

***Case No COMP/M.1939 -
REXAM (PLM) /
AMERICAN NATIONAL
CAN***

Only the English text is available and authentic.

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

Article 6(2) NON-OPPOSITION
Date: 19/07/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.07.2000
SG (2000) D/105175

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject: Case No COMP/M.1939 – Rexam / American National Can

Notification of 05/06/2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 5 June 2000, the Commission received notification of a proposed acquisition by which Rexam Plc (“Rexam”), the consumer packaging group, will acquire control of the undertaking American National Can Inc (“ANC”), the beverage can producer (together Rexam and ANC are described as “the parties”).
2. After examination of the notification the Commission concluded that the notified operation falls within the scope of the Merger Regulation and that subject to the fulfilment of the undertakings proposed by the parties it does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES AND THE OPERATION

3. Rexam is a packaging group, active in the following sectors, i) beverage packaging; ii) speciality food packaging; iii) healthcare packaging; iv) beauty packaging; v) coated films and paper; and vi) building and engineering. Rexam’s beverage packaging sector manufactures beverage cans. Within Rexam, the beverage cans activities are carried out by the Swedish company PLM, which Rexam acquired in 1999.¹
4. ANC is an American corporation involved in the manufacturing of beverage cans.

¹ Decision of 1.2.1999 - case IV/M.1400 – Rexam / PLM

5. On 2 April 2000, Rexam and ANC entered into an agreement pursuant to which ANC will become a wholly owned subsidiary of Rexam. The transaction is carried out in the form of a US public bid since ANC's shares are listed on the New York Stock Exchange. ANC's largest shareholder, Péchiney, which hold 45.45 per cent of ANC's issued shares, has agreed to accept the offer.

II. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than € 5 billion². Each of Rexam and ANC have a Community-wide turnover in excess of € 250 million, but 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.

III. RELEVANT PRODUCT MARKET (beverage cans)

7. The merging parties are both involved in the manufacturing of beverage cans. Although they have claimed that beverage cans and other types of beverage packaging (glass and plastic bottles) may be competing materials, the investigation has not supported this view. This is in particular because bottlers and fillers would not shift their demand to plastic (PET) or glass bottles in case of a small but significant non transitory increase in the price of beverage cans. According to bottlers/fillers, such a shift would not be motivated by a change in the relative price of the various packaging solutions, but would have to consider other non-price factors, in particular marketing and product image, varying consumer preferences, and so fourth. Concerning the market for single-serve beverage packaging, beverage cans form thus a separate product market from other beverage packaging solutions. This is in line with previous Commission's case law.³

i) Can sizes

8. Two-piece beverage cans produced in the EEA are of different sizes. The main distinction is made between slim cans and standard cans. The sizes are 15, 25,⁴ 27.5, 33, 44, 45, and 50 cl. The Commission considers that, because of demand and supply-side considerations, all these cans, with the exception of slim cans, form a single product market⁵.
9. On the demand side (bottlers/fillers), filling lines can easily be changed to accommodate different-sized cans provided these are of standard-body diameter - that is, not slim cans. Moreover, the investigation in the relevant geographic markets (see chapter IV below), did not reveal any instance whereby the final consumer would have a strong preference for any particular size of cans that could affect the switching possibilities of bottlers and fillers. On the supply side (can manufacturers), most can

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

³ Case IV/M.081 – VIAG/Continental Can

⁴ 15cl and 25cl cans are almost all slim cans.

⁵ Because of different consumer perceptions and preferences, this analysis may not apply to the UK market.

manufacturing lines, designed as “swing lines”, facilitate such switching at a reasonable timing and at a reasonable cost. Overall, it appears that a supra competitive increase in the price of cans of a specific size would be defeated by either customers shifting to other sizes, or by can manufacturers producing more cans of that same size.

ii) Aluminium versus Steel cans

10. The question whether aluminium and steel beverage cans are substitutable products varies from one geographic market to another. In the Nordic countries and in Greece, only aluminium cans are made available. In these geographic areas, as well as to a great extent in the UK, aluminium and steel cans do not compete with each other. In the remaining geographic areas, demand and supply-side considerations suggest that aluminium and steel cans form a single product market. This is supported by the market investigation of the Commission in those areas. This is based, among others, on the following: a high price correlation; almost identical end-users’ and consumers’ perceptions; a cost difference of producing aluminium and steel cans inferior to 2%.
11. The following tables provide a measure of correlation coefficients for aluminium and steel beverage cans. In order to prevent spurious correlation⁶ due to metal costs, correlation analysis is done for aluminium cans and aluminium can sheet, as well as for steel cans and steel can sheet. Since the overlaps of the merging parties in the different-sized beverage cans appear for the 33 cl and 50 cl cans, the analysis is then performed for both sizes in Table 1 and Table 2, respectively. Furthermore, as the patterns of consumption vary between countries, the correlation analysis is carried out in countries where both types of cans are sold.

