

***Case No COMP/M.6665 - SUN CAPITAL/ REXAM
PERSONAL AND HOME CARE PACKAGING BUSINESS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/10/2012

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EUROPEAN COMMISSION

Brussels, 29.10.2012
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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.6665 - SUN CAPITAL/ REXAM PERSONAL AND HOME CARE PACKAGING BUSINESS
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹

1. On 27 September 2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of the Merger Regulation by which certain entities comprising the Rexam Personal and Home Care Packaging Business ("**Rexam PC**", UK) will be acquired, within the meaning of Article 3(1)(b) of the Merger Regulation, by a holding company ultimately controlled by Sun Capital Partners Fund V, L.P ("**Sun Capital**", USA) by way of purchase of shares ². Sun Capital is hereinafter referred as to the "**Notifying Party**". Sun Capital and Rexam PC are hereinafter referred as to "**the Parties**".

(1) THE PARTIES

2. **Sun Capital** forms part of Sun Capital Partners, a US private investment firm focused on leveraged buyouts, equity, debt and other investments. One of Sun Capital Partners

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² Publication in the Official Journal of the European Union No C 300, 5.10.2012, p.17.

Fund's portfolio companies is Albéa, a manufacturer of cosmetic and personal care packaging and thus a competitor of Rexam PC.

3. **Rexam PC** is a manufacturer of personal care packaging solutions to the cosmetics and perfumery industry. These solutions are primary plastic packaging solutions, such as compacts, mascara wands and lip gloss applicators, lipsticks, fragrance caps, cosmetic closures and pumps. Rexam PC also offers personal and home care packaging solutions.

(2) THE OPERATION AND CONCENTRATION

4. On 20 September 2012, the Parties entered into an Equity Purchase Agreement by which Sun Capital, through a holding company, intends to acquire all of the equity interests of the selling entities with respect to Rexam PC.
5. The proposed transaction will result in Sun Capital acquiring sole control of the Rexam PC. Therefore, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

(3) EU DIMENSION

6. The operation does not have an EU dimension within the meaning of Article 1 of the Merger Regulation.
7. On 1 August 2012, however, the Parties informed the Commission in a reasoned submission that the concentration was capable of being reviewed under the national competition laws of five Member States (Austria, Cyprus, France, Germany and Poland) and requested the Commission to examine it. None of the Member States that were competent to examine the concentration indicated its disagreement with the request for referral within the period laid down by the Merger Regulation. The notified operation is therefore deemed to have an EU dimension according to Article 4(5) of the Merger Regulation.

(4) COMPETITIVE ASSESSMENT

8. The proposed transaction concerns the packaging industry, in particular, rigid plastic packaging solutions for cosmetics, home and personal care.
9. The Parties submit, in line with Commission precedents, that the packaging industry does not constitute one market but is divided into several markets based on the type of packaging, the material used for packaging and the end-use for packaging.³ No Commission precedents exist which examine the products offered by Albéa and Rexam PC that give rise to horizontal overlaps or vertical relationships.⁴

³ Case COMP/M.2416- *Tetra Laval/Siebel*.; Case COMP/ M.603 - *Crown Cork & Seal/Carnaud Metalbox*.

⁴ With the exception of Case COMP/M.5866, *Sun Capital/Beauty Business* which was examined under the simplified procedure.

10. The proposed transaction gives rise to three horizontally affected product markets in the area of cosmetics packaging: (i) mascaras wands/lipgloss applicators; (ii) lipstick applicators; (iii) fragrance caps and cosmetic closures.⁵
11. In addition, the proposed transaction also gives rise to one vertically affected market resulting from Albéa's activities in plastic and laminated tubes and Rexam PC's activities in airless and lotion pumps. In order to provide customers a product combining a tube with a pump, the tube manufacturer must generally first purchase pumps from a pump manufacturer.
12. The packaging solutions offered by Rexam PC in the home and personal care segments are not offered by Albéa.

