



EUROPEAN COMMISSION
DG Competition

CASE M.7567 – BALL / REXAM

(Only the English text is authentic)

MERGER PROCEDURE REGULATION (EC) 139/2004

Article 8(2) Regulation (EC) 139/2004

Date: 15/01/2016

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EUROPEAN
COMMISSION

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COMMISSION DECISION

of 15.1.2016

**declaring a concentration to be compatible with the internal market and the EEA
Agreement (Case M.7567 – BALL / REXAM)**

(Only the English text is authentic)

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COMMISSION DECISION

of 15.1.2016

declaring a concentration to be compatible with the internal market and the EEA Agreement
(Case M.7567 – BALL / REXAM)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings¹, and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 20 July 2015 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations²,

Having regard to the final report of the Hearing Officer in this case³,

Whereas:

- (1) On 15 June 2015 the European Commission received a notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 ('the Merger Regulation') by which the undertaking Ball Corporation ('Ball') would acquire the entire issued share capital of Rexam PLC ('Rexam') (the 'Transaction'). Ball is referred to as the 'Notifying Party'. Ball and Rexam are jointly referred to as the 'Parties'.

1. THE PARTIES

- (2) **Ball** is a company based in the United States of America ('US'). It is active worldwide in the production and supply of metal packaging for beverage, food and household products. It has production facilities in North America, Brazil, Europe and the Asia Pacific region. Ball is also present in the design, development and manufacture of aerospace systems. Ball is the largest beverage can manufacturer worldwide and the second largest beverage can manufacturer in the EEA.
- (3) **Rexam** is company based in the United Kingdom ('UK'). It is active worldwide in beverage can manufacturing, with production facilities in North America, South America, Europe, Africa, the

¹ OJ L 24, 29.1.2004, p. 1. 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 OJ C200. , p....

³ OJ C200. , p....

Middle East and Asia. It is the second largest beverage can manufacturer worldwide and the largest beverage can manufacturer in the EEA.

2. THE OPERATION AND THE CONCENTRATION

- (4) On 19 February 2015, Ball announced a recommended offer to acquire sole control of Rexam by way of purchase of shares for the total consideration of GBP 4.3 billion. The Transaction is a scheme under English law and needs to be approved by Rexam shareholders and sanctioned by a court.
- (5) The Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ [Ball: EUR 6.5 billion; Rexam: EUR 4.8 billion]. Each of them has a Union-wide turnover in excess of EUR 250 million [Ball: EUR [...] billion; Rexam: EUR [...] billion], but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (7) The Transaction therefore has a Union dimension.

4. PROCEDURE

- (8) On 20 July 2015, the Commission found that the Transaction raised serious doubts as to its compatibility with the internal market and the EEA Agreement and adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation (the 'Article 6(1)(c) Decision'). The serious doubts were raised in relation to beverage cans, as well as aluminium bottles.
- (9) On 22 July 2015, the Commission provided non-confidential versions of certain key submissions of third parties collected during the Phase I investigation to the Notifying Party.⁵
- (10) On 3 August 2015, the Notifying Party submitted its written comments to the Article 6(1)(c) Decision ('Reply to the Article 6(1)(c) Decision').
- (11) On 10 August 2015, a formal State of Play meeting took place between the Commission and the Parties.
- (12) During the Phase II investigation, the Commission sent several requests for information to the Parties, in particular on 24 July; 3, 7, 10, 21 and 28 August; 1, 7 and 11 September 2015; 5, 16 and 28 October 2015; and 17, 20, 23 and 25 November 2015.
- (13) The Commission also sent requests for information to competitors and customers of the Parties, in particular on 27 July 2015, on 10, 11, 18, 28 and 31 August 2015, on 15 September 2015, on 12, 16 and 19 October 2015, and on 13 November 2015. Over 100 customers responded to

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

⁵ A supplementary document was sent on 29 July 2015 upon consideration of a request from the Notifying Party.

those requests.⁶ All competitors active in the EEA also provided input to the investigation. Moreover, the Commission conducted further calls and meetings with some market participants, including customers, competitors and suppliers of the Parties.

- (14) On 22 September 2015, the Commission informed the Parties of the results of the Phase II investigation during a formal State of Play meeting.
- (15) On 29 September 2015, the Commission adopted a Statement of Objections ('SO') pursuant to Article 18 of the Merger Regulation. The Notifying Party replied to the SO on 13 October 2015 ('Reply to the SO'). On 23 October 2015, a formal State of Play meeting took place.
- (16) By letter of 9 October 2015, the Notifying Party informed the Commission that it did not wish to develop its arguments in a formal oral hearing.
- (17) Further meetings with the Parties took place on 9, 11, 13, 16 and 27 November 2015, and on 1 December 2015.
- (18) Pursuant to Article 18(4) of the Merger Regulation read in conjunction with Article 5 of Decision 2011/695/EU,⁷ the Hearing Officer recognised as interested third parties the competitors Crown Holdings, Inc. ('Crown') and CAN-PACK S.A. ('Can-Pack'), as well as customers SABMiller, Carlsberg and a customer who wished to remain anonymous.
- (19) On 6 November 2015, the Commission sent a first Letter of Facts to the Notifying Party ('Letter of Facts of 6 November'). The Notifying Party replied to the Letter of Facts of 6 November 2015 on 12 November 2015 ('Reply to Letter of Facts of 6 November').
- (20) On 12 November 2015, the Commission sent a second Letter of Facts to the Notifying Party ('Letter of Facts of 12 November'). The Notifying Party replied to the Letter of Facts of 12 November 2015 on 16 November 2015 ('Reply to Letter of Facts of 12 November').
- (21) On 27 November 2015, the Commission sent a third Letter of Facts to the Notifying Party ('Letter of Facts of 27 November'). The Notifying Party replied to the Letter of Facts of 27 November 2015 on 30 November 2015 ('Reply to Letter of Facts of 27 November').
- (22) On 4 December 2015, the Commission sent a fourth Letter of Facts to the Notifying Party ('Letter of Facts of 4 December'). The Notifying Party replied to the Letter of Facts of 4 December 2015 on 7 December 2015 ('Reply to Letter of Facts of 4 December').
- (23) On 18 November 2015, the Notifying Party submitted commitments in order to address the competition concerns identified in the SO (the 'Commitments of 18 November 2015'). Consequently, the period for the adoption of a final Decision was extended by 15 working days pursuant to Article 10(3) of the Merger Regulation.

⁶ Questionnaire to Customers (Q1), ID 1609; Questionnaire to Customers (Q2), ID 2664; Questionnaire to Customers (Q3), ID 2665; Questionnaire to Customers (Q4), ID 2786. Q1 was sent to all can customers. Q2 was sent to a smaller group of can customers: AB InBev, Bavaria, Brasserie Champigneulle, Britvic, Carlsberg, Coca-Cola Enterprises, Coca-Cola Erfrischungsgetränke AG, Coca-Cola Hellenic, Coca-Cola Iberian Partners, Molson Coors, Diageo, Heineken, Karlsberg Brauerei, Lidl, Mahou San Miguel, Nestlé, Oettinger Brauerei, Pepsico, Red Bull, Refresco, Royal Unibrew, S.A. DAMM, SABMiller and Schweppes. The demand for cans of all these customers, except Diageo, exceeds [...] million cans a year (based either on replies to Q1, question 4 or on the information provided by the Notifying Party in its Reply to the Article 6(1)(c) Decision, Annex 5. [...]). Q3 was sent to aluminium bottles customers. Q4 was sent to all can customers that were not addresses of Q2.

⁷ 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, page 29).

- (24) On 20 November 2015, the Commission launched a market test of the Commitments of 18 November 2015.
- (25) On 3 December 2015, the Notifying Party submitted a final set of commitments ('the Final Commitments').
- (26) The meeting of the Advisory Committee took place on 5 January 2016.
- (27) The Hearing Officer issued his final report on 6 January 2016.

5. INTRODUCTION TO THE PARTIES' ACTIVITIES

- (28) The main products involved in the Transaction are beverage cans. The Parties are also active to a lesser extent in aluminium bottles.

5.1. Introduction to the beverage can sector

5.1.1. Description of the beverage can value chain and production process

- (29) Beverages are packed in a range of products made from different substrates, including polyethylene terephthalate ('PET', a form of polyester) bottles, glass bottles, aluminium and steel cans, cartons, pouches, sachets, and kegs.
- (30) As can be seen in Figure 1, in Europe⁸ PET accounts for around 50 % of beverage packaging, glass bottles for 15 %, beverage cans for 9 % and other types of material for 26 %. In terms of pricing, PET is the cheapest of the main packaging substrates while glass is the most expensive one.

Figure 1: European beverage packaging shares in 2014



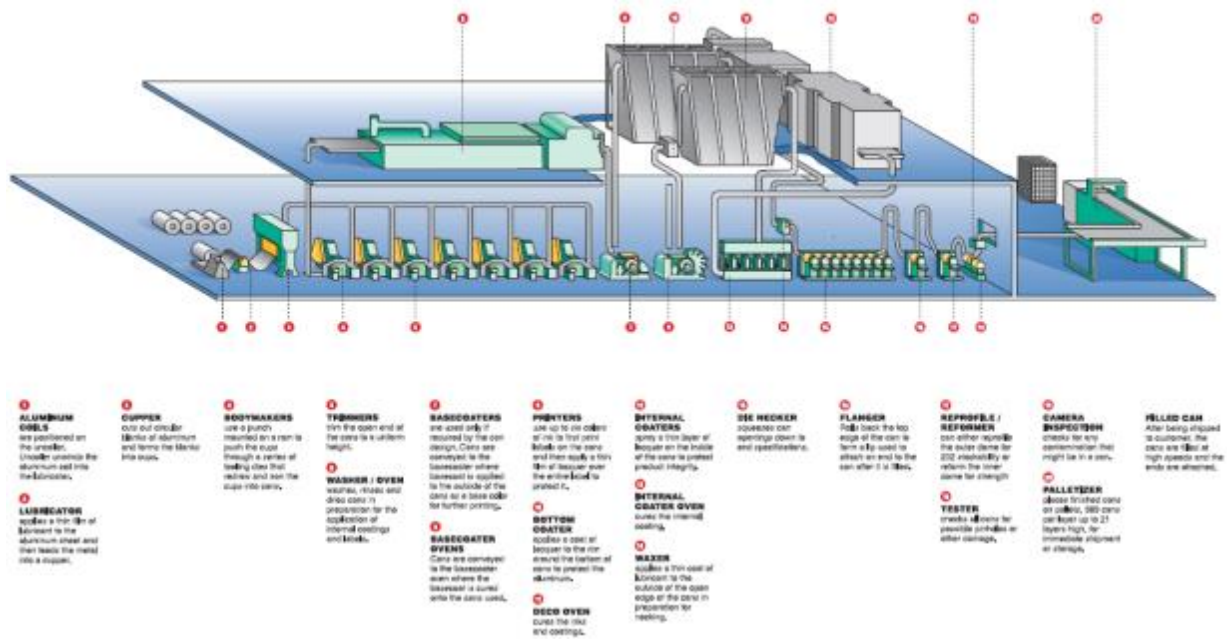
Source: Form CO based on Canadean data

- (31) The main packaging types come in a range of shapes and sizes and it is not infrequent for the same beverage to come not only in various packaging materials but also in various shapes and sizes in each material.

⁸ Based on Canadean data. In this data, beverages taken into account include carbonated soft drinks, packaged water, juice, nectars, still drinks, iced tea/coffee, sports drinks, energy drinks, beer, cider, white and flavoured milk (wine is not included). Countries to which the data relates are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, UK, Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovak Republic.

- (32) A beverage can is a metal container designed to hold a fixed portion of liquid such as carbonated soft drinks, alcoholic beverages (for instance beer), fruit juices, energy drinks, etc.
- (33) A beverage can is made up of a can body and a lid (can end). The technique used to manufacture the can body is called 'draw and wall ironing' ('DWI'). It generally involves the following steps: blanking and deep-drawing; wall-ironing and end forming; trimming; washing; outside coating; printing; drying; internal coating; necking; flanging; end coating; testing for holes and flange cracks; testing for internal defects; and palletising.⁹

Figure 2: Production process of beverage cans



Source: Ball's website

- (34) Can ends are typically manufactured in different plants to can bodies and involve other industrial production techniques. Can ends are then shipped separately to the customer and attached to the can at the customer's filling location once the can has been filled. Contrary to other parts of the world like the US or Canada, can bodies and can ends are always sold as a package in the EEA.
- (35) Beverage cans are made from either aluminium or steel. Aluminium is used more widely and accounts for around 80 % of European can demand.¹⁰
- (36) Beverage cans come in different diameters and sizes. While the standard in Europe is 33 centilitres ('cl') and 50 cl with a standard diameter (66.2 or 66.3 millimetres ('mm')), other can types with different height and diameters are also produced. In particular, slim and sleek cans that have smaller diameters are sometimes referred to as specialty cans. Can sizes generally range from 150 millilitres ('ml') to 568 ml. The Parties offer most, if not all possible can sizes and types.

⁹ Ball website: <https://www.ball-europe.com/Production-process-of-beverage-cans.htm> Last accessed on 28.09.2015, ID 2999.

¹⁰ Form CO, Paragraph 6.13.

- (37) According to the Notifying Party, the variables distinguishing the can size categories (standard, tall, slim and sleek) are diameter and height (which together determine the volume of the can). In terms of diameter, standard cans and tall cans both typically have a diameter of 66 mm, sleek cans have a diameter of 58 mm and slim cans typically have a diameter of 53 mm. In terms of height, a standard can with a diameter of 66 mm with a volume larger than 37.5 cl is categorised as tall. Similarly, sleek cans tend to be slightly taller than slim cans although this is not always the case. Table 1 provides examples of volumes which tend to fall within each category size.

Table 1: Typical beverage can size volumes according to the Notifying Party

Can size category	Volume (cl)
Slim	15, 20, 25
Sleek	25, 27.5, 30, 33, 35.5, 40, 45, 50
Standard	25, 29.6, 30, 33, 34, 37.5
Tall	44, 45, 47, 50, 53, 55, 56.8, 71, 75, 94.6, 100

Source: Form CO

5.1.2. Demand for beverage cans in the EEA

- (38) The annual sales volume of beverage cans in the EEA amounts to more than 50 billion cans (2014).¹¹ Growth in demand is modest but steady. Market participants state for instance that:

*'While the US is a declining market (with 95 billion cans per annum currently, versus 105 billion cans few years ago, but still a high annual can per capita ration of approximately 300), Europe is slightly growing (but from a more modest starting point of approximately 100 cans per capita annually).'*¹²

*'[T]he demand for cans is increasing as it's easier for customers to transport and to drin[k] "on the GO".'*¹³

*'The beverage can drink market in the EU is rather stable, growing about 5% each year.'*¹⁴

- (39) The Parties, in their internal documents and publicly on their website, also expect a stable beverage can demand growth in Europe, highlighting facts such as recent growth in the take home beer sector resulting from a drop in disposable income levels¹⁵ Figure 3 illustrates growth forecasts of the Parties.

¹¹ Form CO, Paragraph 6.20. In Europe as a whole, the consumption was about 58 billion cans in 2013. Rexam website: <http://www.rexam.com/index.asp?pageid=790> Last accessed on 28.09.2015, ID 3003.

¹² Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

¹³ Questionnaire to Customers (Q1), question 13, ID 1609.

¹⁴ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 213.

¹⁵ Rexam website: <http://www.rexam.com/index.asp?pageid=256> Last accessed on 28.09.2015, ID 3002.