Table 1: 33cl beverage cans

	Al Cans/Steel Cans	Al Cans/Al Sheet	Steel Cans/Steel Sheet
Belgium	1.00	0.73	0.95
France	0.87	0.68	0.91
Germany	0.81	0.10	0.84
Netherlands	0.97	0.24	0.93
Iberia	0.81	0.04	0.78

Source: ANC⁷

Table 2: 50cl beverage cans

	Al Cans/Steel Cans	Al Cans/Al Sheet	Steel Cans/Steel Sheet
France	0.99	0.65	0.90
Germany	0.95	0.32	0.30
Netherlands	0.99	0.46	0.80
Iberia	0.83	0.11	0.59

Source: ANC

⁶ Spurious correlation means that the degree of correlation between two price series is high but irrelevant to highly substitutes products. In many cases, spurious correlation is caused by common costs.

⁷ Calculation of the correlation coefficients has been done in local currency in order to avoid problems due to fluctuating exchange rates. The consistence of the results is confirmed by benchmarking analysis.

12. The results of the above analyses show that there exists a high level of correlation between aluminium and steel beverage cans. In addition, a high degree of correlation exists between steel beverage cans and steel can sheet, while the reverse is true for aluminium cans and aluminium sheet. This is because the price of aluminium can sheet is very volatile. As a consequence, the inability of suppliers of aluminium beverage cans to pass through increases in the price of aluminium indicates that the price of aluminium beverage cans is constrained by the presence of another product, which is actually competing in the same product market.
13. There exists a limited number of situations where steel and aluminium may not be good substitutes for one another. For instance, for some decorations and printing aluminium cans may offer advantages over steel. However, in the relevant geographic markets under consideration in this decision, these situations appear to be limited in volume and appear to occur randomly. In this sense, they do not appear to procure a basis for price discrimination by can manufacturers. For instance, an aluminium can manufacturer could not distinguish any customer group with a consistent and inelastic demand for aluminium cans in order to selectively increase prices to such a distinct group. An overall price increase in aluminium cans would thus be defeated by the switch of the remaining customers to steel cans.

IV. GEOGRAPHIC MARKET

14. The Commission has found the geographic market to be regional. Thus, different factors such as customers' location relative to beverage cans plants, transport costs, national legislation, and the demand-side structure, do influence the geographic scope of competition. The market investigation has identified the following relevant geographic markets for (empty) beverage cans:
 - (i) Greece,
 - (ii) The Nordic countries,
 - (iii) The UK
 - (iv) Southern Europe (including Spain/Portugal/Italy/Southern France), and
 - (v) Northern Europe (including Germany/Austria/Northern France/Benelux/the UK⁸).
15. Among these areas, the Nordic countries and Greece are 'all aluminium' countries. In the former, national recycling legislation prevents steel cans from being marketed. In the latter, the two existing can manufacturing plants produce only aluminium cans and the consumers' preferences, as well as the recycling schemes have, throughout the years, have adapted to that material.
16. The structure of the demand has a strong regional aspect. For instance, Northern Europe is characterised by a flat demand growth while the demand in the Southern part of Europe is increasing at a constant rate (in average 10% per year).

