities in the laminated sachets segment, it has established contacts with major pharmaceutical companies. As this market segment is already highly concentrated, the proposed transaction would further strengthen Alcan's very strong position in this market segment by eliminating a recent entrant.³⁶ Moreover, Amcor [...].

116) Amcor's plans [...] are demonstrated by its own internal documents. [...] ³⁷ [...] ³⁸ [...] ³⁹ These documents indicate that Amcor's future potential on the market may be much larger than its market share would suggest.

³⁵ Table 2 of the parties' reply to Commission's request for information on flexible packaging for pharmaceutical end uses of 11 and 12 November. It is true that Aluberg and Carcano have experience in aluminium-based packaging, but both of these players only operate one site (both in Italy), which may be considered as a disadvantage for large pharmaceutical companies preferring to rely on larger suppliers as a first supply option.

³⁶ See Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, paragraph 37. (Official Journal C 31, 05.02.2004, p. 5-18)

³⁷ [...].

³⁸ [...].

³⁹ [...].

- 117) The investigation also indicates that there were no other credible entrants in the market who could be considered as better placed than Amcor to grow into a new significant competitive force in the future.⁴⁰
- 118) Amcor argues [...] However, the year of the announced acquisition may not be the best relevant counterfactual for the assessment of the effects of the proposed concentration and the prediction of Amcor's competitive behaviour absent the proposed concentration.⁴¹ Overall, Amcor as a strong player in the market for pharmaceutical flexible packaging with crucial customer contacts and several manufacturing sites had the potential to develop into a significant competitive constraint on the market leader Alcan in the future. This is in particular relevant given the very strong position of Alcan on the cold-form market, with a pre-merger share of around [70-80%].

Conclusion on cold form blisters

- 119) For the above reasons, it is thus concluded that the transaction raises serious doubts as to the compatibility with the Internal, Market on the potential market for cold form blisters bases.

(v) Other non-food

- 120) In the market for flexible packaging for other non-food end-uses, the Parties hold a combined market share of [20-30%] (Amcor [10-20%], Alcan [10-20%]). Other large suppliers are present in this market, for instance Constantia ([20-30%]), Clondalkin ([20-30%]), Mondi ([5-10%]), Isovolta ([5-10%]) and Bischof & Klein ([5-10%]). Further suppliers include Huhtamaki, Nordenia, Gerosa, Goglio and Budelpack.
- 121) During the market investigation, concerns were raised by some customers with respect to sachets used for sampling or distribution of cosmetics products through magazines ("sachets" inserted in magazines). One customer was of the opinion that it was a niche market with high margins, as it was considered technically demanding to produce this particular type of sachets. The technical problem would be to combine enough layers of material to ensure a sufficient robustness of the sachets to withstand the pressure they would be put under when placed in a heavy stack of magazines.
- 122) Further investigations revealed that several alternative suppliers are present in the market. Following up with the concerned customers, it appeared that, although the customers were of the opinion that switching would be time consuming, they all have alternative suppliers to which they could turn. Safta was often mentioned as a good and cheaper alternative⁴² and further suppliers include Gerosa, Nordenia, Constantia and Wipf. Huhtamaki was also considered able to supply, and one customer listed companies from the US, India and China as potential suppliers.

⁴⁰ The Parties argue that Bilcare, a company based in India, is a potential entrant in this business. However, customers indicated that, while Bilcare may be interested to enter, it does not yet offer the cold-form product. Compared to the time it took Amcor to grow its cold-form business since the acquisition of Tobepal, and the significant experience Amcor has in the pharmaceutical sector in Europe, it would not seem realistic that Bilcare could develop into a significant competitor in the near future in comparable manner as Amcor.

⁴¹ There are some indications that Amcor's incentives and strategic behaviour, and also the expectations of customers may have changed in the anticipation of Alcan's acquisition.

⁴² The majority of the complainants consider that the merging Parties are not each other closest competitors, and mention Safta as being Parties' closest competitor for magazine "sachets".