Figure 3: The Parties' forecasts of the European beverage can sector

[...]

Source: Ball's internal document, 'Support demand based analysis of production footprint', ID 2006-60718 (left). Rexam's internal document, 'Pre-Budget Meeting', ID 2154-9036 (right)

- (40) Customers purchasing beverage cans in Europe include both bottlers and beverage manufacturers (for instance soft drinks or beer manufacturers). The largest customers of beverage cans in Europe account for a large majority of demand, as can be seen in Figure 4. Demand is also fragmented, with more than 200 smaller customers in Europe.

Figure 4: Overview of largest European beverage can customers (all can types)

[...]

Source: Internal document of Rexam¹⁶

- (41) The packaging choice, and thus the preference for beverage cans, is mainly driven by consumer needs and trends. These include demographic trends and health and wellness trends.¹⁷ Consumption patterns are therefore evolving and beverage cans are increasingly being used for off-premise consumption (e.g. consumption at home).¹⁸
- (42) In addition, in the EEA, the Parties also expect a growing 'specialty' segment due to differentiation and segmentation.¹⁹ This growing demand for 'specialty' cans is also acknowledged by respondents to the market investigation, which highlight that end-consumers (and their preferences) are driving this growth.²⁰
- (43) In the EEA, there is also a strong shift to aluminium cans. As explained by one aluminium supplier, aluminium has a number of advantages over steel, including sustainability, marketing and light-weighting.²¹ Whilst 20 years ago the proportion between aluminium and steel was roughly 50/50, it is currently around 80/20.²² Out of the 38²³ beverage can plants in the EEA operating a total of 93 lines, only 23 lines in 9 plants are steel lines, with a strong trend of steel plants being converted to aluminium²⁴ and new investments only being done in aluminium.²⁵

¹⁶ Form CO, Attachment G, Reply to the Commission request for information ('RFI') 1, Exhibit H10, 'BCE Strategic Plan 2015-2017', slide 29.

¹⁷ Questionnaire to Customers (Q1), question 13, ID 1609.

¹⁸ Questionnaire to Customers (Q1), question 15.1, ID 1609.

¹⁹ Ball's internal document, 'B102 BPE Strategic Plan 2015-2017'.

²⁰ 'Moreover, [customer] perceives a strong increase in the demand for sleek cans. Standard cans are around 20-30% of [customer's] total production of cans. Sufficient volumes of sleek cans to meet the growing demand are difficult to source on the market.' Courtesy translation from the Italian original: 'Inoltre [cliente] ha riscontrato un forte aumento della domanda di lattine "sleek". Le lattine standard sono usate per il 20-30% della produzione totale di lattine di [cliente]. Le lattine sleek sono difficili da reperire sul mercato in quantità sufficiente per soddisfare la domanda crescente di tale tipo di lattina.' Agreed non-confidential minutes of a call with a customer, 07.08.2015, ID 2524. See also Questionnaire to Customers (Q1), question 29. ID 1609, agreed non-confidential minutes of a call with a customer, 19.05.2015, ID 1212, agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 226.

²¹ Agreed non-confidential minutes of a call with a supplier, 13.05.2015, ID 1163.

²² Agreed non-confidential minutes of a call with a supplier, 13.05.2015, ID 1163, agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

²³ Plants not located in the EEA such as Ball's Belgrade and Rexam's Widnau as well as Helvetia's Saarlouis and [...] plants, are not included in this number. All of these plants operate/will operate exclusively aluminium production lines.

²⁴ Agreed non-confidential minutes of a call with a customer, 19.05.2015, ID 1212.

Market participants overall expect that eventually steel beverage cans will cease to be used and all steel plants will be closed or converted to aluminium.²⁶ The Notifying Party's [...]: (i) [...]; (ii) [...]; and (iii) [...].²⁷

- (44) Capital intensiveness, the disruption in production during the period of conversion and the learning curve of the personnel seem to be the key reasons why not all steel plants and lines have not yet been converted to aluminium.
- (45) Regarding the capital intensive nature of the conversion from steel to aluminium, this is evidenced by the Parties' recent projects. For instance, for the conversion of [...], Ball estimated in an internal document the cost to be around EUR [...] million.²⁸ In another internal document, Ball estimated the cost for the [...] to be EUR [...] million.²⁹ For Ball's [...] plant the investment for the conversion of [...] was estimated at around EUR [...] million (financial interest not included).³⁰ In addition, as noted by Rexam, [...]. For example, for the conversion of its [...] plants, Rexam estimated that the conversion would lead [...] totalling [...] million cans³¹ and an additional cost of delivering cans from further away (as well as other transport inefficiencies) at around EUR [...] million.³²

Figure 5: Ball's footprint project timeline

[...]

Source: Ball's internal document³³

- (46) Regarding the disruption in production during the period of conversion, the process of converting lines from steel to aluminium is time-consuming although that the time it takes to complete a particular process varies depending on a wide range of factors, with a minimum time of [...] weeks per line.³⁴ For example, Ball estimated the time required to convert its [...] plant to be up to [...] months.³⁵ For [...], Ball estimated the time for the conversion of the plant was up to [...] months with a downtime of [...] months plus the learning curve.³⁶ Similarly, Rexam estimated the conversion of [...] steel lines in [...] to take up to [...] to [...] months.³⁷ Although the conversion can be done in stages by keeping one steel line operating while the other one is converted, the process involves a temporary reduction in capacity.

5.1.3. Beverage can manufacturers in the EEA

- (47) At global level, Ball, Rexam and Crown are the main players, as highlighted in Figure 6. According to Rexam's website, '[t]he three biggest global can makers are Rexam, Ball and Crown who together account for more than 60% of the global beverage can volumes, and close

²⁵ Questionnaire to Customers (Q1), question 25, ID 1609.

²⁶ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

²⁷ Ball's internal documents, 'BPE Deep Dive Meeting, September 22 2014' and 'BPE Strategic Plan 2015-2017'.

²⁸ Reply to RFI 5 of 13.07.2015, Exhibit O.17. According to the Notifying Party, this estimate was preliminary. An earlier estimate indicated EUR [...] million (Reply to the SO, Annex 1 and Reply to Letter of Facts of 4 December).

²⁹ Reply to Letter of Facts of 4 December. '[...]'].

³⁰ Reply to RFI 5 of 13.07.2015, Exhibit O.13.

³¹ Form CO, Attachment G, RFI 1, Exhibit H.7, 'BCE Strategic Plan 2014-2016'.

³² Reply to RFI 5 of 13.07.2015, Exhibit O.26.

³³ See Ball's internal document 'BPE Deep Dive Meeting, September 22 2014', slide 37.

³⁴ Reply to Letter of Facts of 6 November, Annex.

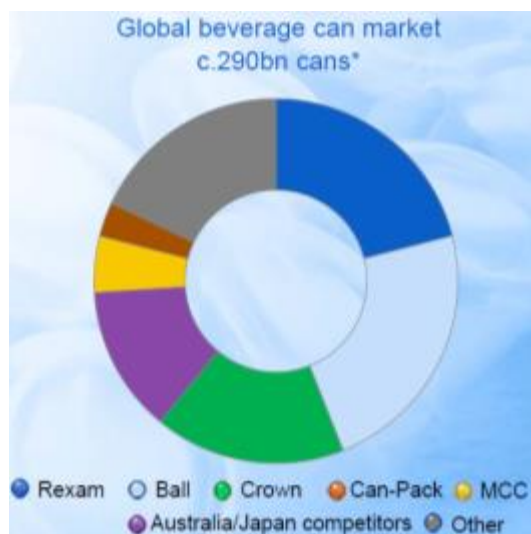
³⁵ Reply to RFI 5 of 13.07.2015, Exhibit O.17.

³⁶ Reply to RFI 5 of 13.07.2015, Exhibit O.18A.

³⁷ Reply to RFI 5 of 13.07.2015, Exhibit O.26.

to 90% in Europe, North and South America.¹³⁸ Rexam's CEO in a public statement describes can making as 'a consolidated industry, [...] the three largest players, including ourselves, account for about 60% of global supply.'¹³⁹

Figure 6: Main players in beverage cans globally*



Source: Publicly available document of Rexam (Investors presentation 2013)

* MCC is a subsidiary of AB InBev

- (48) In the EEA, four main players are present: Rexam, Ball, Crown and Can-Pack.
- (49) Crown is a global packaging company headquartered in the US and listed on the New York Stock Exchange. It produces metal packaging for the (i) beverage; (ii) food; (iii) health and beauty; and (iv) household and industrial products sectors. Apart from Europe, Crown is present in both North and South America, Africa, the Middle East, as well as in South-East Asia.⁴⁰
- (50) Can-Pack is a privately-owned company headquartered in Poland. It started supplying beverage cans in 1994 through its Brzesko plant in Poland. Can-Pack also produces glass bottles.⁴¹ Can-Pack has plants only in some parts of the EEA (Eastern Europe, Finland and the UK), as well as in India, Morocco, Russia, Ukraine and the United Arab Emirates.⁴²
- (51) In the EEA, are also active: (i) BAGPAK Polska Sp. z o.o., 'BagPak', a beverage can manufacturer based in Poland and owned by the Polish beer manufacturer, Van Pur; and (ii) Helvetia Packaging AG ('Helvetia'), which has built a new beverage can plant at Saarlouis in Germany that is expected to be operational in the course of 2015.

³⁸ Rexam website: <http://www.rexam.com/index.asp?pageid=790> Last accessed on 28.09.2015, ID 3003.

³⁹ Rexam. *Edited Transcript, REX L – Rexam PLC Investor*. https://www.rexam.com/files/presentations/investorseminar11investor_seminar_nov11_transcript.pdf. Last accessed on 28.09.2015, ID 3000.

⁴⁰ Crown website: <http://www.crowncork.com/about-crown/global-locations> Last accessed on 23.10.2015, ID 3413.

⁴¹ Form CO, Paragraphs 6.70-6.73.

⁴² Can-Pack website: http://www.canpack.eu/?page_id=45 Last accessed on 23.10.2015, ID 3414.

5.1.3.1. Location of beverage can plants serving the EEA

- (52) The locations of the beverage can manufacturing plants of Ball, Rexam, Crown and Can-Pack are presented in Figure 7.
- (53) Rexam has fifteen beverage can plants in the EEA, while Ball has nine. Figure 8 also includes plants of the Parties not located in the EEA but serving EEA customers (Rexam's Russian plants in Naro-Fominsk and Vsevolozhsk⁴³ and Ball's Serbian plant⁴⁴ in Belgrade).⁴⁵ In addition, Figure 8 also shows Rexam's new plant in Widnau, Switzerland, which started in 2015⁴⁶ and [...].
- (54) Crown has eight beverage can plants in the EEA: two in each of Spain, Greece and the UK; as well as one in each of France and Slovakia. Crown also has a plant in Tunisia.
- (55) Can-Pack has five beverage can plants in the EEA: two plants in Poland, and one in Romania, Finland and the UK. Its four other plants are located in Russia (two), and one in Ukraine and Morocco.

Figure 7: Beverage can plants serving the EEA – [...]

[...]

Source: Ball's internal document 'EuropeMap.February.11.2014'

5.1.3.2. Location of can end plants

- (56) Rexam has two can end plants in the EEA located in France and Ireland. Rexam is currently planning [...].⁴⁷ In addition, one of its German beverage can facilities (Recklinghausen) produces both can bodies and can ends.⁴⁸
- (57) Ball also currently has two can end facilities in the EEA located in Germany and the UK. In addition, in June 2015, it opened a new can end facility in Poland.⁴⁹
- (58) Crown has three can ends plants in the EEA located in the UK, Greece and Poland.⁵⁰
- (59) Can-Pack's two can plants located in Poland also produce can ends.⁵¹

5.1.3.3. Location of research and development activities of the Parties

- (60) Rexam's research and development ('R&D') activities for its beverage cans sold in the EEA are carried out at its locations in Tongwell, Milton Keynes (the UK),⁵² in Mont (France)⁵³ and at

⁴³ These plants sell limited volumes to the EEA (Sales into the EEA represented in 2014 [...] % of Naro-Fominsk's total volume and [...] % of Vsevolozhsk's total volume, data from Reply to RFI 10 Exhibit B).

⁴⁴ [...] % of this plant's volumes are shipped to the EEA (data from Reply to RFI 10 Exhibit B).

⁴⁵ Rexam also has a plant in Turkey (Izmir). In the years 2009-2014 [...] from Izmir to the EEA. Reply to the SO, footnote 181 and Reply to RFI 16 of 16.10.2015.

⁴⁶ See recital (105). By email of 9 December 2015, Rexam confirmed that '*operations at Rexam's Widnau plant have now commenced with one production line. [...]*', ID 4588.

⁴⁷ Rexam's internal document, 'Implementation of [...]', Project update 23 March 2015'.

⁴⁸ Form CO, Paragraph 6.64.

⁴⁹ The plant is currently going through the '[...]'. Reply to RFI 13 of 07.09.2015.

⁵⁰ Form CO, Paragraph 6.67.

⁵¹ Form CO, Paragraphs 6.71.

⁵² Innovation (new product development and improvement of products); developing new processes to improve plant efficiency and performance and engineering and technical support (providing technical support in relation to, inter alia, all tooling and container performance issues). Reply to RFI 5 of 13.07.2015, Exhibit U.

RTC, Elk Grove Village (the US).⁵⁴ In addition, some small scale R&D activities are undertaken at other locations (for instance the Graphic Centre at the Luton HQ). Rexam also has a minority shareholding in Magna Parva, a UK-based R&D company.⁵⁵

- (61) Ball has R&D activities for its EEA operations at its Shared Service Centre in Bonn (Germany)⁵⁶ and at the Ball Technical and Innovation Centre, in Broomfield, Colorado (the US).⁵⁷

5.1.4. The pre-Transaction expansion plans of the Parties

- (62) Pre-Transaction, both Ball and Rexam had expansion plans.

Figure 8: Beverage can plants serving the EEA – [...]

[...]

Source: Form CO

5.1.4.1. Ball in [...]

- (63) [...]
- (64) [...]⁵⁸ [...]⁵⁹ [...]⁶⁰
- (65) [...]⁶¹ [...]⁶² [...]
- (66) [...]⁶³ [...]⁶⁴ [...]⁶⁵ [...]⁶⁶ [...]⁶⁷

5.1.4.2. Rexam in [...]

- (67) Although [...], prior to the public announcement of the Transaction Rexam had [...]. The chronology of events is set out in this section.
- (68) [...]⁶⁸ [...]⁶⁹
- (69) [...]⁷⁰ [...]⁷¹ [...]⁷²

⁵³ Supporting sales and marketing development team; developing and improving manufacturing end processes and Innovation (product development, testing and improvement of can ends and coatings). Reply to RFI 5 of 13.07.2015, Exhibit U.

⁵⁴ Innovation (new can body and can end development) and analytical testing and beverage testing. Reply to RFI 5 of 13.07.2015, Exhibit U.

⁵⁵ <http://magnaparva.com/markets/metal-packaging/> Reply to RFI 5 of 13.07.2015, Exhibit U.

⁵⁶ Innovation (developing and testing new and existing ideas & products); engineering (supporting manufacturing plants on improving & harmonizing products & processes) and laboratory - (Testing of cans, ends and materials). Reply to RFI 5 of 13.07.2015, Exhibit T.

⁵⁷ Innovation and laboratory. Reply to RFI 5 of 13.07.2015, Exhibit T.