⁸ See paragraph 19

Customers' locations relative to plants

17. The location of the customers relative to the plants making the supplies limits the number of plants which can economically supply day given customers. First, just-in-time deliveries and the security of supply may be compromised if a supplier is located far away from its customer. Second, close customer liaison may be needed because of possible quick and late modifications in shape, size and decoration of beverage cans. These factors influence the patterns of supply which are thus organised along regional rather than national boundaries.
18. The notifying parties claimed that Austria and Italy should constitute separate markets. The market investigation, however, has indicated that Austria and Italy are respectively part of the Northern and the Southern European markets. From the supply-side, 88% (in volume) of beverage can deliveries from the only Austrian can manufacturing plant (a Rexam facility) are made to Northern Europe. From the demand-side, Rexam's customers located in Austria have confirmed that they would easily switch to other suppliers located in Northern Europe in case of a price increase of 5% to 10%. As for Italy, from the demand-side, Italian customers usually receive a substantial part of their deliveries from Southern France and vice versa. From the supply-side, Rexam's plant in La Ciotat, in the south of France, makes substantial supplies to Italy.
19. The notifying parties also regard the UK as a separate market. There are no imports from the Northern part of Europe into the UK and prices in the UK may be up to 40% higher than in the rest of Northern Europe. The market investigation has indicated that from a demand-side point of view the UK constitutes a separate geographic market. Owing to the large spare capacity of the UK can manufacturing plants, customers located in the UK purchase beverage cans from UK-based plants only. No imports, whatsoever, have been recorded to the UK from Northern Europe. However, there exists a substantial trade flow of beverage cans from the UK to Northern Europe. Conditions of competition in the latter are thus substantially influenced by production capacity located in the UK. This is mainly due to the large overcapacity of the UK plants. Thus, up to [30%-40%] (in volume) of ANC's deliveries from its UK plants are made to Northern European customers. As a consequence, when assessing the impact of the transaction in Northern Europe, the UK plants should be included in the relevant geographic market whereas the opposite does not appear to be the case.

Transport costs

20. The above geographic market definition, distinguishing between Southern and Northern Europe is also supported by transport costs considerations. Because empty beverage cans have only a small value, take up a great deal of space and therefore cannot economically support transport costs over a long distance. Thus, the average transport cost is 5% of the total beverage can price for a distance up to 500 km, and about 10% or more for a distance up to or above 1000km. However, since the costs of transporting are significant, strict lines between regions are not hermetic.

V. COMPETITION ASSESSMENT

21. In Northern Europe the combined market share of the merged firm in terms of capacity will be [35%-45%]. Two competitors will remain active in this market, Continental Can with [35%-45%] and Carnaud-Metalbox with [15%-25%].
22. In Southern Europe the combined market share of the merged firm in terms of capacity will be [65%-75%]. The other active competitors are Carnaud-Metalbox with [25%-30%] and a small independent manufacturer, Tubettificio Lecco, with [less than 5%].

Duopolistic dominance

23. In Northern Europe, the operation raises concerns as to the creation of a duopolistic dominant position held by the merged firm and its immediate competitor, Continental Can.
24. The analysis of the Northern European demand indicates a flat growth trend. The market is highly concentrated with only four competitors *ex ante*. The product is generally identified as an homogeneous product whereas this industry is not characterised by any high level of technical change⁹. As a result, competition takes place at the level of price. The market is relatively transparent. Contracts are signed as a result of a bidding process, in which the four suppliers take place. As the large majority of customers proceed by way of tenders and as the contracts are usually signed for a period of one year, there may be several tens of tenders throughout a year. The frequency and regularity of the bids, coupled with the feedback that suppliers receive from tendering customers, enhances the degree of transparency of the market. Can manufacturers may thus become aware of the winner of the bid, possibly of the proposed price, and of course, through the tender announcement, of the identity of the purchaser and of the quantities involved in the tender.¹⁰ This has been confirmed by the market investigation with third parties. In terms of prices, average Continental Can's prices are relatively similar to those of Rexam or ANC. In terms of capacity, the Northern European market has an overcapacity of [15%-25%] which is equally divided between the merging firms and Continental Can. The two members of the duopoly, Rexam/ANC and Continental Can, will have more or less symmetrical market shares in terms of capacity and of capacity utilisation. Given the similarity in prices, in capacity and in capacity utilisation and due to the fact that firms are profit maximisers, it can be reasonably assumed that the cost structures of the merged firm and Continental Can are basically identical in the same geographic area. Substantial and symmetric overcapacity allows both players to limit the incentives to deviate and thus to maintain high collusive prices. The parties have indicated that "the players have a reasonable idea of the total available capacity at their competitors' plants". Collusive mechanisms are then sustainable through credible punishment threats because firms with spare capacity

⁹ Current features in the beverage can industry are photo printing, can shaping, registered embossed cans, etc. However, these developments are marginal and do not have any significant impact on the market.