- 123) Concerns were raised by customers active in the packaging of the end-products in magazine sachets. However, follow-up investigation with these customers showed that it is often the companies behind the end-products (the samples of cosmetics etc.) who negotiate with the sachets suppliers (converters). These customers include large companies such as L'Oreal and Unilever who hold significant bargaining power allowing them to keep a certain competitive pressure on suppliers of flexible packaging.
- 124) Given the presence of numerous alternative suppliers in the EEA, the proposed transaction does not raise serious doubts in the segment of flexible packaging for other non-food products.

b. Folding carton

- 125) The Parties hold a combined market share of [5-10]% in the overall folding carton market. In the market for the supply of folding carton to tobacco manufacturers, the Parties hold a combined market share of [40-50]%. The main competitors include Mayr-Meinhof ([10-20]%), MeadWestVaco Wall ([10-20]%), A&R Carton ([5-10]%), Grundlach ([5-10]%), and Chesapeake ([5-10]%).

| Overall folding carton in EEA | Market shares in value | For Tobacco in EEA | Market shares in value |
|--------------------------------------|-------------------------------|---------------------------|-------------------------------|
| Alcan | [0-5%] | Alcan | [20-30%] |
| Amcor | [5-10%] | Amcor | [20-30%] |
| Combined | [5-10%] | Combined | [40-50%] |
| Mayr-Meinhof | [10-20%] | Mayr-Meinhof | [10-20%] |
| A&R Carton | [5-10%] | MeadWestVaco Wall | [10-20%] |
| Nampack | [0-5%] | A&R Carton | [5-10%] |
| Van Genechten | [0-5%] | Grundlach | [5-10%] |
| Edelmann | [0-5%] | Chesapeake | [5-10%] |

Source: Form CO; according to the Parties best estimation

- 126) The market investigation indicated that there would still be strong competition in this segment after the proposed transaction and a sufficient number of alternative effective suppliers. Customers have multiple suppliers qualified for their needs for folding carton. Market participants stated that switching volumes between these alternative suppliers would be feasible without significant transaction costs and they would switch volumes to other suppliers if the merged entity raised prices. Competitors have indicated that they have currently enough spare capacity to satisfy a significant increase in demand. No specific concerns were raised by customers during the market investigation.
- 127) Based on the above, the proposed transaction does not raise serious doubts in the markets for folding carton packaging or any sub-market of it.

V. PROPOSED REMEDIES

128) In order to remove the serious doubts expressed by the Commission after its first phase market investigation, the undertakings concerned have modified the notified concentration by entering into the following commitments, which are annexed to this decision and form an integral part thereof.

Description of the commitments

129) Amcor proposes to divest the entirety of its Spanish AF Tobepal business. AF Tobepal is an operationally self-standing business with own management and two production sites located in Logroño and Burgos. The Tobepal business is currently Amcor's main operation for pharmaceutical flexible packaging, and in particular for pharmaceutical sachets and cold-form blisters.

130) The Divestment business is described in paragraph 4 and in Schedule 1 of the Commitments attached to this decision, and includes in particular the following :

- a) Production sites of AF Tobepal located in Logroño and Burgos, including machinery and equipment, and site personnel;
- b) Royalty free perpetual licence of the IP rights/patents/brands/trademarks owned by Amcor which are linked with products (pharma or non-pharma) supplied by the Divestment Business;
- c) All customer contracts;
- d) Key personnel including all relevant personnel necessary to manage, operate and develop the business on a viable and long term basis. This in particular includes senior management, sales and marketing staff (including staff based outside of the Tobepal plants), R&D team, market technicians and technical service personnel;
- e) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
- f) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business
- g) transitional raw material and other supplies agreements from other Amcor plants for a period of to two years after Closing, on terms and conditions equivalent to those at present afforded to the Divestment Business.