A. Relevant markets

Product market definition

(i) Mascara wands/Lipgloss applicators

13. Mascara wands are packaging for mascaras which contain brushes and which are made from plastic resins or metal. Lipgloss applicators are sold in forms of plastic tubes with specific application nozzles or in applicators that are similar in shape and form to mascaras wands.
14. The Parties submit that lipgloss applicators and mascara wands constitute a single product market for the assessment of the present transaction since they are similar in terms of design, manufacturing process and end-use. The Commission has not previously considered these products.
15. The Commission, on the basis of the market investigation, notes that although the vast majority of competitors do not use the same processes or the same manufacturing lines for lipgloss applicators and mascara wands, most competitors manufacturing mascara wands also manufacture lipgloss applicators. The vast majority of customers considered that mascara wands and lip gloss applicators are in the same product market, distinct from other cosmetic packaging.⁶
16. For the purpose of this decision, the exact product market definition can be left open as the transaction does not raise serious doubts as to its compatibility with the internal market whether mascara wands and lipgloss applicators are considered as part of the same or separate product markets.

(ii) Lipstick applicators

17. The Parties submit that lipstick applicators consist of a base, an elevator in which the bullet is inserted, and a cap. The Commission has not previously considered these products.

⁵ The Parties' activities also overlap in compacts and plastic jars but these overlaps do not, according to the Parties, result in any affected markets and thus they are not discussed in this decision.

⁶ Replies to question 18 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers, dated 1 October 2012 and Replies to questions 13 and 14 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors, dated 27 September 2012.

18. The vast majority of the respondents to the market investigation confirmed that lipstick applicators constitute a separate product market, distinct from other cosmetic packaging.⁷
19. For the purpose of this decision, the Commission therefore considers lipstick applicators as a relevant product market, distinct from other cosmetics packaging.

(iii) Fragrance caps and cosmetic closures

20. According to the Parties, caps and closures are used on the top of jars and tubes in cosmetics products (such as cream) and perfume bottles. Caps include screw-on caps, flip-top dispensing caps and snap-on closures with multi-purpose features such as sponges and applicators. Caps for perfume bottles have an important esthetical role in the final product and differ from other cosmetic closures.
21. The Commission has previously considered there to be a separate product market for metal crowns closures and left open whether plastic and aluminium closures belong to the same market. Similarly, the Commission left open whether cosmetic closures belong to a separate product market from closures for other end-uses (e.g. food and beverage industry).⁸ The Commission has not previously considered fragrance caps and cosmetic closures.
22. The Parties submit that a potential relevant product market is the overall market for closures. This overall market may be segmented as between metal and plastic materials. A further segmentation may also be made between closures for fragrance products and caps used for other cosmetic products since the two may not be used interchangeably. The relevant product market could therefore be segmented as follows: (i) plastic fragrance caps; (ii) metal fragrance caps; (iii) plastic cosmetic closures; and (iv) metal cosmetic closures.
23. The Commission notes that, based on the results of the market investigation, a distinction between metal caps and closures and plastic caps and closures is relevant. The market investigation was, however, inconclusive as to whether fragrance caps and cosmetic closures should be considered as separate products markets from each other.⁹
24. For the purpose of this decision, the exact product market definition can be left open as the transaction does not raise serious doubts as to its compatibility with the internal market under any alternative product market definition.¹⁰

⁷ Replies to questions 23 and 24 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers, dated 1 October 2012 and to Competitors, dated 27 September 2012.

⁸ Case COMP/ M.603 - *Crown Cork & Seal/Carnaud Metalbox* (para 10).

⁹ Replies to questions 23 and 24 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers, dated 1 October 2012 and to Competitors, dated 27 September 2012.

¹⁰ The only overlap between the Parties' activities would occur in plastic fragrance caps and plastic cosmetic closures.

(iv) Plastic and Laminated Tubes

25. Plastic tubes are mainly used for cosmetic and personal care products. Laminated tubes are used mainly for toothpaste, pharmaceutical products and some cosmetic products.
26. The Parties submit that a potential relevant product market may be defined for all tubes, which may be further sub-divided between plastic and laminated tubes, due to the difference in manufacturing technology from a supply-side perspective. From a demand-side perspective, apart from being cheaper than plastic tubes, laminated tubes also have different barrier properties. That being said, the Parties consider that product segments should not be defined based on end-use application for tubes (i.e. toothpaste, cosmetic, pharmaceutical, personal care, etc.) since the tubes are essentially the same and the products used in the tubes have similar requirements.
27. The Commission has not previously considered the market for plastic and laminated tubes.
28. The Commission, on the basis of the results of the market investigation, notes that tubes bear different characteristics from other packaging available on the market and could constitute a relevant product market from other cosmetic packaging.
29. As regards a further segmentation between plastic and laminated tubes, there does not appear to be supply-side substitutability in that manufacturers do not produce plastic and laminated tubes on the same machines. Furthermore, some competitors appear to manufacture only one type of tube.¹¹
30. However, from a demand-side perspective, all tubes appear to constitute one product market. Customers consider all tubes as one product category and they choose the type of tube to be used depending on the cosmetic specification.¹²
31. For the purpose of this decision the exact product market definition can be left open since the transaction does not raise competition concerns under any alternative product market definition.

