



## **Final Report of the Hearing Officer<sup>1</sup>**

### **BALL / REXAM**

**(COMP/M.7567)**

#### **I. Introduction**

1. On 15 June 2015, the European Commission (the "Commission") received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation<sup>2</sup> by which Ball Corporation ("Ball") is to acquire the entire issued and to be issued share capital of Rexam PLC ("Rexam") (the "Transaction"). Ball is referred to as the "Notifying Party". Ball and Rexam are collectively referred to as the "Parties". The Transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

#### **II. Procedure**

##### **Article 6(1)(c) decision and access to key documents**

2. On 20 July 2015, the Commission adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation finding that the Transaction raised serious doubts as to its compatibility with the internal market and the EEA Agreement. The serious doubts were raised in relation to beverage cans as well as aluminium bottles.
3. On 22 and 29 July 2015, the Commission provided the Notifying Party with non-confidential versions of certain key submissions of third parties collected during the Phase I investigation.
4. On 3 August 2015, the Notifying Party submitted its written comments to the Article 6(1)(c) decision.
5. During the Phase II investigation, the Commission sent several requests for information to the Parties and to competitors, customers and suppliers.

##### **Hearing of the parties**

6. On 29 September 2015, the Commission adopted a Statement of Objections ("SO") pursuant to Article 18 of the Merger Regulation which was notified to the Notifying Party on the same day. Rexam received a non-confidential version of the SO as organized between the Parties.

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<sup>1</sup> Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29 ("Decision 2011/695/EU").

<sup>2</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

7. In the SO, the Commission preliminarily concluded that the proposed Transaction would lead to a significant impediment to effective competition, in particular through the creation of a dominant position in respect of beverage cans in the relevant geographical markets within the EEA and would as such be incompatible with the internal market and the EEA Agreement.
8. Access to the file took place by means of a data room and of CD-ROMs handed over at the Commission's premises on several occasions, in particular on 30 September, 2 October, 28 October, 12 November, 1 December and 22 December 2015. The Commission dealt with some requests for additional access. I received no formal applications with respect to access to file.
9. On 13 October 2015, the Parties submitted a joint reply to the SO. They did not request an oral hearing.
10. Four Letters of Facts were sent to the Notifying Party respectively on 6, 12, and 27 November 2015 and on 4 December 2015. The Notifying Party replied to these Letters of Facts on 12, 16 and 30 November 2015 and on 7 December 2015, respectively.
11. Formal State of play meetings took place with the Parties on 10 August, 22 September and 23 October 2015 and further meetings took place during November and December 2015.

#### **Interested third persons**

12. Two competitors of the Parties, namely Can-Pack S.A. and Crown Holdings, Inc. were recognized as interested third persons on 19 August and 25 September 2015, respectively. Two customers of the Parties, namely SABMiller plc and Carlsberg Breweries A/S were also recognized as interested third persons on 14 August and 4 November 2015, respectively. A fifth interested third person was also recognized on 13 October 2015 as having demonstrated sufficient interest in the case but has requested for its identity not to be disclosed to the Parties pursuant to Article 5(4) of Decision 2011/695/EU.
13. All interested third persons received non-confidential versions of the SO and were given the opportunity to make known their views.

#### **Commitments**

14. On 18 November 2015, the Notifying Party submitted commitments pursuant to Article 8(2) of the Merger Regulation.
15. On 20 November 2015, the Commission launched a market test in order to gather the views of competitors, customers and other market participants on the proposed commitments.
16. On 3 December 2015, the Notifying Party submitted a final set of commitments.
17. On the basis of the final set of commitments, the Commission concluded that the Transaction is compatible with the internal market and the functioning of the EEA Agreement.

### **III Conclusion**

18. Pursuant to Article 16 of Decision 2011/695/EU, I have examined whether the draft decision deals only with objections in respect of which the Parties have been afforded the opportunity of making known their views and I have come to a positive conclusion.
19. Overall, I conclude that the parties have been able to effectively exercise their procedural rights in this case.

Brussels, 6 January 2016

Joos STRAGIER