Procedure and market testing

131) The Parties initially proposed a set of commitments consisting of one part of the Tobepal business – the Logrono site. In addition, they proposed to transfer to the Logrono site the customer contracts and goodwill (without assets or personnel) related to cold-form and pharmaceutical sachets currently produced at the Burgos site of AF Tobepal. These commitments were market tested, and the market test pointed to a number of deficiencies relating to the clear-cut viability of this solution, notably with

respect to the proposed transfer of customers from Burgos to Logrono, but also relating to key personnel, IP rights, and longer transitional periods.

- 132) Following the market testing feedback, the Parties proposed an improved commitments package consisting of the whole of the AF Tobepal business (including both of its sites), and including a number of other improvements such as an increase in the robustness of key personnel including people based outside of the Tobepal business, IP rights, and longer transitional supply agreements for raw materials.
- 133) The market test also emphasised the importance of a suitable buyer with sufficient experience in the business that would be capable of gaining customers' trust and effectively developing the business.

VI. ASSESSMENT OF THE COMMITMENTS

Introduction

- 134) As set out in the Commission Notice on Remedies⁴³, the Commission assesses the compatibility of a notified concentration with the common market in line with the terms of the EC Merger Regulation. Where a concentration raises serious doubts which could lead to a significant impediment to effective competition, Amcor may seek to modify the concentration so as to resolve the serious doubts identified by the Commission with a view to having the merger cleared. In assessing whether or not the remedy will restore effective competition, the Commission considers the type, scale and scope of the remedies by reference to the structure and the particular characteristics of the market in which these serious doubts arise.
- 135) As concerns the different types of remedy, the most effective way to maintain effective competition is to create the conditions for the emergence of a new competitive entity or for the strengthening of existing competitors by way of a divestiture. The divested activities must consist of a viable business, which if operated by a suitable purchaser, can compete effectively with the merged entity on a lasting basis and which is divested as a going concern.
- 136) The Commission's assessment led to the conclusion that the final remedy package consisting of the AF Tobepal divestiture addresses all serious doubts identified during the course of the procedure and adequately deals with concerns identified by market participants in response to the initial remedy package. The final commitments consist of the divestiture of a clear-cut standalone viable business, capable of competing effectively on the market. As such, the Commission has concluded that the proposed remedy package is effective in removing the serious doubts brought about by the transaction in the market for flexible packaging for pharmaceuticals end-use and its sub-segments of laminated sachets and cold form blisters.

Suitability for removing the serious doubts

- 137) The Divestment business is a flexible packaging business with sales of EUR [...] million which will create or enhance a significant competitor in pharmaceutical flexible

⁴³ Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, OJ C 267 of 22/10/2008, page 1 ("Remedies Notice").

packaging (including for both sachets and cold-form blister bases), with pharmaceutical flexible packaging sales of nearly EUR [...] million which is the equivalent of over [...] of Amcor's entire EEA-wide pharma flexible business of EUR [...] million.

- 138) The commitments reduce Amcor's presence in the overall pharma market to [0-5%] market share and the combined market share of the Parties to [30-40%]. For the segment of cold-form blisters, the commitments remove the entire overlap, as all of Amcor's activities in cold-form blisters were concentrated in AF Tobepal. Regarding laminated pharma sachets, the commitments remove nearly [...] of Amcor's sales in this segment. After the divestment, the combined market share in the laminated pharma sachets will be reduced from [60-70%] to [40-50%], with a remaining increment of [5-10%]. The Divestment Business will create a strong and viable competitor with a [20-30%] share in pharma sachets in the EEA and the entirety of Amcor's existing cold-formable materials business, and possessing the ability to develop further those businesses.
- 139) AF Tobepal – and specifically its two plants located in Burgos and in Logroño are, according to the Parties, labelled as the [...] of Amcor's pharmaceutical business. It was in fact the acquisition of the Tobepal business in 2002 which significantly contributed to Amcor's successful entry into the segment of pharma flexible packaging. Since the acquisition in 2002, Amcor has invested in Tobepal and it currently accounts for [...] of all pharmaceutical flexible packaging business of Amcor in the EEA, the rest being spread across some 15 separate plants - no one of which represents more than [...] of Amcor's current pharma flexibles sales. The sites to be divested contain all the tangible and intangible assets (machinery, know-how, R&D facilities, certifications etc.) and all key personnel necessary to compete in the pharmaceutical flexible packaging market and specifically in the segments of cold form foil and laminated pharma sachets.
- 140) Overall, the Commission concludes that the commitment package includes all the elements to create an independent, viable and competitive entity. The business being divested is the largest and most profitable business in the Amcor Flexibles Portfolio, according to the Parties. The market test confirmed that there would be interest from purchasers in the acquisition of the Divestment Business.