(v) Pumps

32. Pumps (or dispensing systems) are used to deliver fragrance or other liquid substances, such as lotions, creams and gels from various cosmetic containers (namely bottles or tubes). Different types of pumps exist including lotion pumps, foamers, samplers and fragrance pumps.¹³

¹¹ Replies to question 31 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors dated 27 September 2012.

¹² Replies to question 33 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors dated 27 September 2012 and replies to question 30 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers dated 1 October 2012.

¹³ One competitor also refers to the existence of an additional category of "spray pumps", i.e. pumps which are specifically designed for products such as solar protection, hair spray and body deodorant.

33. According to the Parties, lotion pumps can be further subdivided into atmospheric lotion pumps and airless lotion systems. Atmospheric lotion pumps consist of a tube which goes into the lotion. Each time the pump is used, a dose of air is introduced into the lotion which goes up into the pump and through the tube. Airless lotion systems are composed only of a bottle, piston and a pump and have no tube element in them. In these systems the lotion is preserved from any contact with air and the piston brings the lotion into the pump directly.
34. Pumps are sold either as an isolated product (in which case the closure and the bottle are purchased separately by the customer), or as a complete solution (the closure and the bottle is supplied in addition to the pump). Only airless pumps are also sold together with plastic and laminated tubes.
35. The Commission has not previously considered this market for cosmetic pumps. The vast majority of respondents to the market investigation agrees with the Parties that pumps are used to deliver fragrance or other liquid substances such as lotions, creams and gels.¹⁴
36. As regards further segmentation between different pumps, the views are conflicting. From a demand-side perspective, customers use different types of pumps for the same types of cosmetics (although the choice of pump will ultimately depend on a compatibility test between the pump and the cosmetic it is meant for).¹⁵ However, the majority of customers who responded to the market investigation also state that they do not consider all pumps to belong to the same product market.¹⁶
37. From the supply-side perspective, although the respondents observed that the process and technology used for the production of different types of pumps are quite similar and therefore pump manufacturers tend to manufacture a number of different types of pumps, ultimately different machines and processes are needed for each type of pump, in particular as regards airless lotion pumps and atmospheric lotion pumps.¹⁷
38. As regards the distinction between atmospheric and airless lotion pumps, customers noted that airless technology tends to be used for luxurious products as it is more expensive.¹⁸ In addition, only airless pumps can be used on tubes.
39. Based on the market investigation results, the Commission considers that the relevant market segment for the assessment of this transaction is the market for airless lotion pumps. However, the exact product market definition can be left open since the

¹⁴ Replies to question 34 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors dated 27 September 2012 and replies to question 32 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers dated 1 October 2012.

¹⁵ Replies to question 35 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers dated 1 October 2012.

¹⁶ Replies to question 36 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers dated 1 October 2012.

¹⁷ Replies to question 37 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors dated 27 September 2012.

¹⁸ Replies to question 34 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers dated 1 October 2012

transaction does not raise competition concerns irrespective of the product market definition adopted.

(vi) Mass and luxury packaging

40. A further distinction between mass and luxury (or prestige) packaging could be made within each of the products discussed above in paragraphs 13 to 39.
41. The Parties submit that a further segmentation between mass and prestige is not necessary. First, all manufacturers are capable of manufacturing both mass and prestige packaging. Second, mass and prestige packaging are essentially the same and the difference between them is in terms of the finish applied to prestige packaging.
42. The market investigation confirmed the Parties' position with regards to the supply-side substitutability between mass and prestige packaging. However, a vast majority of the customers indicated that mass and luxury packaging products do not compete against each other since they serve different customer requirements.¹⁹
43. Since the transaction does not raise serious doubts as to its compatibility with the internal market regardless of whether the different products are further segmented between mass and luxury products, this question can be left open.