¹⁰ For instance, replying to a request for information (Article 11 of the Merger Regulation), the notifying parties have provided lists of past bidding exercises where the identity of the customer and of the winner, as well as the quantities involved in each tender were reported.

can impose a realistic threat of retaliation on potential mavericks. Furthermore, Carnaud-Metalbox cannot be considered as a source of competition to the duopoly, because of its capacity constraints ([%] overcapacity).

Single dominance

25. In Southern Europe, the operation raises concerns as to the creation of a single dominant position. Southern Europe is characterised by a trend of growing demand. With a post-merger market share of [65%-75%], the merged firm will be able to behave in the market independently from its customers and competitors. Because of its non-negligible over-capacity ([5%-15%]), the merged firm will be able to implement, sustain and monitor a price increase, in particular to the extent that the remaining competitor, Carnaud-Metalbox, is capacity-constrained. In this context, Carnaud-Metalbox may not have any incentive to engage in price-cutting, since it will not be able to capture market share by supplying more customers in the market than it does today. In these circumstances, the parties will have the incentive to behave independently and to charge supra-competitive prices.

Bargaining power, barriers to entry and potential competition

26. The notifying parties have stated that the market is dominated by a small number of very powerful buyers. The market investigation showed that one large buyer, [BUSINESS SECRET], purchases [%] of total Rexam and ANC's supplies. However, other "big" customers, like [BUSINESS SECRET] or [BUSINESS SECRET], represent respectively less than [%] and [%] of the merging parties' sales. In this sense, they can hardly be considered as having any considerable buyer power. This was confirmed by the market investigation. Furthermore, the parties claim that, for reasons of security of supply, many customers, described as "sophisticated", have developed a strategy of dual-sourcing. However, in practice, [50%-60%] of Rexam's main customers have a single source of supply. This means that the merged firm can price-discriminate between the sophisticated customers and the non-sophisticated ones. Discrimination can be easily achieved with the non-sophisticated customers as they cannot exercise arbitrage. By using an appropriate pricing schedule, the merged firm will be able to extract a large part of its profits from the non-sophisticated customers while letting a substantial rent to the sophisticated ones.
27. With a € 45 million requirement to set up a new line of production, costs of entry in the can manufacturing industry are significant. No new entry has occurred in the European markets for the last two decades, nor is it envisageable that any new entry would be made in the near future.
28. The parties claim that there are at least two small, but non-negligible competitors which would constitute a serious threat to the exercise of market power by the merged firm. These are Canpack, located in Poland and Tubettifico, in Lecco, Italy. In practice, both of them have limited capacity which limits their ability to act as potential competitors. The large majority of customers approached during the market investigation did not consider either of them as being their potential suppliers, even in the case of a supra competitive price increase by incumbents. Apart from capacity limitations, the main arguments were the lack of accreditation and the random quality of their product.

VI. COMMITMENTS SUBMITTED BY THE PARTIES

29. In order to remedy the above mentioned concerns, the notifying parties have offered commitments. These concern the divestiture of three beverage can manufacturing plants in Europe. These are La Ciotat (Rexam) in Southern France, and Runcorn (ANC) and Geslenkirchen (Rexam) in the UK and Germany, respectively.
30. In each case, the divestiture will comprise the factory, equipment, stocks, raw materials and work in progress; the employees employed at the said plants; all administrative, accounting, sales and technology back-up necessary to run the business; all contract for the supply of customers taking delivery in the said plants. Moreover, the notifying parties undertake, pending completion of the divestment and for a period of three years subsequently, not to compete for any of the customers transferred along with the divested plants, and for a period of two years following the divestiture, not to solicit staff working at the divested plants. Finally, in order to improve the prospects of the potential acquirer to effectively compete in the beverage cans market after the acquisition of the divested plants, the notifying parties proposed to transfer additional customer contracts, unrelated to the plants in question.
31. A Trustee will be given an irrevocable mandate, to be approved by the Commission, with the aim to overview and ensure compliance of the notifying parties with these undertakings. Amongst others, the Trustee will also monitor the viability and saleability of the divested plants and ensure that these are held separately from the remaining assets of the merging parties. He/She will make sure that sufficient working capital and a line of credit are maintained in the divested plants up to the date of sale. Finally, the Trustee will conduct negotiations with prospective buyers with a view to the final sale of the divested assets. The Trustee will inform the Commission periodically.