Conclusion on the Commitments

- 141) In light of the foregoing, the Commission considers that the commitments package is suitable for remedying the serious doubts as to the compatibility of the concentration with the Internal Market and the EEA Agreement which have been established in the previous sections of this decision.

VII. CONDITIONS AND OBLIGATIONS

- 142) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.
- 143) The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result

are generally obligations on the Parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the common market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

- 144) In accordance with the basic distinction described above, the decision in this case is conditioned on the full compliance with the requirements set out in section B of the Commitments submitted by the Parties on 11 December 2009 (conditions), whereas the other Sections of the Commitments constitute obligations on the Parties.

VII. CONCLUSION

- 145) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the common market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in section B of the Commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation (EC) No 139/2004.
- 146) The detailed text of the commitments is annexed to this decision. The full text of the annexed commitments forms an integral part to this decision.

For the Commission
(signed)
Neelie KROES
Member of the Commission

Case M.5599 - AMCOR/ALCAN PACKAGING COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the “*Merger Regulation*”), Amcor Limited (“*Amcor*”) hereby provides the following Commitments (the “*Commitments*”) in order to enable the European Commission (the “*Commission*”) to declare the acquisition by Amcor of certain assets of Rio Tinto Alcan Inc. (“*Alcan Packaging*”) compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “*Decision*”).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under the Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.

Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:
Affiliated Undertakings: undertakings controlled by Amcor or the entities comprising the Alcan Packaging business to be acquired by Amcor, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings:

AF Burgos: is a plant which forms part of AF Tobepal for financial reporting purposes.

AF Logroño: is a plant which forms part of AF Tobepal for financial reporting purposes.

AF Tobepal: is the Amcor Flexibles Tobepal business that currently comprises two sites at Logroño and Burgos, and is presently owned by Amcor Flexibles Hispania, S.L.

Alcan Packaging: is the business to be acquired by Amcor pursuant to the notified concentration (comprising the Food Europe, Food Asia, Global Pharmaceuticals and Global Tobacco sectors of Alcan Packaging) and is presently ultimately owned by Rio Tinto Alcan Inc. with its registered office at. 1188 Sherbrooke Street West, Montréal, Quebec H3A 3G, Canada.

Amcor: is an Australian-based publicly listed company, with its registered office at 109, Burwood Road, Hawthorn, Victoria 3122, Australia.

Amcor Flexibles Hispania S.L.: is a Spanish holding company, ultimately owned by Amcor, with its registered office at Avda, Sant Julia, 222, Granollers, E-08400 Barcelona, Spain.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Divestment Business: the whole of AF Tobepal, which is a stand-alone business (as defined in Section B and the Schedule) that Amcor commits to divest.

Divestiture Trustee: one or more natural or legal person(s), independent from both Amcor and Alcan Packaging, who is approved by the Commission and appointed by Amcor and who has received from Amcor the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] from the Effective Date.

Hold Separate Manager: the person appointed by Amcor for the Divestment Business to manage its day to day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule.

Monitoring Trustee: one or more natural or legal person(s), independent from both Amcor and Alcan Packaging, who is approved by the Commission and appointed by Amcor, and who has the duty to monitor Amcor's compliance with the conditions and obligations attached to the Decision.