Geographic market definition

44. According to the Parties, the relevant geographic market for all the products concerned is at least EEA-wide, if not worldwide in scope.
45. The Parties notably consider that (i) the products in question are small and easily transported; (ii) both Albéa and Rexam PC sell them to customers around the world; (iii) the Parties' competitors also operate on a worldwide basis; and (iv) the products are delivered to customers' filling stations around the world and the supplier has no knowledge of the specific country where the products are ultimately sold by the customer.
46. The market investigation confirmed the Parties' view. The respondents pointed out that there is no significant price difference between the different packaging products depending on the geographic area from which they come from and that manufacturers supply packaging products on the EEA or worldwide level. The vast majority of customers indicated that they procure on a worldwide level and consider the markets for cosmetic packaging products to be worldwide although the ability to source from a plant that is geographically close to the filling station of the cosmetic company may play a role in the choice of the supplier.
47. The Commission considers that the relevant geographic markets for the cosmetic packaging products concerned by this transaction is at least EEA-wide if not worldwide. The exact geographic market definition can, however, be left open since the

¹⁹ Replies to question 9 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers, dated 1 October 2012 and Replies to question 7 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Competitors, dated 27 September 2012

transaction does not raise competition concerns irrespective of the geographic market definition adopted.

B. Competitive assessment

48. The proposed transaction leads to a number of horizontal affected markets, notably in (i) mascaras/lipgloss; (ii) lipsticks; (iii) fragrance caps and cosmetic closures. Furthermore, it leads to one vertically affected market between tubes and pumps given that pumps (in particular airless pumps) are inputs for tube manufacturers to be able to provide a combined tube/pump packaging system to customers.²⁰

Horizontally affected markets

(i) Mascara wands/Lipgloss applicators:

49. Both Albéa and Rexam PC are active in the manufacture of mascara wands and lipgloss applicators.
50. In the market encompassing both mascara wands and lipgloss applicators, the Parties' combined market shares would be [20-30]% on an EEA-wide basis and [30-40]% on a worldwide basis, with an increment of [0-5]% at both EEA and worldwide level.
51. Were the market to be segmented between mass and prestige products, the Parties' combined market shares would be as follows: (i) [20-30]% at the EEA level and [30-40]% on a worldwide level in the mass segment with an increment of [5-10]% at both levels; and (ii) [30-40]% at the EEA level and [30-40]% on a worldwide level in the prestige segment, with an increment of [5-10]% at both levels.²¹
52. Under a narrower market definition distinguishing between mascara wands and lipgloss applicators, the proposed transaction would only lead to an affected market for mascara wands with a combined market share of [30-40]% (with an increment of [5-10]%) at both the EEA level and the worldwide level.
53. As regards the mass and prestige segments in mascara wands, the Parties' combined market shares would be similar to those in respect of the wider market encompassing both mascara wands and lipgloss applicators.²²
54. Given the modest combined market shares and the small increment resulting from the proposed transaction, the change in the structure of the market is not such as to raise

²⁰ The total market size and market share estimates are based on the Parties' best estimation on the basis of industry knowledge and information derived over the years from market intelligence and relationships with customers (see Form CO, footnote 49). The market investigation confirmed that there are no third party reports available on the size of these markets.

²¹ Market shares based on Parties' estimates. All market share estimates are on the basis of value.

²² The Parties' combined market shares in mass segment mascara wands would be [20-30]% at the EEA level and [30-40]% on a worldwide level with an increment of [5-10]% at both levels and would reach [30-40]% at the EEA level and [30-40]% on a worldwide level in the prestige segment, with an increment of [5-10]% at both geographic levels. With regards to lipgloss applicators, segmentation between mass and luxury would result in an affected market in relation to prestige lipgloss applicators at a worldwide level with a combined market share of [10-20]%.

competition concerns. The merged entity will face a number of credible competitors for mascara wands/lipgloss applicators, namely Geka ([20-30]%), Texen ([10-20]%), Somater ([10-20]%) and Shya Hsin ([10-20]%) which are all active at least in the EEA.

55. Furthermore, customers are sophisticated and well established cosmetics companies, such as [...] which have significant buyer power.²³ All of the customers usually multi-source their requirements from different manufacturers and the majority of the customers are able to switch easily between the suppliers.²⁴
56. Moreover, no respondent to the market investigation expressed concerns in relation to the market for mascaras wands/lipgloss applicators.
57. In light of the above, it can be concluded that the transaction does not raise serious doubts in as to its compatibility with the internal market in relation to the market for mascaras wands/lipgloss applicators and its possible narrower segments.