⁵⁸ Form CO, Attachment G, RFI 1, Exhibit H.190, '[...]'.
⁵⁹ Ball's internal document, 'Project [...]'.
⁶⁰ Form CO, Attachment G, RFI 1, Exhibit H10, 'BCE Strategic Plan 2015-2017', slide 34.

⁶¹ Update reply to question 28 of RFI 2 of 30.06.2015, '[...]'.
⁶² Update reply to question 28 of RFI 2 of 30.06.2015, '[...]'.
⁶³ In its Reply to RFI 10 of 21.08.2015, Exhibit A, the Notifying Party submits that [...] while in its Reply to RFI 15 of 9.10.2015, Exhibit A, the Notifying Party submits that only [...]

⁶⁴ Reply to RFI 15 of 9.10.2015, Exhibit A.
⁶⁵ Reply to RFI 10 of 21.08.2015, Exhibit A.
⁶⁶ Reply to the SO, paragraph 4.23.
⁶⁷ Ball's internal document, 'BPE Deep Dive Meeting, [...]', slide 68, 71 and 74.
⁶⁸ '[...]/'. Rexam's internal email of [...] from [...], subject: 'Re: AW: [...]'.
⁶⁹ Rexam's internal email of [...] from [...], subject: 'Re: AW: [...]'.
⁶⁹

- (70) [...]
- (71) [...] ⁷³ [...] ⁷⁴
- (72) [...]
- (73) [...] ⁷⁵
- (74) [...] ⁷⁶ [...] ⁷⁷
- (75) [...] ⁷⁸.
- (76) [...]
- (77) [...] ⁷⁹
- (78) [...] ⁸⁰ [...] ⁸¹ [...] ⁸² [...] ⁸³ [...] ⁸⁴ [...] ⁸⁵

Figure 9: Rexam's expansion plan in [...]

[...]

Source: [...], Rexam, ID 2154-16550

- (79) [...] ⁸⁶ [...] ⁸⁷
- (80) [...] ⁸⁸
- (81) [...] ⁸⁹ [...] ⁹⁰
- (82) [...] ⁹¹

⁷⁰ Rexam's internal document, '[...]', slides 17 and 61.
⁷¹ Form CO, Attachment G, RFI 1, Exhibit H10, 'BCE Strategic Plan 2015-2017', slide 74 and 75.
⁷² Form CO, Attachment G, RFI 1, Exhibit H10, 'BCE Strategic Plan 2015-2017', slide 74.
⁷³ Rexam's internal document, '[...]', slide 61.
⁷⁴ Rexam's internal document, '[...]', slide 5.
⁷⁵ Rexam's internal document, 'Strategic Planning Board Actions [...]', ID 3679.
⁷⁶ Rexam's internal document, '[...] 01/2014/098 – December 2014'.
⁷⁷ See Rexam's internal email, '[...]', ID 4023-1073.
⁷⁸ Rexam's internal email of [...] from [...] to [...], subject: 'Re: [...]'.
⁷⁹ Rexam's internal email of 7 December 2014 from [...], subject: 'RE: [...]'.
⁸⁰ Rexam's internal document, '[...] – Board Presentation', slide 3 in '[...] – December 2014'.
⁸¹ Rexam's internal document, '[...]'. See also Rexam's internal document, '[...]'.
⁸² Rexam's internal document, '[...]- December 2014', slide 2.
⁸³ Rexam's internal documents, '[...] – Board Presentation' and 'Capital Expenditure Request – Executive Summary', page 7 in '[...] – December 2014'.
⁸⁴ See Rexam's internal document, 'Capital Expenditure Request – Executive Summary', in '[...] – December 2014'.
⁸⁵ [...]
⁸⁶ Rexam's internal document, '2014 12 09 – Minutes – Board'. The drafting of these Minutes was done in early February 2015, when Rexam's Group CEO asked '[...]'. See Rexam's internal email, 'RE: Dec Board minutes - [...]', ID 4141-20.
⁸⁷ Rexam's internal document, '2014 12 09 – Minutes – Board'.
⁸⁸ Rexam's internal email of 9 December 2014 from [...], subject 'Board meeting output'.
⁸⁹ Rexam's internal email, '[...] – Board response paper', ID 4141-7. According to information provided by Rexam during the course of the administrative procedure, Rexam estimated initial supply contract volumes for the [...] plant to be over [...] billion cans per year. Rexam also estimated that the production costs of the [...] to be as low as EUR [...] for [...] cl cans and EUR [...] for [...] cl cans.
⁹⁰ Rexam's internal document, '[...] (CER Commentary - Supplementary questions) Final', in Rexam's internal email of 15 December 2014 from [...], subject: '[...] – Board response papers'.

- (83) [...] ⁹²
- (84) [...] ⁹³
- (85) [...] ⁹⁴ [...]
- (86) [...] ⁹⁵ [...] ⁹⁶
- (87) [...] ⁹⁷
- (88) [...] ⁹⁸
- (89) [...] ⁹⁹ [...]
- (90) [...] ¹⁰⁰ [...] ¹⁰¹
- (91) [...] ¹⁰² [...] ¹⁰³ [...] ¹⁰⁴
- (92) [...] ¹⁰⁵
- (93) [...] ¹⁰⁶ [...] ¹⁰⁷
- (94) [...] ¹⁰⁸
- (95) [...] ¹⁰⁹ [...] ¹¹⁰
- (96) [...] ¹¹¹
- (97) [...] ¹¹²

⁹¹ Rexam's internal email, '[...] – Board response paper', ID 4141-7.

⁹² Rexam's internal email of 18 December 2014 from [...], 'Board feedback', ID 4027-861.

⁹³ Rexam's internal email, 'Re: [...] - Board response paper', ID 4023-196.

⁹⁴ Rexam's internal email, 'Re: [...] - Board response paper', ID 4023-196.

⁹⁵ See for instance Rexam's internal emails, 'RE: [...]', ID 4023-296, 'Re [...]', ID 4023-195; 'Outstanding issues to resolve today', ID 4027-1625. And correspondence between Rexam and [...], see for instance Rexam email to [...], subject: '[...]', ID 2042-20360.

⁹⁶ Rexam's internal email, 'RE: [...] – Board response papers', ID 4023-1096.

⁹⁷ Rexam's email to [...], subject: '[...]', ID 2042-20360.

⁹⁸ Rexam's internal document (email attachment), 'SCAF Executive Summary [...]', ID 4141-14.

⁹⁹ See Rexam's internal emails, '[...]', ID 4027-1400, 'RE: [...]', ID 4027-1395 and 'Re: [...]', ID 4023-280.

¹⁰⁰ See for instance Rexam's internal emails, 'WG: [...]', ID 4023-943 and Rexam email to [...], ID 4023-488.

¹⁰¹ Rexam's internal email of 7 January 2015 of [...] to [...], subject: 'RE: [...]'.

¹⁰² Rexam's internal document, '[...] content – Feb19 media statement', in Rexam's internal email of 30 January 2015 from [...], Subject: 'Pre-read to SteerCom on Monday'.

¹⁰³ Rexam's internal document, '[...] content - Investor Relations', in Rexam's internal email of 30 January 2015 from [...], Subject: 'Pre-read to SteerCom on Monday'.

¹⁰⁴ Rexam's internal document, '[...] content - Investor Relations', in Rexam's internal email of 30 January 2015 from [...], Subject: 'Pre-read to SteerCom on Monday'.

¹⁰⁵ Rexam's internal document, '[...] content – Storyline ND', in Rexam's internal email of 30 January 2015 from [...], Subject: 'Pre-read to SteerCom on Monday'.

¹⁰⁶ Reply to RFI 18 of 17.11.2015, Annex 1.

¹⁰⁷ Rexam's internal document, 'Project Alliance, Communication to ELT', ID 419-167.

¹⁰⁸ See for instance Rexam's internal emails, subject: 'RE: [...]', ID 4023-776, 'Re: [...]', ID 4023-445, 'Re: [...]', ID 4023-772, 'Re: Annual Report 2014 - for review and comment', ID 4027-1375, 'FW: [...]', ID 4141-159, 'RE: [...]', ID 4023-175, 'Re: [...]: video script and Q&A', ID 4027-1669, 'RE: [...] slides - YE presentation', ID 4027-1828, and Rexam email to [...], '[...]', ID 4141-89.

¹⁰⁹ Rexam's internal email of 31 January 2015, subject: 'RE: [...]', ID 4023-333.

¹¹⁰ Rexam's internal email of 12 February 2015 from [...], subject: 'exec meeting 12th feb', ID 4027-1610.

¹¹¹ Rexam's internal emails, 'Re: Feb Board agenda', ID 4023-614. See also Rexam's internal emails, 'Re: Tuesday [...]', ID 4023-49.

- (98) [...]
- (99) [...]¹¹³
- (100) [...]
- [...]¹¹⁴
 - [...]¹¹⁵
 - [...]¹¹⁶
 - [...]¹¹⁷
- (101) [...]¹¹⁸
- (102) [...]
- (103) [...]¹¹⁹
- (104) [...]¹²⁰
- (105) [...]¹²¹

5.1.4.3. Rexam in Switzerland

- (106) Rexam has built a new plant in Widnau, Switzerland, to [...]. Absent the Transaction, Rexam's plan ([...]) was to use the plant [...].¹²²
- (107) The first line started operating in 2015. The second line is scheduled to start in [...] and the third line in [...].¹²³
- (108) The start of operations at Widnau will [...] Rexam's plants at [...] and [...] whilst [...].¹²⁴ The Widnau plant is expected to reach a capacity of approximately [...] billion cans by [...].¹²⁵

5.1.5. Changes in the beverage cans sector in the EEA since 1999

5.1.5.1. Changes relating to Rexam

- (109) In 1999, Rexam started to supply beverage cans in the EEA by acquiring Swedish beverage can maker PLM.¹²⁶
- (110) In 2000, Rexam further expanded through the acquisition of American National Can.¹²⁷ The acquisition reduced the number of main players in the EEA from four to three: Rexam, German

¹¹² Rexam's internal document, '2015 02 17 – Minutes – Rexam Board (redacted)'.

¹¹³ Rexam's email of 19 February 2015 from [...] to [...], subject: '[...]'.
¹¹⁴ Rexam's internal email of 11 March 2015 from [...] to [...], Subject: 'Re: [...]'.
¹¹⁵ Rexam's internal email of 13 March 2015 from [...] to [...] to [...], subject: 'RE: [...]'.
¹¹⁶ Rexam's internal email of 14 April 2015 from [...] to [...] and [...], subject: 'RE: [...]'. See also Rexam's internal email of 25 March 2015 from [...] to [...] and [...], Subject: 'RE: [...]'.
¹¹⁷ Rexam's internal email of 13 March 2015 from [...] to [...], subject: 'Re:[...]'.
¹¹⁸ SO, paragraph 4.217.
¹¹⁹ Rexam's internal email of 27 February 2015 from [...], subject: 'RE: SteerCom meeting [...] 2nd Mar.pptx'.
¹²⁰ Rexam's internal email of 17 February 2015, subject: 'AW: WG: [...]', ID 4027-1083.
¹²¹ [...] email to Rexam of 10 April 2015, subject: 'RE: [...]', ID 2788-120.
¹²² Form CO, Paragraph 6.283.
¹²³ Reply to RFI 11 of 28.08.2015.
¹²⁴ Reply to RFI 11 of 28.08.2015.
¹²⁵ Form CO, Attachment G, RFI 1, Exhibit H.173.
¹²⁶ Case IV/M.1400 – Rexam / PLM (1999).

based packaging company Schmalbach-Lubeca, a subsidiary of Continental Can and Crown (Crown Cork/CarnaudMetalbox). The only other player in the EEA at the time was the small independent manufacturer Italian Tubettificio Lecco (mainly active in Italy).¹²⁸

- (111) In order to remove the competition concerns in the EEA raised by the acquisition of American National Can, Rexam undertook to divest three beverage can plants: La Ciotat in France, Gelsenkirchen in Germany and Runcorn in the UK. Schmalbach-Lubeca acquired the La Ciotat and Runcorn plants.¹²⁹ As for the Gelsenkirchen plant, it was sold to a private investor group. Following the introduction of a can deposit scheme in Germany which prompted a collapse in the demand for beverage cans, the Gelsenkirchen plant experienced serious financial difficulties leading to a reacquisition of the plant by Rexam in 2003.
- (112) In 2001, Rexam took over the Ejpovice beverage can plant in the Czech Republic from Schmalbach-Lubeca in a separate transaction.
- (113) In 2007, Rexam opened a new plant in Ludesch (Austria). In 2009, it opened a new plant in Fredericia (Denmark). Rexam also invested in Finland, where it opened its Mäntsälä plant in 2013. Finally, Rexam's Widnau plant in Switzerland started operating in 2015 (see section 5.1.4.3).
- (114) Apart from plant openings, Rexam has also conducted several improvements to its plants, including [...].¹³⁰
- (115) As regards plant closures, in 2009, Rexam closed its Dunkirk plant in France, which mainly produced steel cans for Coca-Cola. The Dmitrov plant near Moscow was also closed by Rexam in the same year.
- (116) Rexam publicly announced the closure of its Berlin plant in 2015. Rexam has [...].¹³¹

5.1.5.2. Changes relating to Ball

- (117) In 2002, Ball started supplying beverage cans in the EEA through the acquisition of Schmalbach-Lubeca. Following the acquisition, there were two other main players, Rexam and Crown¹³², and two smaller players, Tubettificio Lecco and Can-Pack.
- (118) In 2003, Ball closed the UK Runcorn plant (previously divested by Rexam to Schmalbach-Lubeca).¹³³
- (119) In 2005, a new plant in Belgrade (Serbia) was opened by Ball.¹³⁴
- (120) Apart from plant openings, Ball has conducted several improvements to the plants, including [...].¹³⁵

¹²⁷ Case M.1939 – *Rexam/American National Can* (2000).

¹²⁸ Can-Pack, who at the time had one plant in Poland, was delivering some volumes into the EEA.

¹²⁹ Case M.2542 – *Schmalbach-Lubeca / Rexam* (2001).

¹³⁰ Reply to RFI 5 of 13.07.2015, Exhibit Q.

¹³¹ Moreover, the [...] has been envisaged in a 5 to 10 years horizon subject to future market development in the EEA. See Rexam's internal document, '[...] – Board Presentation', slide 15.

¹³² Crown entered the European beverage can market in the 1990s by acquiring Carnaud-Metalbox.

¹³³ Two lines out of three were for steel cans, whose demand dropped. Moreover, the new German deposit scheme decreased the German demand. Aluminium volumes were subsequently consolidated in the nearby Wrexham plant. See Form CO, Annex 20.

¹³⁴ Reply to RFI 10 of 21.08.2015, Exhibit A.

¹³⁵ Reply to RFI 5 of 13.07.2015, Exhibit P.

(121) In 2012, Ball acquired the small Italian producer Tubettificio. Following the acquisition, Ball [...].¹³⁶ As for Tubettificio's equipment, it was [...].¹³⁷

5.1.5.3. Changes relating to Can-Pack

(122) In 2003, Can-Pack opened its Ukrainian plant in Vyshgorod and built a plant in Bucharest (Romania). Within the EEA, Can-Pack set up its plant in Scunthorpe in the UK in 2009 as well as in Finnish Hämeenlinna in 2012. Can-Pack also opened several new plants in countries neighbouring the EEA: Volokolamsk (Russia) in 2010, Casablanca (Morocco) in 2011 and most recently Novochoerkassk (Russia) in 2013.

5.1.5.4. Changes relating to Crown

(123) In 2010, Crown opened a new plant in Slovakia in 2010. Crown has also opened plants in countries neighbouring the EEA: in Tunisia in 2006 and in Turkey in 2012.