Personnel: all personnel currently employed by the Divestment Business, including Key Personnel, staff seconded to the Divestment Business, shared personnel and the additional personnel listed in the Schedule (save those pursuant with shared responsibilities who will not transfer to the Purchaser or identified in the Schedule).

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period.

Section B. The Divestment Business

Commitment to divest

- 1 In order to restore effective competition, Amcor commits to divest, or procure the divestiture of, the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 14. To carry out the divestiture, Amcor commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestment Period. If Amcor has not entered into such an agreement at the end of the First Divestiture Period, Amcor shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 15 in the Trustee Divestiture Period.
- 2 Amcor shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Amcor has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 14 and if the closing of the sale of the Divestment Business takes place within a period not exceeding [...] after the approval of the purchaser and the terms of sale by the Commission.
- 3 In order to maintain the structural effect of the Commitments, Amcor shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

- 4 The Divestment Business consists of the plants, sites and business of AF Tobepal as described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes:
 - (a) all tangible and intangible assets (including intellectual property rights) which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business which contribute

to the current operation and/or are necessary to ensure the viability and competitiveness of the Divestment Business;

- (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business which contribute to the current operation and/or are necessary to ensure the viability and competitiveness of the Divestment Business; (items referred to under (a) - (c) hereinafter collectively referred to as “*Assets*”);
- (d) the Personnel which contribute to the current operation and/or are necessary to ensure the viability and competitiveness of the Divestment Business; and
- (e) the benefit, for a transitional period after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of the current arrangements under which Amcor or affiliated undertakings supply products or services to the Divestment Business, as detailed , in particular, in paragraph 6 of the Schedule, unless otherwise agreed with the Purchaser.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

- 5 From the Effective Date until Closing, Amcor shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular Amcor undertakes:
- (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
 - (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

Hold-separate obligations of Amcor

- 6 Amcor commits, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses it is retaining and to ensure that Key Personnel of the Divestment Business - including the Hold Separate Manager - have no involvement in any business retained and vice versa. Amcor shall also ensure that the Personnel do not report to any individual outside the Divestment Business.
- 7 Until Closing, Amcor shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties. Amcor shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under

the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Amcor.

Ring-fencing

- 8 Amcor shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. Amcor may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to Amcor is required by law.

Non-solicitation clause

- 9 Amcor undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [...] after Closing.

Due Diligence

- 10 In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Amcor shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
- (a) provide to potential purchasers sufficient information as regards the Divestment Business;
 - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

- 11 Amcor shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
- 12 Amcor shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

- 13 In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
- (a) be independent of and unconnected to Amcor or Alcan Packaging;
 - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with Amcor and other competitors;

- (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the “*Purchaser Requirements*”).
- 14 The final binding sale and purchase agreement shall be conditional on the Commission’s approval. When Amcor has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Amcor must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment Procedure

- 15 Amcor shall appoint a Monitoring Trustee to carry out the function specified in the Commitments for a Monitoring Trustee. If Amcor has not entered into a binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Amcor at that time or thereafter, Amcor shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
- 16 The Trustee shall be independent of Amcor and Alcan Packaging, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The trustee shall be remunerated by Amcor in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by Amcor

- 17 No later than one week after the Effective Date, Amcor shall submit a list of one or more persons whom Amcor proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, Amcor shall submit a list of one or more persons whom Amcor proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed trustee fulfils the requirements set out in paragraph 16 and shall include:

- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
- (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
- (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

- 18 The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Amcor shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Amcor shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Amcor

- 19 If all the proposed Trustees are rejected, Amcor shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 15 and 18.

Trustee nominated by the Commission

- 20 If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Amcor shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

- 21 The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Amcor, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

- 22 The Monitoring Trustee shall:
- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;
 - (ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Amcor with the conditions and obligations attached to the Decision.