(ii) Lipstick applicators

58. Both Albéa and Rexam PC manufacture lipsticks applicators.
59. The Parties' combined market share for lipstick applicators would be [30-40]% in the EEA (with an increment of [10-20]%) and [20-30]% at a worldwide level (with an increment of [10-20]%). On the potential markets of mass and prestige lipstick applicators, the Parties' combined market shares would reach [40-50]% in the EEA and [20-30]% on a worldwide basis in the mass lipstick applicator segment. With regard to prestige lipstick applicators, the Parties' combined market share would reach [30-40]% in the EEA and [30-40]% on a worldwide basis.
60. The Parties submit that the merged entity would face a number of competitors for lipstick applicators. According to the Parties, their main competitors in the EEA include Shya Hsin ([10-20]%), HCP ([10-20]%) and ShiChiaLin ([5-10]%).²⁵ On a worldwide level, the Parties consider their main competitors to be Axilone ([10-20]%), Qualipac ([10-20]%) and Shya Hsin ([10-20]%). The respondents to the market investigation considered there to be sufficient alternatives to the Parties in the market for lipstick applicators.²⁶

²³ Customer buyer power was confirmed by the market investigation.

²⁴ Replies to questions 50 and 51 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers, dated 1 October 2012

²⁵ The same competitors are active in both mass and prestige lipstick applicators. In the EEA, competitors' market shares are estimated at [10-20]% for Shya Hsin, [10-20]% for HCP and [5-10]% for ShiChiaLin in the mass segment and at [10-20]% for Shya Hsin, [10-20]% for HCP and [5-10]% for ShiChiaLin ([5-10]%) in the prestige segment. On a worldwide level, the market share estimates for the Parties' main competitors are as follows: Kemas ([10-20]%), ShyaHsin ([10-20]%), and Axilone ([10-20]%) in the mass segment and Axilone ([10-20]%), Qualipac ([10-20]%) and Shya Hsin ([5-10]%) in the prestige segment.

²⁶ Replies to questions 49 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers, dated 1 October 2012

61. Although the Parties will clearly become the market leader in lipstick applicators both in the EEA and on a worldwide level, most of the respondents to the market investigation did not express any concerns in relation to the market for lipstick applicators. Moreover, the market investigation confirmed the significant buyer power of customers.²⁷ In addition, the market investigation did not raise concerns with regards to entry to the lipsticks applicators market.²⁸
62. In light of the above, it can be concluded that the transaction does not raise serious doubts in as to its compatibility with the internal market in relation to the market for lipstick applicators and its possible narrower segments.

(iii) Fragrance caps and cosmetic closures

63. The Parties overlap only in plastic fragrance caps and plastic cosmetic closures since neither Albéa nor Rexam PC manufacture metal fragrance caps and Rexam PC does not manufacture metal cosmetic closures.
64. On a worldwide level, no affected markets arise under any alternative product market definition.
65. The Parties' combined EEA-wide market shares in an overall market comprising both fragrance caps and cosmetic closures would be [10-20]% with an increment of [5-10]%.
66. As regards plastic fragrance caps, the Parties' combined EEA-wide market share would be [10-20]% with an increment of [5-10].²⁹
67. As regards plastic cosmetic closures, the Parties' combined EEA-wide market share would be [10-20]% with an increment of [5-10]%. On a narrower market, the merged entity would reach [20-30]% in the market for prestige plastic cosmetics closures in the EEA.³⁰
68. Post transaction, the Parties' combined market share under any possible segmentation will remain moderate. Moreover, a number of important competitors remain on the market such as Qualipac ([10-20]%) and Axilone ([10-20]%) in relation to plastic fragrance caps³¹ and Texen ([20-30]%), Zeller ([10-20]%) and Aptar ([10-20]%) in relation to plastic cosmetic closures.³²

²⁷ Replies to questions 50 and 51 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to Customers, dated 1 October 2012

²⁸ In this regard the Parties submitted that (i) there are no major legal or regulatory barriers to entry from outside EEA or within EEA; (ii) there are no barriers to access for input and infrastructure and (iii) intellectual property rights do not constitute a barrier to entry.