Assessment of the undertakings

32. Rexam's plant in La Ciotat is the only overlapping asset of the merged firm in Southern Europe. Its divestiture clearly eliminates the overlap and restores the competitive conditions prevailing before the merger. As a result, the merged firm will have a market share of [%] (previously held by ANC in that area), Carnaud-MetalBox a share of [25%-35%] and the purchaser of the divested asset a share of [%] (corresponding to the share of La Ciotat in that area).
33. The divestiture of ANC's plants in Gelsenkirchen, Germany and in Runcorn, the UK aim at eliminating doubts as to the creation of a duopolistic dominant position in Northern Europe. Prior to the divestiture, the merged firm and Continental Can would have [35%-45%] and [35%-45%] market shares (in terms of capacity), respectively, with Carnaud-MetalBox following back with [15%-20%] of the capacity (as mentioned in the competitive assessment, Carnaud-MetalBox however has serious capacity constraints). As a result of this divestiture, the merged firm will have [25%-35%] market share as opposed to [35%-45%] for Continental Can, while the purchaser of the divested assets will acquire [5%-15%] of the capacity in that area. On the one hand, this divestiture will break the symmetric configuration between the merged firm and Continental Can. On the other hand, ANC's plant in Runcorn has a large over-capacity ([35%-45%] of unutilised capacity), and as a result, once divested to a new entrant, the

retaliation mechanism will become less credible and co-ordination less sustainable on behalf of the members of the duopoly. Finally, the new entrant, with such capacity, will be a credible competitor in the short-run as well as in the long-run.

34. Concerning the proposed undertaking for the Northern European market, the market test was largely positive.
35. The acquirer of the divested assets will need to acquire some critical mass enabling it both to compete and to pay back its investment. For that reason, in order to enhance the prospects for the acquirer, the divested plants offered have sufficient capacity reserves. This is the case in particular for the Runcorn plant in the UK, which has a rate of capacity utilisation of around [55%-65%], leaving thus [35%-45%] of its capacity available for capturing further market share from the incumbents. Moreover, the fact that additional customer contracts, amounting to [1%-5%] of actual production in Northern Europe, will be transferred on top of those stemming from the divested plants, will enable the acquirer to utilise better the capacity of the divested assets and it thus makes it easier for a new entrant to establish itself on the market. In terms of operating costs, all three plants proposed for divestiture are considered as viable and competitive facilities.

VII. CONCLUSION

36. In the light of the above, the proposed undertakings eliminate the serious doubts as to the compatibility of the notified operation with the common market and with the functioning of the EEA Agreement.
37. The Commission therefore has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement, subject to the fulfilment of the proposed undertakings which are contained in the Annex to this decision and which form an integral part of it. This decision is adopted in application of Articles 6 (1) (b) and 6 (2) of Council Regulation (EEC) No. 4064/89.

For the Commission
(signed : Mario MONTI
Member of the Commission)

NATIONAL CAN GROUP, INC.

UNDERTAKINGS

NB Business secrets are identified in CAPS AND BOLD

Whereas, on 5th June, 2000, Rexam PLC ("Rexam") notified its public bid for the entire share capital of American National Can Group, Inc. ("ANC") ("the Transaction") to the European Commission ("the Commission") pursuant to Council Regulation 4064/89 as amended ("the Merger Regulation").

In accordance with Article 6(2) of the Merger Regulation, Rexam hereby commits to the Commission, with respect to the above-referenced notification to dispose of **[a beverage can plant in Southern Europe and two beverage can plants in Northern Europe]** **[redacted – business secrets]** on the terms and conditions set out in this Undertaking. The plants to be divested shall be the "Divestment Plants".

1. **Assets to be divested**

- 1.1 Within a period of **[redacted – business secrets]** from the date of any decision by the Commission under Article 6(1)(b) of the Merger Regulation in respect of the Transaction ("the Decision") or within such longer period as may be approved by the Commission, Rexam will sign a contract or contracts to divest the First Divestment Plant, the Second Divestment Plant and the Third Divestment Plant where, for the purposes of this Commitment:

"the First Divestment Plant" shall mean **[redacted – business secrets]**, "the Second Divestment Plant" shall mean **[redacted – business secrets]**; and "the Third Divestment Plant" shall mean **[redacted – business secrets]**; and in each case (whether the disposal takes the form of a sale of shares or assets), the plant shall comprise:

- (a) the factory, equipment, stocks, raw materials, **[redacted – business secrets]**, and work in progress at the Divestment Plant;

- (b) subject to applicable laws, the employees employed at the Divestment Plant;
- (c) for so long as it reasonably takes the Purchaser to procure its own source of supply (up to a maximum of **[redacted – business secrets]** from the date of completion of the sale) and if requested by the purchaser, provision **[redacted – business secrets]** of the Divestment Plant with:
 - (i) raw materials (including metal sheet) currently used by, and necessary to run, the business; **[redacted – business secrets]** and
 - (ii) all administrative, accounting, sales and technology back-up (including IT support and production planning) necessary to run the business and which is currently being provided to the Divestment Plant by Rexam or ANC.