- (A) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 5 and 6 of the Commitments;
- (B) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 7 of the Commitments;
- (C) (i) in consultation with Amcor, determine all necessary measures to ensure that Amcor does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to Amcor as the disclosure is reasonably necessary to allow Amcor to carry out the divestiture or as the disclosure is required by law;
- (D) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Amcor or Affiliated Undertakings;
- (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) propose to Amcor such measures as the Monitoring Trustee considers necessary to ensure Amcor's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;
- (vi) provide to the Commission, sending Amcor a non-confidential copy at the same time, a written report within 15 days after the date of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process

as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Amcor a non-confidential copy at the same time, if it concludes on reasonable grounds that Amcor is failing to comply with these Commitments;

- (vii) within one week after receipt of the documented proposal referred to in paragraph 14, submit to the Commission a reasoned opinion as to the sustainability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking into account the proposed purchaser.

Duties and obligations of the Divestiture Trustee

- 23 Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 14. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Amcor, subject to Amcor's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
- 24 In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Amcor.

III. Duties and obligations of Amcor

- 25 Amcor shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Amcor's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Amcor and the Divestment Business shall provide the Trustee upon request with copies of any document. Amcor and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
- 26 Amcor shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters

- level. Amcor shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Amcor shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
- 27 Amcor shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Amcor shall cause the documents required for effecting the sale and the Closing to be duly executed.
- 28 Amcor shall indemnify the Trustee and its employees and agents (each an “*Indemnified Party*”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Amcor for any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisers.
- 29 At the expense of Amcor, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Amcor’s approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Amcor refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Amcor. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 28 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Amcor during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

- 30 If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- (a) the Commission may, after hearing the Trustee, require Amcor to replace the Trustee, or
 - (b) Amcor, with the prior approval of the Commission, may replace the Trustee.
- 31 If the Trustee is removed according to paragraph 30, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 15 to 20.
- 32 Beside the removal according to paragraph 30, the Trustees shall cease to act as Trustee only after the Commission has discharged it from its duties after the Commitments with which the Trustee has been entrusted have been implemented.

However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

33 The Commission may, where appropriate, in response to a request from Amcor, showing good cause and accompanied by a report from the Monitoring Trustee:

- (i) Grant an extension of the time periods foreseen in the Commitments; or
- (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where Amcor seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Amcor be entitled to request an extension within the last month of any period.

.....
duly authorised for and on behalf of
AMCOR LIMITED

SCHEDULE 1

1 Legal, functional structure and financials

1.1 The Divestment Business consists of:

(a) AF Logroño, which is located at:

Avda. Burgos, 67 Pol. Ind.

E-26006 San Lazaro

Spain

(b) AF Burgos, which is located at:

C/Lopez Bravo 68 Poligono

Industrial de Villalonquej

E-09001 BURGOS

Spain

1.2 The Divestment Business is owned by Amcor Flexibles Hispania, S.L. (Grupo), which is located at:

Avda, Sant Julia, 222

Granollers

E-08400 Barcelona

Spain

1.3 The recent and predicted financial data for the Divestment Business and the Transfer Business are as follows:

Table 1

Recent and predicted financial data for the Divestment Business

| Tobepal Sales (€000) | 06/07 | 07/08 | 08/09 | Projected 09/10 | Projected 10/11 |
|-----------------------------|--------------|--------------|--------------|----------------------------|----------------------------|
| Net Sales | [...] | [...] | [...] | [...] | [...] |
| PBITDA | [...] | [...] | [...] | [...] | [...] |

2 Tangible assets

2.1 The Divestment Business comprises the following at the AF Logroño site:

(a) The AF Logroño plant and site: a plant of approximately [...] sited on [...] of land.

(b) All machinery and equipment including, in particular: [...] gravure press machines; [...] extrusion lamination machines, [...] adhesive lamination machine, [...] slitting machines, [...] embossing machines and all necessary ancillary equipment.