5.1.5.5. Changes relating to other beverage can manufacturers

(124) In 2015, Helvetia opened its first plant in Saarlouis (Germany) from which it is supposed to start supplying cans as from 2016.

5.2. Introduction to the aluminium bottles sector

(125) Aluminium bottles are a relatively new product with few users, mostly large customers. There are several suppliers of this niche product worldwide, including Ball and Rexam.

(126) Aluminium bottles can be produced according to two methods (i) the drawing and wall ironing process ('DWI'), and (ii) by impact extrusion ('IE').

(127) In the EEA, there are four suppliers of aluminium bottles: Ball (IE bottles), Rexam (DWI bottles), Ardagh (IE bottles) and Alucan (IE bottles).

(128) Outside the EEA, a larger number of suppliers exist, including Ball (DWI bottles), Rexam (DWI bottles), Exal (DWI and IE bottles), CCL Container (IE bottles), Toyo Seikan (DWI bottles), Daiwa Can (DWI bottles) and Universal Can Corporation (which manufactures DWI bottles in China and licenses its DWI bottle technology to other manufacturers around the world).¹³⁸

(129) Ball produces aluminium bottles mainly in the US. It is a large player worldwide for DWI bottles (*Alumi-Tek* brand). In Europe, however, Ball only supplies IE bottles. In 2011 Ball bought an aerosol can factory in the Czech Republic with the capabilities to produce IE bottles. Ball started sales of IE bottles to EEA customers in 2014.¹³⁹

(130) Rexam is the only producer and supplier of DWI bottles (*Fusion* brand) in Europe. These bottles are produced at Rexam's beverage can plant at Ejpovice in the Czech Republic using the DWI process. Rexam does not produce or supply IE bottles in the EEA or anywhere in the world.¹⁴⁰

¹³⁶ Reply to the SO, Annex 1.

¹³⁷ See Ball's internal document 'Tubettificio Project Overview - 2nd July 2012', and Ball's internal email of 13 July 2012 from Roy Brooks to Dominique Mercier, Subject "RE: Tubettificio - Stolle Europe".

¹³⁸ Reply to the Article 6(1)(c) Decision, Paragraphs 6.10 - 6.13, Reply to RFI 5, Exhibit O.10.

¹³⁹ Form CO, paragraphs 6.150 and 6.151.

¹⁴⁰ Form CO, paragraphs 6.150 and 6.152.

6. RELEVANT PRODUCT MARKET

6.1. Beverage cans

6.1.1. Beverage cans and other forms of beverage packaging solutions

6.1.1.1. Past decisional practice

(131) In *Rexam/American National Can*,¹⁴¹ the Commission found that beverage cans constitute a separate market from other forms of beverage packaging solutions. This finding was based on the fact that bottlers and fillers would not switch their demand to glass or polyethylene terephthalate ('PET') bottles in the event of a small but significant and non-transitory increase in the price for beverage cans. Furthermore, the Commission noted that such shift would not be motivated by a change in the relative price of various packaging solutions, but would have to consider other non-price factors, such as marketing and product image and changes to consumer preferences. Therefore, the Commission concluded that beverage cans constitute a separate product market from other forms of beverage packaging solutions.¹⁴²

6.1.1.2. The Notifying Party's views¹⁴³

(132) In the Form CO and its Reply to the Article 6(1)(c) Decision, the Notifying Party submits that glass, PET, and other forms of packaging impose a strong competitive constraint on beverage cans.

(133) The Notifying Party considers that this view is supported by examples of beverage producers switching or threatening to switch between packaging types and reflected in the Parties' internal documents. Furthermore, the Notifying Party points out that beverage producers have a significant degree of influence over the packaging mix.

(134) In the Reply to the Article 6(1)(c) Decision and the Reply the SO, the Notifying Party put forward examples of internal documents which show [...] (see section 9.1.14).

6.1.1.3. The Commission's assessment

(135) For the reasons set out in this section, the Commission has reached the conclusion that beverage cans constitute a separate market from other forms of beverage packaging solutions.

(136) First, the Parties' customers generally use a mix of packaging types. These include not only cans, glass and PET bottles, but also kegs, cartons, and pouches. Customers consider that there are several distinguishing factors between cans and other types of packaging and substantiated their views as follows:

*'Each packaging material has different product characteristics such as whether or not it is re-sealable, its shape, its environmental performance and its suitability for decoration and artwork. [...] cans differ from other beverage solutions in terms of marketing, product image and customer and consumer needs and preferences'*¹⁴⁴

¹⁴¹ Case M.1939 - *Rexam/American National Can* (2000).

¹⁴² Case M.1939 - *Rexam/American National Can* (2000), paragraph 7.

¹⁴³ Form CO, paragraph 6.87. See also Reply to the Article 6(1)(c) Decision, paragraphs 2.1 and 4.138-4.149.

¹⁴⁴ Questionnaire to Customers (Q1), question 15.1, ID 1609.

'Cans have longer shelf-life, offer better possibilities for personalisation (they can be used well in communication strategy). However, glass bottles offer longer stability of the beverage'.¹⁴⁵

- (137) Second, customers indicated that different types of packaging satisfy different types of needs. For example, cans cannot be resealed and hence are suited for immediate or home consumption in a single session, whereas PET bottles can be resealed and used for on-the-go or home consumption in multiple sessions.¹⁴⁶
- (138) Third, a large majority of customers that responded to the market investigation indicated that cans are not substitutable with other forms of packaging and that any substitution would be limited, considering the differences in characteristics and in main uses.¹⁴⁷
- (139) Fourth an overwhelming majority of customers that responded to the market investigation indicated that they have never substituted cans with another form of packaging.¹⁴⁸ Customers pointed out that *'[i]t is extremely rare to substitute between packages in our business'¹⁴⁹* and that *'[c]ans are generally not substitutable with other forms of packaging'.¹⁵⁰* One of the Parties' competitors shared this view and considered that *'[g]iven the lack of substitution of the different types of packaging [...], [competitor] does not view suppliers of other packaging materials as a direct [competitor]'.¹⁵¹*
- (140) Fifth, a large majority of customers that responded to the market investigation stressed that the choice of packaging mix is determined by non-pricing factors, mainly by end-consumer preferences and market trends.¹⁵² One of the Parties' competitors shared this view and considered that *'[p]ackaging mix is rather stable. It is not influenced by changes in prices of the different forms of packaging. Rather final customers' preferences, distribution channels, recycling and environmental issues as well as having the relevant filling lines impact the packaging choice'.¹⁵³*
- (141) Sixth, the limited effect of prices on the choice of packaging mix by beverage manufacturers is supported by the fact that the majority of the Parties' customers that responded to the market investigation indicated that if the price of cans increased permanently by 5-10 % while prices of glass and PET bottles remained constant, they would not switch from buying cans to glass or PET bottles.¹⁵⁴ As stated by one of the Parties' competitors, *'[a] small price increase (for instance of 5%) would not lead to customers changing the packaging for two reasons. First, price is not the main driver for customers when choosing their packaging mix. [...] Second, price fluctuations of both can inputs (aluminium) and PET inputs (oil) are larger than a 5%, therefore a small price increase does not provide sufficient incentives to switch for can or PET manufacturers'.¹⁵⁵*

¹⁴⁵ Agreed non-confidential minutes of a call with a customer, 11.05.2015, ID 377.

¹⁴⁶ Questionnaire to Customers (Q1), questions 14 and 15, ID 1609.

¹⁴⁷ Questionnaire to Customers (Q1), question 15, ID 1609.

¹⁴⁸ Questionnaire to Customers (Q1), question 16, ID 1609.

¹⁴⁹ Questionnaire to Customers (Q1), question 16.1, ID 1609.

¹⁵⁰ Questionnaire to Customers (Q1), question 15.1, ID 1609.

¹⁵¹ A competitor's non-confidential reply to RFI of 15.06.2015, ID 2572.

¹⁵² Questionnaire to Customers (Q1), question 17, ID 1609.

¹⁵³ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

¹⁵⁴ Questionnaire to Customers (Q1), questions 17 and 19, ID 1609.

¹⁵⁵ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

(142) Likewise, a large majority of customers that responded to the market investigation indicated that they would not switch to cans from glass or PET in case of a permanent 5-10 % price increase of the latter two.¹⁵⁶

6.1.2. Various sizes and types of cans

6.1.2.1. Past decisional practice

(143) In *Rexam/American National Can*, the Commission found that all can size categories (27.5 cl, 33 cl, 44 cl, 45 cl, and 50 cl) belong to the same product market, with the exception of slim cans (15 cl and 25 cl).¹⁵⁷

(144) From a demand-side perspective, the Commission found that customers' filling lines could easily be changed to accommodate different-sized cans provided these are of standard-body diameter, which was not the case for slim cans. From a supply-side perspective, the Commission found that can manufacturers could switch within a reasonable time and at a reasonable cost, because their manufacturing lines are designed as 'swing lines', that is to say lines that allow beverage can manufacturers to produce different can sizes on the same line.¹⁵⁸

6.1.2.2. The Notifying Party's views¹⁵⁹

(145) The Notifying Party considers that there is a single market for all can size categories, due to the high degree of demand- and supply-side substitutability between sizes, but that there is limited differentiation between standard and specialty cans¹⁶⁰ as there is sufficient demand and supply-side substitutability between standard and speciality cans.¹⁶¹

(146) On the demand-side, the Notifying Party submits that: (i) beverage producers tend to use a mix of can sizes and the same beverage is often packaged in cans of different height, diameter or volume; (ii) beverage producers can and do switch can size categories and also change the mix of cans supplied within each category; and (iii) beverage producers are generally able to accommodate different can size categories on the same filling lines. The Notifying Party also argues that there is a high degree of supply-side substitutability between can sizes, including between can size categories.

6.1.2.3. The Commission's assessment

(147) Due to end-consumer preferences,¹⁶² beverage can manufacturers generally offer products in cans of different sizes and diameters and it is not uncommon for the same beverage to be sold in cans of different formats. As explained by a competitor,¹⁶³ different can sizes serve different consumer needs or distribution channels: 15 cl cans are predominantly used to contain beverages for airplane-consumption; 20 cl for promotional purposes and wines and 25 cl for energy-drinks (especially Red Bull). As for slim cans, they are mostly used for energy drinks, with the 33 cl size mostly used for soft-drinks and the 50 cl size mostly used for beer.

¹⁵⁶ Questionnaire to Customers (Q1), questions 18 and 20, ID 1609.

¹⁵⁷ The Commission did not consider sleek cans, as these were not produced at the time of the *Rexam/American National Can* decision.

¹⁵⁸ Case M.1939 - *Rexam/American National Can* (2000), paragraphs 8 and 9.

¹⁵⁹ Form CO, Paragraphs 6.114-6.121.

¹⁶⁰ Reply to the Article 6(1)(c) Decision, paragraph 2.3.

¹⁶¹ Reply to the SO, paragraph 3.2.

¹⁶² Questionnaire to Customers (Q1), question 29, ID 1609.

¹⁶³ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

- (148) For the reasons set out in this section, the Commission has reached the conclusion that various can sizes and can types belong to the same market even though they constitute differentiated products within this market. This is the case for both: (i) different can sizes of standard diameter; and (ii) all cans of standard diameter and narrow body cans (slim and sleek).
- (149) As regards (i) different can sizes of standard diameter, the Commission's conclusion is based on the considerations set out in recitals (150)-(152).
- (150) First, from a demand-side perspective (that is to say, from the perspective of the beverage manufacturers and fillers), filling lines can easily be changed to accommodate different can sizes provided they are of the same diameter.¹⁶⁴
- (151) Second, from a supply-side perspective (that is to say, from the perspective of the can manufacturers) converting existing production lines to different can sizes or can types is possible with a capital investment of EUR [0-5] million per line, depending on the complexity of the retooling processes.¹⁶⁵
- (152) Third, the four main beverage can manufacturers that supply beverage cans in the EEA are able to offer a wide range of sizes and types of cans, although for efficiency reasons each plant does not necessarily produce a complete product range.¹⁶⁶
- (153) As regards (ii) narrow body cans (that is to say, slim and sleek), the Commission's conclusion is based on the considerations set out in recitals (154)-(158).
- (154) First, while slim and sleek cans were traditionally considered as a niche product (specialty cans) used by certain beverage producers, in particular energy drink producers, as brand differentiators, they are now ordered in significant quantities for packaging a range of beverages even though they are generally more expensive than standard cans.¹⁶⁷ As such, even though slim and sleek cans might still be considered as premium products and a brand differentiator, they no longer represent a novelty to the end-consumer.¹⁶⁸
- (155) This is supported by a majority of customers that responded to the market investigation.¹⁶⁹ Customers explained that '*[h]istorically, "specialty cans" were defined as anything other than the standard 330ml can. However, as a result of evolving consumer preferences and demand, the variety of can sizes has been increasing*' and that '*[s]leek cans are more and more prevalent in the market, however, the overall price of sleek and slim are much higher than standard cans*'.¹⁷⁰ Another customer pointed out that '*15 years ago Slim/Sleek-cans had a insignificant volume, nowadays they do have very high volumes and therefore are to be considered normal Can sizes*'.¹⁷¹
- (156) This was also supported by a competitor that considered that '*[n]on-standard in this sense means different sizes in diameter or height from the traditional 330 and 500 ml. and therefore containing different quantities of fluids (sometimes, but misleadingly, referred to as*

¹⁶⁴ Questionnaire to Customers (Q1), question 33.1, ID 1609.

¹⁶⁵ A competitor's non-confidential reply to RFI of 15.06.2015. ID 2572

¹⁶⁶ A competitor's non-confidential reply to RFI of 15.06.2015, ID 2572.

¹⁶⁷ Questionnaire to Customers (Q1), questions 30 and 30.1, ID 1609.

¹⁶⁸ Questionnaire to Customers (Q1), questions 30 through 33, ID 1609.

¹⁶⁹ Questionnaire to Customers (Q1), question 30, ID 1609.

¹⁷⁰ Questionnaire to Customers (Q1), question 30.1, ID 1609.

¹⁷¹ Questionnaire to Customers (Q1), question 30.1, ID 1609.

*“speciality” cans as there is nothing about these cans – other than their size – that would make them special).*¹⁷²

- (157) Second, from a demand-side perspective (that is to say, from the perspective of the beverage manufacturers and fillers), switching between different diameters is also possible, even though switching filling lines from standard diameter to smaller diameter to fill sleek and slim cans appears more costly and time consuming than switching lines to accommodate different can sizes of standard diameter. Some customers use contract fillers for narrow body cans when quantities for those cans are small and therefore do not justify the necessary investments for the switchover.¹⁷³ Customers that regularly order large volumes of narrow body cans tend to have filling lines dedicated to filling these types of cans.
- (158) Third, from a supply-side perspective (that is to say, from the perspective of the can manufacturers), swing lines allow for switching even between different diameters, although for reasons of efficiency, beverage can manufacturers do not switch back and forth between different sizes and diameters but tend to optimise their production lines to produce a limited amount of different sizes. As a competitor indicated, *'[s]wing lines are more time consuming and less economical in terms of output, but more flexible. Overall switching height is less costly than changing the diameter of the production line. For newer lines switching sizes is easier'*.¹⁷⁴

6.1.3. Can ends and can bodies for beverage cans

6.1.3.1. Past decisional practice

- (159) In *Crown/Mivisa*,¹⁷⁵ the Commission found that can bodies and can ends for food cans are part of a single relevant market. A majority of customers would not switch to separate purchases of can ends and can bodies in the event of a small but permanent increase in price of whole cans and would not purchase can bodies from a can manufacturer if that manufacturer could not also provide can ends.