²⁹ The proposed transaction would not lead to any affected markets either at worldwide level or under narrower market definitions of mass and prestige in plastic fragrance caps. Only in the case that the market shares were considered in volume, the proposed transaction would lead to an affected market with [10-20]% in the EEA.

³⁰ The proposed transaction would not lead to any affected markets in the segment of mass cosmetics closures.

³¹ On a possible segment for mass plastic fragrance caps the merged entity will face at least the following competitors in the EEA: Qualipac ([10-20]% in the EEA, [10-20]% worldwide), MBF ([10-20]% in the

69. The market investigation again confirmed the existence of a number of competitors providing sufficient alternatives to customers post-transaction as well as the existence of well-established and sophisticated customers with significant buyer power.
70. Based on the moderate combined market share and the existence of a sufficient number of alternative suppliers on the market post-transaction, the Commission concludes that the transaction does not raise serious doubts in as to its compatibility with the internal market in relation to the market for fragrance caps and cosmetic closures or possible narrower segments.

Vertical relationships - airless pumps as an input to airless dispenser tubes

(i) Market dynamics

71. Rexam PC produces airless pumps whilst Albéa manufactures plastic and laminated tubes produced. Airless pumps can be combined with tubes to form "airless dispenser tubes". Airless dispenser tubes are mainly used for high quality cosmetic products by the customers that desire optimal formulation protection and functionality for their products. Airless dispenser tubes are generally sold by the tube manufacturers to final customers and filled in with the cosmetic products.³³
72. Although tubes and pumps could also be viewed as neighbouring products which can be sold separately or together, in the specific instance of airless dispenser tubes, the relationship is more vertical in the sense that in order to provide an airless dispenser tube to customers, the tube manufacturers must first purchase the airless pump from a pump manufacturer.
73. According to the Parties Rexam PC was the first cosmetics packaging company to introduce airless lotion pumps compatible with tubes in 2007.³⁴ Rexam PC developed these dispenser tubes with two tube manufacturers: [...]. Currently, Rexam PC sells airless lotion pumps compatible with tubes to [...]. Albéa purchases its entire demand for airless pumps for its tubes from [...].³⁵
74. Although airless pumps are a growing business segment, they are an expensive solution and therefore represent a small part of the overall pumps market. Moreover, the majority of airless pumps are sold to fit bottles (neither Albéa nor Rexam PC manufacture bottles). Only a minority of airless pumps are sold to fit tubes. Airless lotion pumps sold with tubes represents approximately [10-20]% of the total airless lotion pumps revenues. Rexam PC estimates that the size of a hypothetical market for airless

EEA, [5-10]% worldwide) and Lisi ([10-20]% in the EEA, [5-10]% worldwide). The same competitors, with similar market shares are active in the possible segment for prestige fragrance caps.

³² On a possible segment for prestige plastic cosmetic closures the merged entity will face competitors such as Texen ([30-40]% in the EEA, [10-20]% worldwide), MBF ([20-30]% in the EEA, [5-10]% worldwide) and Zeller ([5-10]% in the EEA, [5-10]% worldwide).

³³ In some instances it is the pump manufacturer who purchases the tubes from the tube manufacturer and provides the combined airless dispenser tube to the ultimate customer. In the vast majority of cases, however, it is the tube manufacturer who procures the pumps and sells the combined product to the customer.

³⁴ Cf. the Parties' response to article 11 request for information submitted on 10 October 2012.

³⁵ Cf. the Parties' response to the Commission's questions submitted on 19 October 2012.

pumps is in the range of EUR 91 million in the EEA and EUR 338 worldwide. Based on these estimates the total size of hypothetical market of airless lotion pumps sold with tubes would amount to EUR 9-14 million in the EEA and EUR 34-51 million worldwide.

75. Similarly, the vast majority of tubes are sold with other closures than pumps. A number of tube manufacturers estimate airless dispenser tubes to represent approximately [5-10]-[10-20]% of the overall tubes market.³⁶
76. Overall therefore, the airless dispenser tube solution currently remains a niche product market for both pump and tube manufacturers. However, Rexam PC is clearly well posed to grow in this segment and to convert customers from the traditional squeeze tubes to dispenser tubes.

(ii) Market shares

77. The Parties' best estimates as to Rexam PC's and its competitors' market shares for lotion and airless pumps are set out in the tables below on a worldwide and EEA-wide basis³⁷:

³⁶ The pump itself can represent up to 70% of the total price of an airless dispenser tube.