- (c) The engraving cylinder business, which is involved in the production of cylinders which are used on gravure printing presses by flexible packaging converters. The in-house engraving facilities of AF Tobepal are sited at Logroño. The Divestment Business will include the engraving cylinder business which supplies virtually all of its output to the AF Tobepal business.

2.2 The following key machines are located at AF Logroño:

Table 2

Key machinery located at AF Logroño

[...]

2.3 The Divestment Business comprises, in particular, the following at the AF Burgos site:

- (a) The land occupied by the AF Burgos plant, comprising an area of approximately [...] ([...] of which is freehold and [...] is long leasehold with an option to purchase).
- (b) The AF Burgos plant of approximately [...].
- (c) All machinery and equipment including, in particular: [...] gravure press machines; [...] adhesive lamination machines, [...] slitting machines and all necessary ancillary equipment, including relevant laboratory and testing equipment for cold formable material production, namely a burst test analyser and depth draw testing equipment.
- (d) Metalisation equipment including [...] coating machine, [...] metallisers, [...] slitting machines, [...] embossing machine and [...] cross-cutting machine for sheeting.

2.4 The following key machines are located at AF Burgos:

Table 3

Key machinery located at AF Burgos

[...]

2.5 Amcor confirms that no machinery or equipment has been transferred out of either the Burgos or Logroño plants to other Amcor plants in the last two years.

3 Licences, permits and authorisations

All licences, permits and authorisations associated with the production of flexible packaging (including pharmaceutical flexible packaging) at AF Tobepal. This will include, in particular, a royalty free perpetual licence of the IP rights/patents/brands/trademarks owned by Amcor which are (a) listed in Table 4 below and which are linked with any products (pharma or non-pharma) supplied by the Divestment Business or (b) applications pending at the Effective Date and which relate either to pharmaceutical sachets or cold formable foil;

Table 4
All IP rights, patents, brands, trademarks owned by Amcor (or which are in the status of application) in relation to products supplied by AF Tobepal
[...]

There are no other IP rights, patents, brands or trademarks that are owned by Amcor (or which are in the status of application) in relation to products supplied by AF Tobepal.

4 Main contracts, agreements, leases, commitments and undertakings

4.1 All contracts, agreements, leases including:

- (a) The Divestment Business will operate from the sites at Burgos (referred to in paragraph 2.3(a) above) and from the site at Logroño [...]. AF Tobefil, which is not included with the Divestment Business, operates from a neighbouring site and [...].
- (b) The Divestment Business consists of all customer contracts including, in particular the following main customer contracts:

Table 5
Sales from AF Tobepal in 2008/2009 - Top 10 Customers
[...]

In particular, the main customers for pharma sachets at the AF Tobepal business are as follows:

Table 6
Sales from AF Tobepal in 2008/2009 - Top 10 Pharma Sachet Customers
[...]

AF Tobepal has [...] customers in the EEA for cold formable foil, with total sales of approximately [...]:

Table 7
CFF Business customer list and turnover data
[...]

5 Key personnel

5.1 The Divestment Business includes all relevant personnel necessary to manage, operate and develop the business on a viable and long term basis. The relevant personnel identified are responsible for the Divestment Business as currently constituted and operated both in terms of its day to day running and its strategic development - and regardless of whether or not they are based at AF Tobepal.

(a) Senior Management

- 5.2 The Divestment Business includes a very strong management team with several hundred years experience of flexible packaging

Table 8

Key personnel to be transferred with the Divestment Business

[...]

(b) Sales and Marketing Staff

- 5.3 The Divestment Business includes a strong sales and marketing team (wherever currently based) with the experience, product skills and key customer contacts to enable it to maintain and develop the current level of sales, not only in respect of its pharma business, but in all the areas in which the Divestment Business is currently active (pharma, personal care, medical, food and other non-food). The following key sales and marketing personnel are included with the Divestment Business.