6.1.3.2. The Notifying Party's views

- (160) The Notifying Party submits that can ends and can bodies for beverage cans belong to the same product market. This is because typically neither of the Parties sells beverage can ends separately from beverage can bodies - all of the Parties' sales of can ends are sold and priced as part of a contract package with can bodies. This ensures that the liability for can quality rests clearly with the beverage can manufacturer for warranty purposes¹⁷⁶.

6.1.3.3. The Commission's assessment

- (161) For the reasons set out in this section, the Commission has reached the conclusion that can ends and can bodies form part of the same product market.
- (162) First, beverage can manufacturers manufacture both can ends and can bodies and at least in Europe, sell them in a bundle to customers.

¹⁷² Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

¹⁷³ Questionnaire to Customers (Q1), questions 30 through 33, ID 1609.

¹⁷⁴ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

¹⁷⁵ Case M.7104 – *Crown/Mivisa* (2014), paragraph 34.

¹⁷⁶ Form CO, paragraph 6.149.

(163) Second, the majority of customers that responded to the market investigation indicated that they buy can bodies and can ends together,¹⁷⁷ also due to both quality reasons, such as better quality assurances, and cost reasons, including better commercial conditions.¹⁷⁸ As a customer pointed out '[t]he decision to buy cans and lids together is a matter of clear supplier responsibility and in case of problems the resulting warranty for the fit of the combined packaging'.¹⁷⁹

6.1.4. Aluminium and steel cans

(164) As already set out in recital (35), beverage cans are made from either aluminium or steel. Aluminium is used widely and currently accounts for 90 % of global and 80 % of European beverage can production.

(165) Moreover, most customers only source aluminium cans whereas only a few customers exclusively source steel cans. Customers that source both aluminium and steel cans mainly source aluminium cans.¹⁸⁰

6.1.4.1. Past decisional practice

(166) In *Rexam/American National Can*, the Commission found that in the geographic areas where both steel and aluminium were used to manufacture cans aluminium and steel cans formed a single product market. This was based, among others things, on identical prices, almost identical end-users and consumers' perceptions, and a cost difference of producing aluminium and steel cans which amounted to less than 2 %.¹⁸¹

6.1.4.2. The Notifying Party's views

(167) The Notifying Party submits that there is a single market for aluminium and steel beverage cans due to the significant degree of demand- and supply-side substitutability between these metal types. While the Notifying Party recognises that there is a degree of differentiation between aluminium and steel cans¹⁸², these differences should not be overstated.¹⁸³

6.1.4.3. The Commission's assessment

(168) The Commission has reached the conclusion that aluminium and steel cans belong to the same product market in the geographic areas where both steel and aluminium is used to manufacture cans.

(169) On the one hand, two features suggest that aluminium and steel cans could potentially belong to different product markets.

(170) First, aluminium cans are better matched with consumer preferences as they provide an overall better quality than steel cans. In particular, aluminium cans are shinier (therefore look better on designs where large parts of the can are not printed) and lighter (reducing costs of production),

¹⁷⁷ The Commission does note, however, that a number of large customers have indicated that can bodies and ends are only sourced together in the EEA because the suppliers do not allow for separate sourcing. As such, the market investigation highlights that separate demand for can bodies and ends may exist (in particular as can ends could be sourced from, for example, the Middle-East due to low logistic costs for can ends). Questionnaire to Customers (Q1), question 35, ID 1609.

¹⁷⁸ Questionnaire to Customers (Q1), question 35.1, ID 1609.

¹⁷⁹ Questionnaire to Customers (Q1), question 35.1, ID 1609.

¹⁸⁰ Questionnaire to Customers (Q1), question 21, ID 1609.

¹⁸¹ Case M.1939 – *Rexam/American National Can* (2000), paragraph 10.

¹⁸² Form CO, paragraph 6.147.

¹⁸³ Reply to the Article 6(1)(c) Decision, Annex 3.

are easier to recycle and have a more limited risk of corrosion than steel cans. Embossing and other decorations are also easier on aluminium cans.¹⁸⁴

- (171) For example, customers indicated that '*[A]luminium does not corrode and provides an excellent barrier for oxygen, light and moisture, and hence does not contaminate the contents of the container and may be used to pack sensitive products, such as beer. [...] [A]luminium cans are more easily shaped than steel cans, allowing for more product differentiation downstream*'.¹⁸⁵
- (172) Second, as noted by large customers, steel does not offer the same hedging options as aluminium¹⁸⁶ which protects them against swings in raw material prices and allows for better risk management. Some customers only purchase aluminium cans for this specific reason:¹⁸⁷ '*[t]he general direction of the market is toward aluminium for all cans partly because it is easier to hedge the cost of aluminium (LME), and because embossing and other decorations are easier on aluminium cans than on steel cans*'.¹⁸⁸
- (173) On the other hand, a number of other features indicate that aluminium and steel cans belong to the same product market.
- (174) First, most customers consider that there are currently no major differences in terms of legal requirements, effect on the beverages' taste, and price.¹⁸⁹ For example, one bottle filler indicated that '*we also fill products where steel is the preferred metal*'¹⁹⁰, while a customer stated that '*the preference of either aluminium or steel cans depends on the country in which the cans are sold*'.¹⁹¹
- (175) Second, depending on the technical characteristics of the individual filling lines of a customer, a switch from aluminium to steel and *vice versa* may take a few hours or several days and require no or a significant investment.¹⁹² A majority of customers indicated that they could switch their filling lines from aluminium to steel and *vice versa* with no or limited adjustments.¹⁹³
- (176) Third, in case of a permanent 5-10 % price increase for steel cans, customers currently using steel cans would switch in whole or in part to aluminium.¹⁹⁴
- (177) Fourth, customers in the EEA are expected to gradually move from steel to aluminium cans. This move is triggered by several factors.
- (178) In the first place, a majority of the plants of the four main beverage can manufacturers in the EEA produce only aluminium cans:
- out of Ball's nine plants in the EEA, only [...] steel can production lines. [...].¹⁹⁵ [...].¹⁹⁶

¹⁸⁴ Questionnaire to Customers (Q1), question 24, ID 1609. See also agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 226.

¹⁸⁵ Questionnaire to Customers (Q1), question 22, ID 1609.

¹⁸⁶ Questionnaire to Customers (Q1), questions 21 and 22, ID 1609. See also agreed non-confidential minutes of a call with a customer, 28.04.2015, ID 164; agreed non-confidential minutes of a call with a customer, 12.05.2015, ID 468; agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

¹⁸⁷ Agreed non-confidential minutes of a call with a customer, 28.04.2015, ID 164.

¹⁸⁸ Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2691.

¹⁸⁹ Questionnaire to Customers (Q1), question 24, ID 1609.

¹⁹⁰ Questionnaire to Customers (Q1), question 25, ID 1609.

¹⁹¹ Agreed non confidential minutes of a call with a customer, 22.05.2015, ID 226.

¹⁹² Questionnaire to Customers (Q1), question 23.1, ID 1609.

¹⁹³ Questionnaire to Customers (Q1), questions 23 and 23.1, ID 1609.

¹⁹⁴ Questionnaire to Customers (Q1), question 27, ID 1609.

- out of Rexam's fifteen plants in the EEA, [...] has steel can production lines and [...];¹⁹⁷
 - out of Crown's eight plants in the EEA, only three have steel can production lines.
- (179) The Parties themselves consider that [...] ¹⁹⁸ and [...] ¹⁹⁹ and therefore [...].²⁰⁰ This is a reflection of the demand focusing on aluminium cans: '[...]'.²⁰¹ Even when capacity is tight, aluminium continues to be the preferred choice '[...]'.²⁰²
- (180) In the second place, respondents to the market investigation indicated that with the development of extra thin cans, can manufacturers need to use aluminium rather than steel in the production of cans as this raw material is thinner and lighter than steel. As explained by a customer, *'aluminium cans are processed at a lower temperature than steel cans and the production of aluminium cans requires less ovens and energy [...] Consequently, the same amount of beverage cans can be produced much faster, with less energy and labour support, resulting in efficiencies of at least 5 to 15%, in addition to the lower cost for the raw material'*.²⁰³

6.2. Aluminium bottles

6.2.1. Past decisional practice

- (181) The Commission has not analysed the market for aluminium bottles in past decisions.

6.2.2. The Notifying Party's views

- (182) Both Ball and Rexam produce aluminium bottles, but the Notifying Party claims that their respective products and technologies are very different with Ball offering IE bottles whilst Rexam bottles are manufactured through the DWI process.²⁰⁴
- (183) According to the Notifying Party, the IE aluminium bottles are manufactured from a metal slug using the same process and equipment used to manufacture aerosol cans. The DWI aluminium bottles are manufactured through a technique similar to can production.²⁰⁵
- (184) Therefore, while both products fall within the broader beverage packaging market, differentiation between the products limits the degree of competition between the products. Accordingly, the Parties consider that their bottles only compete to the extent that they fall within the broader beverage packaging market.²⁰⁶
- (185) The Notifying Party submits that aluminium bottles are subject to competitive constraint from other forms of beverage packaging such as glass, PET or cans. Aluminium bottles are a relatively small and newly-offered product, therefore they have to compete with more established forms of beverage packaging materials.

¹⁹⁵ Reply to RFI 5 of 13.07.2015, Exhibit O.18, '[...]', November / December 2014'.

¹⁹⁶ Ball's internal document, 'BPE Footprint Optimization 2015 – 2020 [...]', slide 5.

¹⁹⁷ Form CO, Table 6.8.

¹⁹⁸ Ball's internal document, 'BPE Footprint Optimization 2015 – 2020 [...]', slides 2 and 4.

¹⁹⁹ Ball's internal document, 'BPE Deep Dive Meeting, September 22 2014', slide 34.

²⁰⁰ Ball's internal document, 'BPE Deep Dive Meeting, September 22 2014', slide 34.

²⁰¹ Reply to RFI 5 of 13.07.2015, Exhibit O.18, '[...]', November / December 2014', slide 4.

²⁰² Ball's internal document, 'BPE Footprint Optimization 2015 – 2020 [...]', slide 2.

²⁰³ Questionnaire to Customers (Q1), question 25, ID 1609.

²⁰⁴ Form CO, paragraph 6.150.

²⁰⁵ Form CO, paragraph 6.155.

²⁰⁶ Form CO, paragraph 6.156.

(186) At the same time, the Notifying Party nevertheless submits that there is no need to decide on the exact product market definition, as no competition concerns would arise under any potential product market definition.

6.2.3. *The Commission's assessment*

(187) Aluminium bottles are a relatively new and niche product. For the purposes of the present Decision, the Commission assesses aluminium bottles as a separate market from other forms of beverage packaging solutions. Moreover, the Commission considers that for the purposes of the this Decision the exact product market definition for possible sub-segments of the aluminium bottles market can be left open since the proposed Transaction would not lead to a significant impediment of effective competition under any plausible product market definitions.

(188) The market investigation has revealed the following information about the market for aluminium bottles.

(189) First, aluminium bottles belong to a niche market. For instance, *'aluminium bottles are used principally for the sale or sampling of the Company's products at prestige and promotional and sponsored events, such as the Olympic Games, and in certain niche channel, such as discos,' 'aluminium bottles are used in certain venues such as night clubs, bars and during concert or festivals', '[...] because of the high price, aluminium bottles [...]are linked to very specific and limited consumer occasions and preferences, and distributed in very narrow trade channels with low volume turnover (as compared to mainstream volumes filled in cans).'*²⁰⁷

(190) Second, aluminium bottles are linked to special or promotional events, such as *'for instance the football World Cup. Aluminium bottles are also used for small volume promotions or marketing events', 'Aluminium bottles are positioned for high end, special occasion consumption, and to date have been used as promotional limited edition packs.'*²⁰⁸

(191) Third, aluminium bottles are relatively expensive compared to other beverage packaging materials: *'aluminium bottles are considerably more expensive than cans' 'High price for the consumer compared to other formats', 'promotional packaging type with premium product positioning and at a high selling price point'*.²⁰⁹

(192) As for a possible further segmentation of aluminium bottles between IE bottles and DWI bottles, there are arguments both in favour and against.

(193) One the one hand, respondents to the market investigation indicated that while IE bottles and DWI bottles use different technologies, they serve the same customer requirements. *'The IE and D&I [DWI] aluminium bottles both can be reclosed and are essentially the same from the demand side perspective. The main difference between them is in the production techniques and the fact that the production costs of D&I [DWI] aluminium bottles are lower over time but requiring a higher initial investment. For D&I [DWI] aluminium bottles less metal is required which makes them lighter and therefore easier to transport. Production lines of IE aluminium bottles are limited in terms of speed with an output of approximately 250 bottles per minute in contrast to a D&I [DWI] aluminium production line with an output of approximately 600 aluminium bottles.'*²¹⁰

²⁰⁷ Questionnaire to Customers (Q1), questions 36 and 37, ID 1609.

²⁰⁸ Questionnaire to Customers (Q1), question 36, ID 1609.

²⁰⁹ Questionnaire to Customers (Q1), question 37, ID 1609.

²¹⁰ Agreed non-confidential minutes of a call with a supplier, 26.06.2015, ID 1660.

(194) On the other hand, according to internal documents of the Parties²¹¹, IE bottles provide a lower output than DWI bottles, namely less than [...] million bottles per year compared to DWI bottles (minimum [...] million). In addition, in terms of design, IE bottles have thicker walls ([...] grams ('g') of metal versus [...] g for DWI bottles), are more rigid and they use different types of closure. Moreover, as a result of their thickness, IE bottles have a higher price than DWI bottles.

Table 2: Differences between IE and DWI aluminium bottles

	IE bottles	DWI bottles
Technology	Produced on technology similar to aerosol bottles Could be filled on existing lines for glass bottles	Produced on technology similar to can production Require investment into modification lines
Design	Different types of closure Thicker walls More rigid	Uses only screw cap closure Thinner walls Less rigid
Volumes	Lower output (< [...] million bottles/year) at the same cost and timeframe as DWI	Higher output because of faster production (minimum [...] million bottles/year)
Price	Higher than DWI (IE bottles use more metal, namely [...] g versus [...] g and are therefore heavier)	Lower than IE (approximately [...] % less metal costs as they use less material and are therefore lighter)

Source: Questionnaire to Customers (Q1), ID 1609, question 38; Questionnaire to Customers (Q3), ID 2665; Ball's internal documents, 'Alumi-Tek Bottle', 31 January 2013, 'AlumiTek RPM Biz Case BPE e2' and 'AlumiTek BPE Overview Internal Update'

7. RELEVANT GEOGRAPHIC MARKET

7.1. Beverage cans

7.1.1. Past decisional practice

(195) In *Rexam/American National Can* and *Schmalbach-Lubeca/Rexam*, the Commission found the scope of the relevant geographic market for beverage cans to be regional.²¹² In reaching this conclusion, the Commission notably took into account different factors including the location

²¹¹ Ball's internal documents, 'AlumiTek RPM Biz Case BPE e2' and 'AlumiTek BPE Overview Internal Update', slide 9.