³⁷ The market shares estimates made by competitors and customers in response to the market investigation varied widely: some market participants considered that Rexam PC's market share in pumps in the EEA was below [10-20]% whereas others estimated it as high as [50-60]% whilst the majority of respondents were unable to give any estimates.

Estimated Market Shares - Lotion and Airless Pumps (Worldwide, Value 2011)

Manufacturer	2011
	Market Share (value)
Rexam PC	[10-20]%
Aptar	[30-40]%
Meadwestvaco	[20-30]%
Yoshino	[5-10]%
Others	[20-30]%

Source: Parties' estimates (Form CO)

Estimated Market Shares - Lotion and Airless Pumps (EEA, Value and Volume, 2011)

Manufacturer	2011	
	Market Share (value)	Market Share (volume)
Rexam PC	[10-20]%	[10-20]%
Aptar	[20-30]%	[20-30]%
Meadwestvaco	[10-20]%	[10-20]%
RPC	[10-20]%	[10-20]%
Megaplast	[5-10]%	[5-10]%
Yonwoo	[5-10]%	[5-10]%
Others	[10-20]%	[10-20]%

Source: Parties' estimates (Form CO)

78. If only airless lotion pumps which have been designed to be used on tubes were to be taken into account, according to the Parties, the market share of Rexam PC in the EEA would amount to approximately [30-40]%. Rexam PC's major competitors in this segment in the EEA would remain Aptar ([30-40]%) and Megaplast ([10-20]%) as well as a number of Chinese suppliers.
79. Albéa 's and its competitors' market shares in tubes³⁸ in the EEA are set out below:

Plastic and Laminated Tubes (EEA, Value and Volume, 2011)

Manufacturer	2011
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³⁸ The table presents data for the overall market for tubes. The market investigation did not indicate that the tubes combined with airless pumps differ from the tubes combined with cosmetic closures. In fact, the majority of tube manufacturers provide many different types of tubes, some of which are combined with cosmetic closures, others being combined with airless pumps. In addition, the respondents were not in a position to assess the proportion of tubes completed with closures against tubes completed with airless pumps other than for their own production. As regards the latter, respondents to the market investigation confirmed that the majority of their tubes are sold with closures rather than pumps.

	Market Share (value)	Market Share (volume)
Albéa	[20-30]%	[30-40]%
Tupack	[20-30]%	[20-30]%
Soupletube	[10-20]%	[10-20]%
CTL/Tuboplast	[10-20]%	[10-20]%
Essel	[5-10]%	[5-10]%
Witoplast	[5-10]%	[5-10]%
Others	[10-20]%	[5-10]%

Source: Parties' estimates (Form CO)

80. Similar market shares would be obtained if the segments of plastic and laminated tubes would be considered separately in the EEA. In the hypothetical market for plastic tubes Albéa 's market share would be [30-40]%, followed by competitors such as Tupack ([30-40]%), Witplast ([5-10]%) and CTL/Tuboplast ([5-10]%). If a possible market for laminated tubes in the EEA was to be taken into consideration, the market share of Albéa would amount to [30-40]%, followed by Colgate ([10-20]%), P&G ([10-20]%) and Soupletube ([10-20]%).³⁹

(iii) Ability and incentive to foreclose

81. During the market investigation a number of competitors to Albéa (tubes manufacturers), raised concerns that post-transaction the merged entity could engage in input foreclosure and stop supplying airless pumps to competing tube manufacturers, or otherwise degrade supply conditions. In particular, the current customers of Rexam PC were concerned that they would no longer have access to the airless pumps produced by Rexam PC, or have access to those pumps at less favourable conditions and that, as a result, they would have to invest in order to adapt their tubes to be compatible with pumps from other suppliers.⁴⁰
82. However, based on the market investigation, it seems that the above concerns can be dispelled since the merged entity would not have the ability nor the incentive to stop supplying Albéa 's tube competitors or otherwise degrade supply conditions.
83. First, Rexam still faces a number of competitors in the airless pumps segment. Some of these competitors, such as Aptar who is the current main supplier of Albéa and Megaplast currently supply airless pumps to tubes producers. In addition, other airless pumps manufacturers already active in airless pumps indicated during the market investigation that they could potentially be interested in entering the possible sub-segment for airless pumps for tubes, should the demand for these types of tubes occur.