- (a) Pharma
[...]
- (b) Personal and Home Care
[...]
- (c) Industrials
[...]
- (d) Food
[...]

- 5.4 [...] Three offices are satellite offices of AF Tobepal (in Madrid and Barcelona and Villier San Frederic SO) and these offices will be transferred with the Divestment Business. [...]

(c) R&D

- 5.5 The Divestment Business will include a first class R&D team capable of supporting customers' practical needs, growing the business and providing the Purchaser with all necessary support. This team will include [...].

- 5.6 The R&D team being transferred comprises three distinct areas: raw material analysis (which reports to the purchasing department); market technicians (who report to the commercial department) and technical service support (which also reports to the commercial department). All personnel in these areas will be transferred with the Divestment Business including the following key individuals:

Raw material analysis

- 5.7 The raw material scientists and analysis [...]

Market technicians

- 5.8 The Healthcare market technicians [...]
- 5.9 The Food market technicians [...]

Technical Service

- 5.10 The entire technical support personnel at AF Tobepal (and certain personnel who sit within the wider Amcor group) will all be transferred with the Divestment Business. These key personnel have the requisite knowledge, experience and customer relationships across pharmaceutical and personal care flexible packaging (as well as food flexible packaging). [...]
- 5.11 [...]

(d) IT staff

- 5.12 [...]To the extent a purchaser wishes to employ the current IT staff working for AF Tobepal, Amcor grants them an option to do so.

(e) Other staff

- 5.13 All other staff (e.g. administrative, accounts, production etc) necessary for the viable operation of the AF Tobepal business on a stand-alone basis who presently perform a role in connection to either plant will be transferred with the Divestment Business.

(f) Excluded Staff

- 5.14 Amcor is a global flexible packaging company consisting of five business groups, namely Amcor PET Packaging, Amcor Sunclipse, Amcor Australasia, Amcor Asia and Amcor Flexibles. Amcor's healthcare flexible packaging business is in itself a global business with 17 plants in 11 countries and five operating units (which encompasses medical, industrials, personal care, pharmaceutical and hospitals).
- 5.15 Amcor will retain its global level corporate management involved in the strategic direction of its healthcare flexible packaging business including persons who may have responsibility on a global or regional basis in the healthcare flexible packaging business and whose costs are allocated on that basis. Therefore Global Directors, and certain EU Directors are not included within the Divestment Business as their responsibilities relate to areas not concerning AF Tobepal on a day to day basis any more than they are for the other 16 plants or 4 operating units within the healthcare flexible packaging business. These include the following personnel: [...]

6 Transitional arrangements

- (i) Any required central services provided by the Amcor Group (such as operational software or IT support) for a period of [...] from Closing; and
- (ii) to the extent that AF Tobepal currently obtains any raw materials or any other supplies from other Amcor plants including Tobefil, Amcor commits that it will continue to supply such raw materials or supplies to any Purchaser on the same terms and conditions as currently enjoyed by the AF Tobepal plants for a period of 2 years from Closing.

7 Exclusions

The Divestment Business shall not include:

- (i) The Amcor Flexibles Tobefil plant which is situated on the same site as AF Logroño but which operates as an entirely stand-alone production operation which manufactures different products. Tobefil is engaged in the manufacture and production of polyethylene blown film; only [...] of Tobefil's total supplies are made to AF Tobepal and [...]. It operates from a separate building from AF Logroño and is engaged in an entirely distinct activity; it does not produce converted flexible packaging materials similar to, or in competition with, AF Tobepal. In effect, it operates upstream of the Tobepal operation and makes external and internal supplies to a wide range of customers. AF Logroño and Tobefil have no shared facilities. In particular they have separate entrances to the offices and sites, separate canteens and separate lockers.
- (ii) To the extent that Tobefil makes supplies to the Divestment Business, there will be a transitional supply arrangement in place as noted above in order to ensure that such supplies are continued on no less favourable terms than those currently offered or made to AF Tobepal.