²¹² Cases M.1939 – *Rexam/American National Can* (2000), paragraph 14, and M.2542 – *Schmalbach-Lubeca/Rexam* (2002), paragraphs 11-13. In *Rexam/American National Can* the Commission identified the following regions (i) Greece, (ii) the Nordic countries, (iii) the UK, (iv) Southern Europe (Spain, Portugal, Italy, Southern France) and (v) Northern Europe (Germany, Austria, Northern France, Benelux, the UK). The UK was considered as part of the Northern Europe regional market because there are substantial trade flows only from the UK to Northern Europe, but not from Northern Europe to the UK.

of customers relative to plants, transport costs, national legislation, and the demand-side structure.²¹³

7.1.2. *The Notifying Party's views*

- (196) In the Form CO and the Reply to the Article 6(1)(c) Decision, the Notifying Party made the following arguments.
- (197) It submitted that the market for beverage cans is regional at most (with some local differences within the regions) due to: (i) transportation costs, (ii) actual transport patterns; (iii) the mutual benefit for can manufacturers and customers of being located close to each other to maintain good service levels, security of supplies, rapid reaction times and just-in-time deliveries; (iv) low volumes of inter-region trade flows; (v) pricing occurs on a site-by-site basis and there are differences in prices among regions; and (vi) differences in the shares held by the various can manufacturers in the different regions.
- (198) First, transport costs are the main variable in customer-specific costs and increase in parallel with the distance between the can manufacturing plant and the customer's filling location.²¹⁴ Therefore, a can manufacturer with plants located more closely to a customer's plant has a cost advantage over rivals when competing for the customer's business at that location. Due to the significance of transport costs, there is a strong locational dimension to competition. For example, the supply options for a customer filling location in Spain are entirely different to those for a customer filling location in Poland or in the UK.
- (199) Second, the Notifying Party argued that a catchment area analysis shows that significant amounts of cans are transported within a [...] kilometres ('km') radius (more than [...] % of the volume of the Parties' EEA plants' output) or within a [...] km radius (more than [...] % of the output volume of the Parties' plants in the EEA) around a can plant.²¹⁵ On average, the Parties' cans are transported less than [...] km.
- (200) Third, customers will generally prefer suppliers close to their filling locations as this is more environmentally-friendly, allows for just-in-time delivery and security of supply.²¹⁶
- (201) Fourth, on the basis of its trade flow analysis, the different regions can be distinguished as: (i) the UK and Ireland, (ii) North-West Europe,²¹⁷ (iii) South-West Europe,²¹⁸ (iv) North-East Europe,²¹⁹ (v) South-East Europe,²²⁰ and (vi) Nordic countries,²²¹ because trade flows mainly occur within these regions.²²²
- (202) However, these regions are permeable at the edges and, in particular within the relatively large regions of North-West Europe and South-West Europe, significant differences in the sourcing patterns occur by country. This suggests a more localised market. Also, for each region, except

²¹³ Case M.1939 – *Rexam/American National Can* (2000), paragraph 14.

²¹⁴ Form CO, Paragraph 6.170-6.173.

²¹⁵ Form CO, Paragraph 6.178-6.185.

²¹⁶ Form CO, Paragraph 6.175.

²¹⁷ Austria, Benelux, Germany, Northern France and either with or without the UK.

²¹⁸ Italy, Portugal, Southern France and Spain.

²¹⁹ Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia.

²²⁰ Bulgaria, Croatia, Cyprus, Greece, Malta, Romania and Slovenia.

²²¹ Denmark, Finland, Iceland, Norway and Sweden.

²²² Form CO, Paragraphs 6.186 and 6.187.

the UK and Nordic countries, higher volume trade flows from adjacent regions should be taken into account when assessing the impact of the Transaction.²²³

- (203) Fifth, pricing occurs on a customer site-by-site basis and that even large customers present in several regions do not request (and suppliers do not provide) a single EEA-wide price.²²⁴ To support this conclusion the Notifying Party submitted Figure 10 and Figure 11 below which show that Ball's and Rexam's average prices for cans [...], which, according to the Notifying Party, indicates that the scope of the geographic market is not wider than regional.

Figure 10: Ball's and Rexam's average prices by Region (2014)

[...]

Source: Reply to the Article 6(1)(c) Decision, Annex 8

Figure 11: Ball's and Rexam's variable margins by region (2014)

[...]

Source: Reply to the Article 6(1)(c) Decision, Annex 8

- (204) Sixth, the Notifying Party is of the view that the local nature of competition is evidenced by the fact that market shares vary dramatically across the EEA, reflecting the fact that each beverage can manufacturer's competitive strength in a region is in large part determined by the location of its plants.²²⁵
- (205) In its Reply to the SO, the Notifying Party made the following additional arguments.
- (206) First, it accepts the utility of a catchment area and cluster approach in defining the relevant range of geographic competition in the EEA beverage can industry.²²⁶
- (207) Second, the radius of the catchment areas should, however, be defined on the basis of the maximum distance at which Ball and Rexam ship 70 % of their beverage can production. It further argued that such distance should be calculated taking into account driving distances. On this basis, the Notifying Party submitted that the appropriate radius for a catchment area assessment corresponds to a 500 km area around each customer. The Notifying Party considered that this conclusion is supported by evidence in the Commission's file.²²⁷
- (208) Third, the relevant geographic market should not be defined on the basis of catchment areas around individual customer filling locations but rather on the basis of regional clusters grouping together catchment areas around individual customer filling locations. It supported this claim by indicating that (i) within the regional clusters competitive conditions are sufficiently homogeneous and (ii) the scope for price discrimination within a regional cluster is limited, in particular because in each regional cluster competitive choices are unlikely to vary significantly and, even if they vary, any difference would not be sufficiently obvious to enable price discrimination.²²⁸
- (209) Fourth, according to the Notifying Party, in some instances, the SO fails to recognise specific features of local supply patterns. Therefore, even where the regional cluster is used to define

²²³ Form CO, Paragraph 6.187 to 6.197.

²²⁴ Form CO, Paragraph 6.198. Reply to the Article 6(1)(c) Decision, paragraphs 3.5-3.6.

²²⁵ Form CO, paragraphs 6.203-6.204. Reply to the Article 6(1)(c) Decision, paragraphs 3.13-3.15.

²²⁶ Reply to the SO, paragraph 2.1.

²²⁷ Reply to the SO, paragraphs 2.6 to 2.8.

²²⁸ Reply to the SO, paragraphs 2.17 to 2.20.

the scope of the geographic market, it is important that the competitive assessment takes full account of such features in order to ensure that a rigid application of the local cluster approach does not result in an inaccurate assessment of the competitive conditions in a specific area.²²⁹

7.1.3. *The Commission's assessment*

- (210) The Commission has reached the conclusion that, for the purpose of assessing the Transaction, the relevant geographic markets consist of regional clusters of 700 km catchment areas around individual customer filling locations (hereinafter 'regional clusters') where the competitive conditions are sufficiently homogeneous. Those regional clusters comprise individual customer filling locations located in each of the following regions: (i) the UK and Ireland; (ii) the Benelux (Belgium, Luxembourg²³⁰ and the Netherlands); (iii) Central Europe (Austria and Germany²³¹); (iv) France; (v) Italy;²³² (vi) Iberia (Spain and Portugal); (vii) North-East Europe (Czech Republic, Slovakia,²³³ Poland Lithuania, Estonia and Latvia); (viii) South-East Europe (Hungary, Slovenia, Croatia, Romania, Bulgaria, Greece and Cyprus); and (ix) the Nordics (Denmark, Norway, Sweden, Finland and Iceland).²³⁴ To the extent that some degree of differentiation exists between the catchment areas around individual customer filling locations in a given region, such differentiation is taken into account in the competitive assessment.
- (211) As discussed in this section, the supply of beverage cans in the EEA is characterised by the fact that: (i) national barriers do not materially affect trade patterns; (ii) prices are generally set on location-by-location basis in individual negotiations with customers; (iii) customers attach importance to security of supply, rapid and just-in-time deliveries, good service levels; and (iv) transport distances and costs are an important factor influencing competitive dynamics.
- (212) The methodology for the definition of the relevant geographic markets is described in section 7.1.3.5 below.

7.1.3.1. Lack of national barriers

- (213) The Commission has reached the conclusion that it is not appropriate to segment the relevant geographic markets along national lines.
- (214) First, the sales of the Parties and of their competitors indicate that national barriers have a limited influence on the sourcing of beverage cans. For instance, over 30 % of beverage can demand in Italy is imported. Similarly, over 60 % of can demand in the Netherlands is satisfied with cans produced in Germany and in the UK.
- (215) The same is true regarding imports from non-EEA countries. For instance close to 50 % of cans sold in Slovenia are produced in Serbia and over 50 % of cans sold in Lithuania are produced in Russia.

²²⁹ Reply to the SO, paragraph 2.15.

²³⁰ There is no filling location in Luxemburg. However, given the prevalent use of the term 'Benelux', this cluster will be referred to as Benelux.

²³¹ Lichtenstein could also belong to this cluster. However, as there is no filling location in Lichtenstein, it will be not treated further in this Decision.

²³² Malta could also belong to this cluster. However, as there is no filling location in Malta, it will be not treated further in this Decision.

²³³ [...]. For the purposes of this case, the Commission has included Slovakia only in the North-East Europe region.

²³⁴ As described in recital (230), the [...] also includes [...], while this Decision assesses the impact of the Transaction only on catchment areas around individual customer filling locations in the EEA. Volumes sold to customers outside the EEA but in countries [...] regions have been used for the purpose of calculating the share of sales within the catchment area around individual customer filling location in the EEA.

(216) Second, the lack of presence in a particular country does not necessarily restrict a can manufacturer's ability to win at least some sales there. This is exemplified by Can-Pack which, although it has no production facilities in France, Italy, and Spain, nevertheless manages to supply certain quantities of cans to customers located in these countries.

7.1.3.2. Pricing occurs on a customer site-by-site basis

(217) Within the EEA, pricing for beverage cans occurs for the most part on a customer site-by-site basis. Prices are dependent on the number of suppliers available in the catchment area around an individual customer filling location as well as the available capacities.

(218) First, customers that have a network of filling plants spread across the EEA generally pay different can prices for each of their filling locations. As one large customer pointed out, '*[g]iven the nature of this industry there is no uniform or benchmark European price for cans*'.²³⁵

(219) Second, there are price differences depending on where a customer's site is located. Table 3 shows price differences by regions compared to customers located in the Central Europe region. These figures indicate that customers tend to pay: (i) higher prices in [...] region; (ii) similar prices in [...] and the [...] regions; and (iii) lower prices in the [...] and, to some extent, in the [...] regions.²³⁶

Table 3: Price differences compared to the Central Europe region (EUR/1 000 cans)

Country/Region	Price difference
Benelux	[...]
France	[...]
Iberia	[...]
Italy	[...]
North-East Europe	[...]
Nordic	[...]
South-East Europe	[...]
UK Ireland	[...]

Source: Parties' transaction data

*significant at 10 %; ** significant at 5 %

²³⁵ Agreed non-confidential minutes of a call with a customer, 18.08.2015, ID 2866. Also, '*the better the footprint of a can manufacturer matches with [customer's] locations, the better the DDP price*' and further: '*There is no fixed conversion price across Europe. [...] The conversion price depends on several underlying factors, but competition in a given region is the most important one. For instance in Scandinavia (meaning Norway, Denmark and Sweden), where the competition is marginal, conversion costs are the highest. In Finland, where Can-Pack challenges Rexam, conversion costs are much lower*'. Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2724. See also agreed non-confidential minutes of a call with a customer, 18.08.2015, ID 2866: '*[The conversion cost] differs mainly by the country where the beverage can plant is located and might differ by filling location. [...] We see cases where can suppliers inflate their conversion price because they know that the alternative suppliers are farther away from their filling locations. As such, they can mark-up their conversion price due to low logistic costs and still remain below the price offered by competitors (competitors potentially having lower conversion price, but higher logistic costs)*'.

²³⁶ The Commission compared total (can body plus end) prices across the regions by estimating a fixed effects regression of total prices on regional dummies. The fixed effects were defined as all possible combinations of can size, can size category (sleek, slim, standard etc.), metal type, product enhancement, year, manufacturer and freight cost type (delivered or non-delivered).

- (220) Third, customers that have only one filling location or filling locations close to one another indicated that they pay a 'local' price which can be different from that prevalent in other parts of the EEA. As a customer indicates, *'different prices in different regions for the same supplier, expressly Rexam and Ball depending the number of competitors they have in a region. The more they have the low is the price they get into the market'*.²³⁷ Or as another customer puts it, *'[t]erms are negotiated based on competitive situation on a given market. e.g. [customer] gets better pricing in market where there is competition than where there are monopolies or duopolies'*.²³⁸
- (221) Fourth, beverage can manufacturers can set higher prices in catchment areas where there is less competition. According to a customer, *'[there are] cases where can suppliers inflate their conversion price because they know that the alternative suppliers are farther away from their filling locations. As such, they can mark-up their conversion price due to low logistic costs and still remain below the price offered by competitors (competitors potentially having lower conversion price, but higher logistic costs)*.²³⁹
- (222) While Can-Pack's prices are at the lower end of the spectrum and Ball's at the higher end, Rexam's prices are somewhere in the middle.²⁴⁰
- (223) Fifth, the pricing behaviour of both Ball and Rexam takes into account the degree of competition in a given catchment area.
- (224) Rexam has confirmed that it takes a [...] approach. Market pricing in the relevant area and locational advantages of competitors around customer filling locations are key drivers of competition.²⁴¹
- (225) Rexam is also developing [...].
- (226) Ball uses [...] ([...] ²⁴²) [...] ²⁴³ [...] ²⁴⁴
- (227) Ball has also developed the [...]
- (228) [...]
- (229) [...]
- (230) On the basis of an understanding of local market conditions, the [...] has clustered customer filling locations in and around the EEA into the following 9 regions:
- [...];

²³⁷ Questionnaire to Customers (Q1), question 96.2.1, ID 1609.

²³⁸ Questionnaire to Customers (Q2), question 13.1, ID 2664. See also a comment made by a large customer on the differences between regions: *'In other regions, due to varying geographic footprints of the can suppliers, the situation is more difficult so we rely on the more competitive countries to provide us with leverage when negotiating regions where competition is not as high.'* Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 157. As another customer pointed out: *'The conversion price depends on several underlying factors, but competition in a given region is the most important one.'* Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2724.

²³⁹ Agreed non-confidential minutes of a call with a customer, 18.08.2015, ID 2866.

²⁴⁰ Agreed non-confidential minutes of a call with a customer, 27.08.2015, ID 2716: *'Can Pack can be seen as a price-oriented supplier, whose main competitive advantage is the price. Ball's prices are typically less attractive but is more focused on additional services. Rexam falls somewhere between the two.'*

²⁴¹ Reply to the Article 6(1)(c) Decision, paragraph 3.21.

²⁴² [...] Reply to RFI 7, DOC-000039127.

²⁴³ Form CO, Attachment G, RFI 1, Exhibits H.57, H.62 and H.65.

²⁴⁴ Reply to the SO, Annex 1.

- [...];
- [...];
- [...];
- [...];
- [...];
- [...];
- [...]; and
- [...].