1.2 Rexam will ensure that the benefits and burdens of all contracts (on the terms currently prevailing under such contracts) for the supply of customers taking delivery and being supplied:-

- (a) from the First Divestment Plant will be transferred, assumed or assigned to the Purchaser of the First Divestment Plant;
- (b) from the Second Divestment Plant will be transferred, assumed or assigned to the Purchaser of the Second Divestment Plant;
- (c) from the Third Divestment Plant will be transferred, assumed or assigned to the Purchaser of the Third Divestment Plant.

1.3 **[redacted – business secrets]**

2. It is understood that the terms of a contract or contracts for sale of the Divestment Plant will be subject to all necessary regulatory and other approvals and the identity of the purchaser will be subject to the prior approval of the Commission.

Mechanisms for divestment

- 3.1 Rexam will, not more than 10 Commission working days after the date of the Decision, propose to the Commission for its approval two investment banks or accountancy firms of international standing and independent from Rexam which Rexam considers appropriate to be appointed as trustee ("the Trustee") to act on Rexam's behalf in overseeing the divestment of the Divestment Plants.
- 3.2 The Commission shall have discretion to reject the proposed Trustees within 10 Commission working days of receipt of the proposal.
- 3.3 In the event that the Commission rejects the proposed Trustees under paragraph 3.2 above, Rexam will, not more than 10 Commission working days after the date of the rejection, propose to the Commission for its approval a further investment bank or accountancy firm of international standing and independent from Rexam to be appointed as Trustee within the terms of paragraph 3.1 above. Paragraph 3.2 will apply to any proposals made under this paragraph.
- 3.4 Once a Trustee is approved by the Commission (or the period for rejecting a Trustee has expired without such a rejection having been made), Rexam shall appoint the institution in question within 5 Commission working days thereafter.
4. Rexam shall ensure that the mandate of the Trustee includes the following rights and obligations:
 - (a) to propose to Rexam a satisfactory purchaser or purchasers for the Divestment Plants, it being understood that such purchaser or purchasers shall:
 - (i) be (or will be following the divestments) a viable existing or prospective competitor independent of and unconnected with Rexam or ANC;
 - (ii) possess the financial resources and capability to maintain and develop the Divestment Plants as an active force in competition with the merged Rexam/ ANC group;

- (iii) not have significant and relevant commercial connections with Rexam; and
- (iv) have, or have the ability reasonably to obtain, all necessary approvals for the purchase from the relevant competition and other regulatory authorities.

These criteria are collectively described as "the Purchaser Standards". (For the avoidance of doubt, Rexam shall be free (prior to the acquisition by the Trustee of the Additional Functions pursuant to paragraph 5 below) to approach, negotiate with and conclude a sale agreement with a purchaser provided that the Trustee is notified of the potential purchaser and subparagraphs (e) and (f) below are complied with.)

- (b) to monitor and maintain the viability and saleability of the Divestment Plants in accordance with this Undertaking and to ensure that the Divestment Plants and activities are operated by the existing plant management teams independent of Rexam and on an arm's length basis consistent with their status, until their divestment to the Purchaser;
- (c) to monitor the satisfactory discharge by Rexam of its obligations under this Undertaking;
- (d) to monitor the disposal of the Divestment Plants in accordance with this Undertaking;
- (e) to provide to the Commission written reports (with a copy to Rexam) on a bi-monthly basis (or, at the option of the Commission at such other reasonable time in the light of significant developments in the divestment process), concerning relevant developments in its negotiations with third parties interested in purchasing the Divestment Plants, including the time-frame within which an agreement with interested third parties would be implemented and, in particular, sufficient information to enable the Commission to assess whether each potential purchaser satisfies the Purchaser Standards;