³⁹ Market shares based on the Parties' estimates of sales value.

⁴⁰ Some respondents estimated the time of tuning tubes to pumps as around 12-14 weeks and the cost thereof as approximately EUR 300 000.

84. Second, based on the data provided by the Parties, even if Albéa purchased its entire demand for airless pumps that go into airless dispenser tubes from Rexam, it would not currently be able to absorb all of Rexam's output for airless lotion pumps for tubes.⁴¹
85. Third, until now Albéa sourced its airless pumps for tubes in the EEA from [...].⁴² Therefore, in case Albéa would switch all its demand to Rexam PC, [...] would need to seek new customers for its airless pumps for dispenser tubes. This capacity could be therefore used by the other tubes producers in case Rexam PC were to decide to stop supplying Albéa's tube competitors.
86. Fourth, it appears that the choice of cosmetic packaging (including the type of airless pump) depends strongly on the ultimate customers of the dispenser tube (i.e. cosmetics companies) which have strong bargaining power and usually define the choice of the packaging solution. The market investigation results indicate that in many cases the ultimate customers require specific pumps (i.e. coming from specific suppliers) to be used following compatibility tests between the pump and the cosmetic product it is intended for and that the customers' choice is mainly based on the aesthetics and the technical aspects of the pump. Similarly, the customers influence the choice of the tube manufacturer with which the pump will be applied.⁴³
87. These ultimate customers are international cosmetic companies, which often multi-source their requirements. For instance, in the EEA, Rexam PC's major ultimate customers for packaging containing airless pumps are [...]. None of these companies raised concerns with regards to the transaction.⁴⁴ What is more, the majority of customers pointed to the efficiencies which the merger between airless pumps and tubes producers could bring, in particular with respect to the possibility of purchasing the complex solution from one supplier. Some of the customers also pointed to efficiencies in terms of innovation. Although this could ultimately mean some loss of business for competing tube manufacturers it would mean lower prices and increased innovation for customers.
88. Moreover, the market investigation revealed that the life cycle of cosmetics packaging is relatively short since the cosmetics companies are constantly searching for new packaging solutions and renew their product lines on a regular basis. This requires cosmetic packaging manufacturers to constantly invest in research and development to create innovative solutions. Although the pump business is reliant on technology and patents (and as such, barriers to entry are relatively high), existing pump manufacturers will continuously develop new solutions and any foreclosure to an

⁴¹ In 2011, Albéa purchased [...] units (EUR [...]) of airless pumps for tubes from [...] in the EEA. During the same time period, Rexam PC sold [...] units (EUR [...]) of airless pumps for tubes to the market in the EEA.

⁴² [...].

⁴³ Non-confidential minutes of the calls with competitors to the Parties.

⁴⁴ In addition, it seems from the market investigation, that the packaging does not constitute a vital input compared to the final price of the cosmetic in question (according to some respondents packaging constitutes no more than 1-2% of the final price of the cosmetic).

existing pump solution could quickly be countervailed by the development of a technology solution.⁴⁵

89. As regards the incentives of the Parties to foreclose the access to airless pumps, this appears to be limited at least in the short to medium term given that tubes have to be tuned to a specific pump and for existing product lines customers will object to any change. As regards new products, the market investigation suggests that airless pumps are a profitable segment and to forgo those profits by limiting the use of Rexam PC pumps to Albéa tubes in the face of powerful customers seems unlikely. The Parties have clearly stated that they have no intention to stop supplying airless pumps to Albéa's tube competitors.
90. Finally, it is worth noting that neither pump competitors nor the ultimate customers have raised any concerns resulting from the combination of Albéa's tube business and Rexam PC's airless pump business.
91. Based on all the considerations above, the Commission concludes that the merged entity will have neither the ability nor the incentive to foreclose competing tube manufacturers from the airless dispenser tube segment. The transaction therefore raises no serious doubts as to its compatibility with the internal market in relation to the vertical relationship between (airless) pumps and tubes.

(5) CONCLUSION

92. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission
(signed)
Joaquín ALMUNIA
Vice-President

⁴⁵ According to Rexam PC, competition takes place very much at the time of creation of a new cosmetic product. Once a new product is assigned to a packaging supplier, it generally remains with that supplier for the life of the product which can vary from two to five years, sometimes more (see Rexam PC presentation to potential purchasers of February 2012).