7.1.3.3. Security of supply, rapid and just-in-time deliveries, good service levels

- (231) Security of supply, rapid and just-in-time deliveries and good service levels have been identified by customers as key concerns in their relationship with beverage can manufacturers.²⁴⁵ Furthermore, several customers have pointed out that by shortening the distance between customers and suppliers it is easier for can manufacturers to ensure that their customers receive their required amounts of cans on time.²⁴⁶ Short distances between suppliers and customers have also been identified as a factor facilitating customer support.²⁴⁷
- (232) Beverage manufacturers generally hold limited can stock at their filling stations and customers, in particular the larger ones, may have to receive several can shipments per day and expect cans to be delivered shortly before they are needed in the production lines. As one large customer explained '*[j]ust-in-time delivery is crucial. Cans can only be delivered 3-4 hours in advance before being placed in the filling line. This is usually easier to plan if a supplying can plant is within close proximity*'.²⁴⁸
- (233) However, certain other customers indicated that, while closeness to a can manufacturer is desirable, cans may travel longer distances provided that inventories are managed correctly and that effective logistics are deployed.²⁴⁹ Can manufacturers could also invest in additional warehousing near a customer filling location to overcome concerns related to just-in-time deliveries. Furthermore, some customers have indicated that the actual origin of the cans they

²⁴⁵ See, among other, Questionnaire to Customers (Q2), question 16, ID 2664. One customer explained that '*security of supplies remains the most important non-price factor in negotiations*', agreed non-confidential minutes of a meeting with a customer, 27.08.2015, ID 2982.

²⁴⁶ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 213. Customers pointed out that '*Overall, it is easier to get supplies from a plant located nearby*', agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 226, and that '*The security and timeliness of delivery is normally not problematic if the can-plant is close to the filling-plant*', agreed non-confidential minutes of a call with a customer, 12.05.2015, ID 468.

²⁴⁷ '*Considering their connected facilities, cross-checking routines of both [supplier] and [customer] are conducted to prevent any shortage in can supplies.*' Agreed non-confidential minutes of the call with a customer, 07.05.2015, ID 229.

²⁴⁸ Agreed non-confidential minutes of the call with a customer, 22.05.2015, ID 226. See also, Questionnaire to Customers (Q1), question 69.1, ID 1609: '*just-in-time deliveries are the best solution for beverage makers [...], storage is often not regarded as an option. However, in some exceptional situations can suppliers or beverage manufacturers will have to store cans.*'

²⁴⁹ Agreed non-confidential minutes of the call with a customer, 25.08.2015, ID 2724: '*As for the freight, as the just-in-time delivery is expected, it might be preferable for beverage producers to dispose of warehouses to stock some volumes of cans.*'

receive is not important as long as the delivered price is competitive.²⁵⁰ Finally, in peak season, it is not uncommon for beverage can manufacturers to make deliveries from plants that are located further away from customers than those from which they normally supply them.²⁵¹

- (234) On balance, it appears that while closeness to the filling location is a desirable attribute in a beverage can manufacturer as it facilitates logistics and support, it is not a pre-condition to entering into a customer/supplier relationship. This conclusion is confirmed by the fact that, as explained in section 7.1.3.4 below, on average approximately 80 % of can sales in the EEA are made within a maximum radius of approximately 700 km of the production facility.

7.1.3.4. Transport costs

- (235) Transport costs confirm that competitive conditions are largely driven by the number of alternative beverage can manufacturers that are sufficiently close to be able to competitively supply to each customer filling location the bulk of its can requirements.²⁵²
- (236) While customers have in principle no objection to sourcing cans over long distances this does not happen in practice, at least for the bulk of their can requirements.²⁵³ This is because cans are relatively voluminous goods and transport costs increase as the distance between the can plant and customer filling location increases. For example, the cost of transporting cans 1 000 to 1 500 km amounts on average to approximately [...]-% (for Ball) and [...] % (for

²⁵⁰ '[Customer] does not give any importance to the proximity of its suppliers' plants, the only thing that really matters is the price of the cans, [customer] even ignores from which plant exactly its cans come from.' Courtesy translation from the French original: '[Client] n'accorde aucune importance à la proximité des usines de ses fournisseurs, ce qui importe est seulement le prix d'achat des canettes. Pour certains de ses fournisseurs, [client] ignore même de quelles usines exactement proviennent ses canettes.' Agreed non-confidential minutes of the call with a customer, 12.08.2015, ID 1800.

²⁵¹ 'Ball for instance has recently had huge problems with capacity; it used its network to balance it out. In [...], Ball delivered to [customer] not from its [...] plant, but also from [...] due to capacity constraints.' Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2724. '[Customer] was simply not able to receive cans on time. As a result, [Customer] could not produce certain types of products as much as it planned to. Rexam even had to import marginal volumes from [...] in order to face the shortage', agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2691.

²⁵² 'There is no fixed conversion price across Europe. [...] The conversion price depends on several underlying factors, but competition in a given region is the most important one. For instance in Scandinavia (meaning Norway, Denmark and Sweden), where the competition is marginal, conversion costs are the highest. In Finland, where Can-Pack challenges Rexam, conversion costs are much lower', agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2724; and '[The conversion cost] differs mainly by the country where the beverage can plant is located and might differ by filling location. [...] We see cases where can suppliers inflate their conversion price because they know that the alternative suppliers are farther away from their filling locations. As such, they can mark-up their conversion price due to low logistic costs and still remain below the price offered by competitors (competitors potentially having lower conversion price, but higher logistic costs)', agreed non-confidential minutes of a call with a customer, 18.08.2015, ID 2866; and 'different prices in different regions for the same supplier, expressly Rexam and Ball depending the number of competitors they have in a region. The more they have the low is the price they get into the market', Questionnaire to Customers (Q1), question 96.2.1, ID 1609.

²⁵³ 'Supplying from further than 900km would only be possible provided that the security of supply remains constant and that the price does not increase too much. In practice this is unlikely to happen', agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2691. 'In general, feasibility of deliveries depends rather on the DDP price than distance, which is not an issue per se', agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2724. '[Customer] does not impose a specific distance between the supplier's plants and its own filling locations', agreed non-confidential minutes of a call with a customer, 02.09.2015, ID 2888. Nonetheless, this customer received a quote from a player not producing in the EEA and considered this as an 'opportunistic quotation that was not viable (it was ex-works prices)', agreed non-confidential minutes of a call with a customer, 02.09.2015, ID 2888.

Rexam) of the total can price depending on the can size. In comparison, the cost of transporting cans less than 300 km amounts on average to [...]-% (for both Ball and Rexam).²⁵⁴

Figure 12: Weighted average transport cost of Ball and Rexam in 2014

[...]

Source: Reply to the Article 6(1)(c) Decision

- (237) Customers and can manufacturers therefore actively try to minimise transport distances and thus transport costs.²⁵⁵ Minimising travel distances allows manufacturers to offer competitive prices without affecting profit margins and customers to benefit from attractive price and non-price conditions (such as shorter delivery times, facilitated just-in time deliveries, and easier interactions with the can manufacturers e.g. in relation to quality issues or to the development of new products).²⁵⁶
- (238) Exceptions are slim and sleek cans, which can travel further than the standard 33 cl and 50 cl cans. There are fewer plants producing sleek or slim cans than standard cans and these plants often produce sleek or slim cans only for short periods of time each year.
- (239) Another exception is when beverage can manufacturers provide 'freight cost contributions' – special discounts on total delivered price – in order to boost their price competitiveness in areas located remote from their can manufacturing sites. These are often strategic decisions to grow the beverage can manufacturer's footprint with a customer in geographical areas where the beverage can manufacturer is not present with a can plant and which offer high can volume growth potential. For instance, Rexam has often been prepared to supply cans over greater than usual distances.²⁵⁷
- 7.1.3.5. Regional clusters of 700 km catchment areas around individual customer filling locations
- (240) As discussed in sections 7.1.3.1-7.1.3.4, the trade of beverage cans in the EEA is characterised by the following features: (i) supply and demand conditions differ from one location to the next; (ii) customers tend to make most of their purchases within a maximum distance from their filling location plants; (iii) suppliers normally deliver the cans to customers' locations; and (iv) prices are generally negotiated at the level of filling plants.
- (241) These features allow beverage can manufacturers to price discriminate among customers based on their location and customers, in particular small customers, have limited possibilities to source cans at better conditions than those prevailing in the area in which they are based.²⁵⁸
- (242) The Commission, therefore, considers appropriate to take a customer-centric approach to the definition of the geographic market and define geographic markets on the basis of clusters of

²⁵⁴ Reply to the Article 6(1)(c) Decision, paragraph 3.8 and the Parties' transaction data.

²⁵⁵ '[I]t is logical to minimise distances', agreed non-confidential minutes of the call with a customer, 25.08.2015, ID 2724. '[Customer] does not see transport cost as a value-adding spend and therefore seeks to minimise it.', agreed non-confidential minutes of a call with a customer, 12.05.2015, ID 468.

²⁵⁶ 'It is simply not realistic to source large volumes from far away and pay the price of 'transporting air' for large volumes of cans', agreed non-confidential minutes of the call with a customer, 25.08.2015, ID 2691.

²⁵⁷ Agreed non-confidential minutes of a meeting with a customer, 27.08.2015, ID 2982.

²⁵⁸ See also, Commission notice on the definition of the Relevant Market for the purposes of Community competition law, Official Journal C 372, 09.12.1997, p. 5, paragraph 43.

catchment areas around individual customer filling locations where the competitive conditions are sufficiently homogeneous.²⁵⁹

- (243) Catchment areas around individual customer filling locations reflect the geographic differentiation between customers that is a characteristic of a market where proximity and the ability to price discriminate across customers play an important role in the competitive landscape. To the extent that some degree of differentiation exists between the catchment areas around individual customer filling locations in a given region, such differentiation is taken into account in the competitive assessment.
- The radius of catchment areas around individual customer filling locations
- (244) The radius of these catchment areas should be sufficiently wide to capture all suppliers that can competitively supply customers with the bulk of their requirements.
- (245) The Commission, therefore, analysed the travel distance at which sales are made by the four main beverage can manufacturers (Ball, Rexam, Crown and Can-Pack) to customers in the EEA on the basis of the actual sales data of the Parties, Crown and Can-Pack and not, contrary to what the Notifying Party argues,²⁶⁰ only the sales of the Parties.
- (246) These delivery distances represent the maximum distance at which on average Ball, Rexam, Crown and Can-Pack make 80 % or 90 % of their sales in the EEA.

Table 4: Maximum can transport distance in the EEA and non-EEA countries [...] ²⁶¹ in 2014 (km)

Company	Maximum transport distance		
	70 % Volume	80 % Volume	90 % Volume
Ball	[...]	[...]	[...]
Rexam	[...]	[...]	[...]
Crown	[...]	[...]	[...]
Can-Pack	[...]	[...]	[...]
EEA	486	626	922

Source: Parties' actual sales data and the Parties' estimated sales data for competitors

- (247) When *actual* 2012-2014 sales data from the Parties and their competitors is taken into account, in the EEA, 80 % of all can sales take place within a maximum travel distance of approximately 700 km from a customer's filling location.

²⁵⁹ Certain beverage can plants that sell into a customer catchment area may be located outside the boundaries of this catchment area. For volume shares the Commission has, therefore counted sales made to those customers, regardless of the location of the plant supplying those volumes. For capacity shares the Commission has also taken into account the fact that, while certain plants located in a customer catchment area might not makes sales with that catchment area at a given point in time, those plants nevertheless influence competitive conditions in that catchment area.

²⁶⁰ Reply to the SO, Section 2.

²⁶¹ The Stata code underlying Table 4 and Table 7 in this Decision includes Switzerland. Contrary to what the Notifying Party claimed in its reply to the SO, this is, however, unproblematic because the [...].

- (248) The Commission considers that catchment areas with a radius that represents the maximum travel distance at which 80 % of beverage can sales take place adequately capture the prevailing competitive dynamics around each customer. This is for the reasons set out in recitals (249)-(254).
- (249) First, while certain respondents to the market investigation indicated that they source cans only within a radius of 500 km or less, other respondents indicated that they source cans at distances significantly greater than 500 km.²⁶² A majority of customers that responded to the market investigation also indicated that they could even source cans from 900 km or more if delivered prices (including transport cost) were 10 % lower than those of their current supplier(s), subject to all other trading conditions (such as quality, reliability, capacity) being equal.²⁶³
- (250) Second, the definition of 700 km catchment areas around customer filling locations that capture 80 % of current sales may actually understate the size of the appropriate catchment areas for the purposes of defining the relevant geographic market.
- (251) In the first place, given the high variable margins of the Parties (see Figure 11 and recital (320)), manufacturers are likely to be able to supply beverage cans competitively at a maximum distance of more than 700 km.
- (252) In the second place, if faced with a price increase, customers are likely to be willing to source beverage cans further away than they do today. As set out in recital (249), the majority of customers that responded to the market investigation indicated that they would be willing to source cans from 900 km or more if delivered prices (including transport costs) were 10 % lower than those of their current supplier(s), subject to certain conditions.²⁶⁴
- (253) In the third place, as indicated in Table 4, Can-Pack, which is the beverage can manufacturer that has the longest delivery distances, makes 80 % of its sales over a distance of approximately [...] km.
- (254) In the fourth place, whilst the 80 % of sales exclude the 20 % of sales that travel the furthest, they include sales that travel short distances (such as wall-to-wall sales). These short distance sales are not representative of the ability of customers to procure competitively over relatively long distances.
- (255) Based on the data, the Commission therefore concludes that the radius of the catchment areas around individual customer filling locations should be 700 km.
- The clustering of the catchment areas around individual customers filling locations
- (256) For the purpose of assessing the Transaction, catchment areas around individual customer filling locations that are subject to sufficiently homogeneous competitive conditions can be clustered together in broader geographic areas.
- (257) For the reasons set out in this section, the Commission considers that competitive conditions are sufficiently homogenous for customer filling locations located in the following regions: Central Europe (Austria and Germany), Benelux, France, Italy, Iberia (Spain and Portugal),

²⁶² Questionnaire to Customers (Q1), questions 42 and 43, ID 1609.

²⁶³ Questionnaire to Customers (Q2), question 25, ID 2664 and Questionnaire to Customers (Q4), question 11, ID 2786. In particular, 63 % of respondents to Q2 (non-confidential replies) and 51 % of respondents to Q4 (non-confidential replies) would be willing to source from further away than 900 km.

²⁶⁴ Questionnaire to Customers (Q2), question 25, ID 2664; Questionnaire to Customers (Q4), question 11, ID 2786 and Market definition notice, paragraph 17.

North-East Europe (Poland, Czech Republic, Slovakia, Lithuania, Estonia and Latvia), South East Europe (Hungary, Slovenia, Croatia, Romania, Bulgaria, Greece and Cyprus), the Nordics (Denmark, Norway, Sweden, Finland, and Iceland) and the UK and Ireland.

- (258) First, the [...] groups together customers in this manner, on the basis of Ball's understanding of local market conditions.
- (259) Given that the [...] aims at [...], it is a logical starting point for the Commission's assessment of the homogeneity of individual catchment areas.
- (260) Second, the sales data of the Parties and of their competitors indicates that plants located within a given regional cluster make the vast majority of their sales within the cluster (between 71 % and 97 %).²⁶⁵
- (261) Third, this clustering is supported by certain qualitative elements from the market investigation. For example, France has introduced a ban on Bisphenol A ('BPA').²⁶⁶ Imports of beverage cans from other EEA countries that use BPA do not, therefore, represent a competitive constraint on beverage cans produced in France.²⁶⁷
- (262) Fourth, steel cans are produced and used in some geographic areas but not in others, for instance there is no steel beverage can production facility in the Nordics region.²⁶⁸
- (263) At the same time, due to the local nature of competition and the important role that distance plays in the competitive conditions faced by customers, certain regional clusters include customer catchment areas that are more affected by the Transaction than others based in the same cluster. The Commission has thus taken into account geographical differentiation in its competitive assessment (thus also taking into account geographical closeness of competition between the merging parties), together with the specific features of each regional cluster.

7.2. Aluminium bottles

7.2.1. Past decisional practice

- (264) The Commission has not previously investigated the scope of the relevant geographic market for aluminium bottles in past decisions.