- (f) to continue to negotiate with an interested third party only if the Commission does not, within two weeks of receipt of the Trustee's report identifying such third party, formally indicate that it does not approve of the third party;
 - (g) to oversee that the Divestment Plants are disposed of within the time limits specified in this Undertaking.
5. If, within **[redacted – business secrets]** of the Decision or such longer period(s) as has been agreed with the Commission, Rexam has not signed a contract or contracts to transfer the Divestment Plants or any of them, the Mandate shall be deemed to be extended in order to enable the Trustee to carry out the additional functions set out in Paragraph 6 below (the "Additional Functions"). The Trustee shall be granted full power and authority to be Rexam's attorney to enable the Trustee to discharge the Additional Functions. In the event of conflict with the discharge of any of the functions as set above, and the Additional Functions, the Trustee shall give priority to the discharge of the Additional Functions.
6. The Additional Functions are as follows;
- (a) The Trustee shall have an irrevocable mandate to find a suitable purchaser for the Divestment Plants **[redacted – business secrets]** within **[redacted – business secrets]** months of the grant of the Additional Functions. For the avoidance of doubt, this sub-paragraph (a) shall not apply to a Divestment Plant if a legally binding contract for the sale of that plant has been signed but not completed.
 - (b) In the Trustee's reports, or as soon as negotiations are entered into with a potential purchaser, the Trustee shall provide to the Commission sufficient information to enable the Commission to decide on the suitability of such purchaser.
 - (c) The Trustee shall submit to the Commission for approval, with a legal opinion if considered by the Trustee as necessary, within due time to ensure compliance with this Undertaking, an agreement for sale of the Divestment Plants to a suitable purchaser. If an agreement for sale is submitted it shall be unconditional and legally binding on both the purchaser and Rexam and irrevocable save for the approval required from the Commission and such other conditions as are required by law or appropriate having regard to regulatory approvals.

- (d) The Trustee will, or will instruct Rexam to, break off negotiations with any prospective purchaser if it appears to the Commission that the negotiations concerned are being conducted with an unsuitable purchaser;
- (e) As far as permitted by law and in particular applicable company law, the Trustee will direct the carrying out of all such steps as may be required to transfer the legal title by the Final Date.

7. Rexam undertakes that it will:

- (a) Provide the Trustee with all reasonable assistance required in carrying out the mandate, to take effect immediately on approval.
- (b) Ensure that the existing management of the Divestment Plants are permitted to operate them on an arm's length basis until the plant in question is transferred to the purchaser, to take effect immediately on approval.
- (c) Procure that any directors of the companies operating the Divestment Plants who are also employed by Rexam or ANC resign from their positions on the Board of Directors (or their equivalent) of the company operating the Divestment Plant, to take effect immediately on approval.
- (d) Make all reasonable efforts to ensure that the Divestment Plants' production capacity and selling activities are maintained and that all contracts necessary to preserve the business are entered into or continued, in particular up until the date of completion of the sale:
 - (i) providing, on request, the management of the Divestment Plant with raw materials (including metal sheet) currently used by, and necessary to run, the business; **[redacted – business secrets]**; and
 - (ii) providing, on request **[redacted – business secrets]** the management of the Divestment Plant with all administrative, accounting, sales and technology back-up (including IT support and production planning) necessary to run the business and which is currently being provided to the Divestment Plant by Rexam or ANC.

- (e) Not seek to obtain from the Divestment Plants' management any business secrets, know-how or commercial information of a confidential or proprietary nature relating to the Divestment Plants' businesses up to the date of sale.
 - (f) Pending completion of the sale and for a period of **[redacted – business secrets]** years following the sale, not to compete for and, in particular, not to obtain the contracts supplied from the Divestment Plants identified in paragraph 1.2 above. **[redacted – business secrets]**
 - (g) **[redacted – business secrets]**
 - (h) Pending completion of the sale and for a period of **[redacted – business secrets]** years following the sale, not actively to solicit staff working at the Divestment Plants;
 - (i) Provide and maintain sufficient working capital and a line of credit for the Divestment Plant up to the date of sale.
8. The Commission for its part declares that it will use its best endeavours to inform Rexam, as soon as reasonably practicable, as regards the suitability of any proposed purchaser. If rejection of the purchaser by the Commission is not given within fifteen Commission working days after submission of a proposal by Rexam or the Trustee, the purchaser will be deemed to have been approved by the Commission.
9. This Undertaking is governed by, and shall be construed in accordance with, the laws of England and Wales.

Signed on behalf of Rexam PLC

By [duly authorised representative] on July 17, 2000