7.2.2. The Notifying Party's views

- (265) The Notifying Party submits that, since aluminium bottles fall within a broader market for beverage packaging, the scope of the geographical market is the same as for cans and therefore regional with some inner-regional differences and inter-regional trade flows at the edges of some of the regional borders.²⁶⁹

7.2.3. The Commission's assessment

- (266) There are a number of reasons why the relevant market for aluminium bottles may be broader than EEA-wide.

²⁶⁵ This is based on the Commission's analysis of the Parties' and competitors' sales data.

²⁶⁶ BPA is a chemical that is mainly used in combination with other chemicals to manufacture plastics and resins. Residues of BPA are also present in epoxy resins used to make protective coatings and linings for food and beverage cans.

²⁶⁷ Questionnaire to Customers (Q1), question 66, ID 1609.

²⁶⁸ Form CO, table 6.8 and following.

²⁶⁹ Form CO, paragraphs 6.168-6.204.

- (267) First, customers source aluminium bottles both at EEA and global level.²⁷⁰
- (268) Second, aluminium bottles are only produced at a limited number of manufacturing plants in the EEA. IE aluminium bottles are produced by Alucan at its plant near Barcelona (Spain), by Ardagh at its Beaurepaire (France) plant and by Ball at its Velim (Czech Republic) plant.²⁷¹ In the EEA, DWI aluminium bottles are solely produced by Rexam at its Ejpvovice (Czech Republic) plant.²⁷²
- (269) Third, because aluminium bottles are a niche product and significantly more expensive than beverage cans, longer transport distances appear more economical. This view finds support, for example, by a customer looking into the possibility to source aluminium bottles for the EEA from a manufacturer in China²⁷³ or other non-EEA countries.²⁷⁴
- (270) The Commission considers, however, that for the purposes of the present Decision the exact geographic market definition for aluminium bottles can be left open since the Transaction would not lead to a significant impediment of effective competition under any plausible geographic market definition.

8. COMPETITIVE ASSESSMENT: PRINCIPLES

- (271) According to the Commission's Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the 'Horizontal Merger Guidelines'),²⁷⁵ there are two main ways in which horizontal mergers may significantly impede effective competition, in particular by creating or strengthening a dominant position:
- by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour (non-coordinated effects); and/or
 - by changing the nature of competition in such a way that firms that previously were not coordinating their behaviour are now significantly more likely to coordinate and raise prices or otherwise harm effective competition. A merger may also make coordination easier, more stable or more effective for firms which were coordinating prior to the merger (coordinated effects).²⁷⁶

8.1. Non-coordinated effects

- (272) Generally, a merger giving rise to non-coordinated effects would significantly impede effective competition by creating or strengthening the dominant position of a single firm, one which, typically, would have an appreciably larger market share than the next competitor post-merger.²⁷⁷

²⁷⁰ Questionnaire to Customers (Q1), question 51, ID 1609.

²⁷¹ Form CO, paragraphs 6.150 and 6.151.

²⁷² Form CO, paragraphs 6.150 and 6.152.

²⁷³ Agreed non-confidential minutes of a call with a customer, 12.05.2015, ID 468.

²⁷⁴ *'Ball's Alumi-Tek bottles are however imported from outside the EEA'*, Questionnaire to Customers (Q1), question 98, ID 1609.

²⁷⁵ Official Journal C 31, 5.2.2004, pp. 5-18.

²⁷⁶ Horizontal Merger Guidelines, paragraph 22.

²⁷⁷ Horizontal Merger Guidelines, paragraph 17.

- (273) According to well-established case law, very large market shares – 50 % or more – may in themselves be evidence of the existence of a dominant market position.²⁷⁸
- (274) The overall concentration level in a market may also provide useful information about the competitive situation. In order to measure concentration levels, the Commission often applies the Herfindahl-Hirschman Index ('HHI'). The HHI is calculated by summing the squares of the individual market shares of all the firms in the market. While the absolute level of the HHI can give an initial indication of the competitive pressure in a market post-merger, the change in the HHI (known as the 'delta') is a useful proxy for the change in concentration directly brought about by a merger.²⁷⁹ The Commission is unlikely to identify horizontal competition concerns in a market with a post-merger HHI below 1 000.²⁸⁰ Such markets normally do not require extensive analysis. The Commission is also unlikely to identify horizontal competition concerns in a merger with a post-merger HHI between 1 000 and 2 000 and a delta below 250, or a merger with a post-merger HHI above 2 000 and a delta below 150, except where special circumstances are present.²⁸¹
- (275) Furthermore, non-merging firms in a given market can benefit from the reduction of competitive pressure that can result from a merger, since any price increase by merging firms may switch some demand to rival firms, which, in turn, may find it profitable to increase their prices.²⁸²
- (276) Mergers in oligopolistic markets involving the elimination of important competitive constraints that the parties previously exerted upon each other together with a reduction of competitive pressure on the remaining competitors may, even where there is little likelihood of coordination between the members of the oligopoly, also result in a significant impediment to competition. The Merger Regulation clarifies that all mergers giving rise to such non-coordinated effects shall also be declared incompatible with the internal market.²⁸³
- (277) The larger the market share, the more likely a firm is to possess market power. Moreover, the larger the addition of market share, the more likely it is that a merger will lead to a significant increase in market power. The larger the increase in the sales base on which to enjoy higher margins after a price increase, the more likely it is that the merging firms will find such a price increase profitable despite the accompanying reduction in output.²⁸⁴
- (278) In evaluating the likelihood of non-coordinated effects potentially caused by a merger, it is important to assess to which extent the products of one merging party are close substitutes to the products sold by the other merging party. The merging firms' incentive to raise prices is more likely to be constrained when rival firms produce close substitutes to the products of the merging firms than when they offer less close substitutes.²⁸⁵
- (279) Customers may have difficulties in switching to other suppliers where only few alternative suppliers exist or where the customers would face substantial switching costs. Such customers are particularly vulnerable to price increases. In particular, this may be the case for customers

²⁷⁸ Judgment of 6 July 2010, *Ryanair v Commission*, T-342/07, EU:T:2010:280, paragraphs 41 and 54; Judgment of 11 December 2013, *Cisco Systems and Messagenet v Commission*, T-79/12, EU:T:2013:635.

²⁷⁹ Horizontal Merger Guidelines, paragraph 16.

²⁸⁰ Horizontal Merger Guidelines, paragraph 19.

²⁸¹ Horizontal Merger Guidelines, paragraph 20.

²⁸² Horizontal Merger Guidelines, paragraph 24.

²⁸³ Horizontal Merger Guidelines, paragraph 25.

²⁸⁴ Horizontal Merger Guidelines, paragraph 27.

²⁸⁵ Horizontal Merger Guidelines, paragraph 28.

that have used dual sourcing from the two merging firms as a means of obtaining competitive prices.²⁸⁶

- (280) The Commission is unlikely to find that the merger will create or strengthen a dominant position or otherwise significantly impede effective competition when rival firms have available capacity and find it profitable to expand output sufficiently. In other words, the extent to which competitors to the merged entity constrain the merged entity from raising prices not only depends on the level of their spare capacity but also on whether these firms have the incentive to react aggressively to a post-merger price increase.²⁸⁷
- (281) Some proposed mergers would, if allowed to proceed, significantly impede effective competition by leaving the merged firm in a position where it would have the ability and incentive to make the expansion of smaller firms and potential competitors more difficult or otherwise restrict the ability of rival firms to compete.²⁸⁸
- (282) In markets where innovation is an important competitive force, a merger may increase the firms' ability and incentive to bring new innovations to the market and, thereby, the competitive pressure on rivals to innovate in that market. Alternatively, effective competition may be significantly impeded by a merger between two important innovators, for instance between two companies with 'pipeline' products related to a specific product market.²⁸⁹
- (283) Potential competition must also be taken into account in any competitive assessment. Potential competition may lead to negative competition effects where (i) the potential competitor already exerts a significant constraining influence or where there is a significant likelihood that it would grow into an effective competitive force (for example plans to enter a market in a significant way) and (ii) there is an insufficient number of other potential competitors, which could maintain sufficient competitive pressure after the merger.²⁹⁰
- (284) Countervailing buyer power should be understood as the bargaining strength that the buyer has vis-à-vis the seller in commercial negotiations due to its size, its commercial significance to the seller and its ability to switch to alternative suppliers.²⁹¹ One source of countervailing buyer power would be if a customer could credibly threaten to resort, within a reasonable timeframe, to alternative sources of supply should the supplier decide to increase prices or to otherwise deteriorate quality or the conditions of delivery. This would be the case if the buyer could immediately switch to other suppliers, credibly threaten to vertically integrate into the upstream market or to sponsor upstream expansion or entry for instance by persuading a potential entrant to enter by committing to placing large orders with this company.²⁹²
- (285) Countervailing buyer power is, however, only possessed by a customer if it is of a certain size, it is of great commercial significance to the supplier and it has the ability to switch to alternative suppliers. Moreover, even if some customers were to hold such countervailing buyer power, this is not sufficient. In addition, it is not enough that sufficient countervailing buyer

²⁸⁶ Horizontal Merger Guidelines, paragraph 31.

²⁸⁷ Horizontal Merger Guidelines, paragraph 33.

²⁸⁸ Horizontal Merger Guidelines, paragraph 36.

²⁸⁹ Horizontal Merger Guidelines, paragraph 38.

²⁹⁰ Horizontal Merger Guidelines, paragraph 60.

²⁹¹ Horizontal Merger Guidelines, paragraph 64.

²⁹² Horizontal Merger Guidelines, paragraph 65.

power may exist pre-merger, it must continue to exist post-merger (removing a credible alternative supplier may reduce buyer power).²⁹³

- (286) For entry to be considered a sufficient competitive constraint on the merging parties, it must be shown to be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger.²⁹⁴

8.2. Coordinated effects

- (287) In some markets the structure may be such that firms would consider it possible, economically rational, and hence preferable, to adopt on a sustainable basis a course of action on the market aimed at selling at increased prices through a coordination of their behaviour.²⁹⁵ A merger may increase the likelihood that firms are able to coordinate their behaviour and raise prices, even without entering into an agreement or resorting to a concerted practice within the meaning of Article 101 TFEU. A merger may also make coordination easier, more stable or more effective for firms that were already coordinating before the merger, either by making the coordination more robust or by permitting firms to coordinate on even higher prices.²⁹⁶
- (288) Coordination may take various forms, such as setting prices above the competitive level, limiting production or capacity, or dividing the market, for instance by geographic area or other customer characteristics, or allocating contracts in bidding markets.²⁹⁷
- (289) Coordination is more likely to emerge in markets where it is relatively simple to reach a common understanding on the terms of coordination. In addition, three conditions are necessary for coordination to be sustainable. First, the coordinating firms must be able to monitor to a sufficient degree whether the terms of coordination are being adhered to. Second, discipline requires that there is some form of credible deterrent mechanism that can be activated if deviation is detected. Third, the reactions of outsiders, such as current and future competitors not participating in the coordination, as well as customers, should not be able to jeopardise the results expected from the coordination.²⁹⁸ In applying those criteria, it is necessary to avoid a mechanical approach involving the separate verification of each of those criteria taken in isolation, while taking no account of the overall economic mechanism of a hypothetical tacit coordination.²⁹⁹
- (290) For competitors to reach a common perception as to how the coordination should work coordinating firms should have similar views regarding which actions would be considered to be in accordance with the aligned behaviour and which actions would not.³⁰⁰ In particular, coordination by way of market division will be easier if customers have simple characteristics that allow the coordinating firms to readily allocate them. Such characteristics may be based on geography; on customer type or simply on the existence of customers who typically buy from one specific firm. Coordination by way of market division may be relatively straightforward if

²⁹³ Horizontal Merger Guidelines, paragraph 67.

²⁹⁴ Horizontal Merger Guidelines, paragraph 68.

²⁹⁵ Horizontal Merger Guidelines, paragraph 39.

²⁹⁶ Judgment in *Bertelsmann and Sony Corporation of America v Impala*, C-413/06 P, EU:C:2008:392, paragraph 122; Horizontal Merger Guidelines, paragraph 39.

²⁹⁷ Horizontal Merger Guidelines, paragraph 40.

²⁹⁸ Judgment of 6 June 2002, *Airtours v Commission*, T-342/99, EU:T:2002:146, paragraph 62 ; Judgment in *Bertelsmann and Sony Corporation of America v Impala*, C-413/06 P, EU:C:2008:392, paragraph 123; Horizontal Merger Guidelines, paragraph 41.

²⁹⁹ Judgment in *Bertelsmann and Sony Corporation of America v Impala*, C-413/06 P, EU:C:2008:392, paragraph 125.

³⁰⁰ Horizontal Merger Guidelines, paragraph 44.

it is easy to identify each customer's supplier and the coordination device is the allocation of existing customers to their incumbent supplier.³⁰¹

- (291) Publicly available key information, exchange of information through trade associations, or information received through cross-shareholdings or participation in joint ventures may also help firms reach terms of coordination.³⁰²
- (292) Firms may find it easier to reach a common understanding on the terms of coordination if they are relatively symmetrical, especially in terms of cost structures, market shares, capacity levels and levels of vertical integration. Structural links such as cross-shareholdings or participation in joint ventures may also help in aligning incentives among the coordinating firms.³⁰³
- (293) Coordinating firms are often tempted to increase their share of the market by deviating from the terms of coordination, for instance by lowering prices, offering secret discounts, increasing product quality or capacity or trying to win new customers. Only the credible threat of timely and sufficient retaliation keeps firms from deviating. Markets therefore require sufficient transparency to allow the coordinating firms to monitor to a sufficient degree whether other firms are deviating, and thus know when to retaliate. Transparency in the market is often higher when the number of active participants in the market is lower. Further, the degree of transparency often depends on how market transactions take place in a particular market.³⁰⁴
- (294) In some markets where the general conditions may seem to make monitoring of deviations from coordination difficult, firms may nevertheless engage in practices which have the effect of easing the monitoring task, even when these practices are not necessarily entered into for such purposes. These practices, such as meeting-competition or most-favoured-customer clauses, voluntary publication of information, announcements, or exchange of information through trade associations, may increase transparency or help competitors interpret the choices made. Cross-directorships, participation in joint ventures and similar arrangements may also make monitoring easier.³⁰⁵
- (295) The possibility of retaliation is important for the stability of coordination. Coordination is not sustainable unless the consequences of deviation are sufficiently severe to convince coordinating firms that it is in their best interest to adhere to the terms of coordination. It is thus the threat of future retaliation that can keep the coordination sustainable. However the threat is only credible if, where deviation by one of the firms is detected, there is sufficient certainty that some deterrent mechanism will be activated.³⁰⁶
- (296) Retaliation need not necessarily take place in the same market as the deviation. If the coordinating firms have commercial interaction in other markets, these may offer various methods of retaliation.³⁰⁷
- (297) As regards the specific effects of a merger, a merger may increase the likelihood that firms are able to coordinate their behaviour and raise prices, even without entering into an agreement or resorting to a concerted practice within the meaning of Article 101 TFEU. A merger may also make coordination easier, more stable or more effective for firms that were already

³⁰¹ Horizontal Merger Guidelines, paragraph 46.

³⁰² Horizontal Merger Guidelines, paragraph 47.

³⁰³ Horizontal Merger Guidelines, paragraph 48.

³⁰⁴ Horizontal Merger Guidelines, paragraphs 49 and 50.

³⁰⁵ Horizontal Merger Guidelines, paragraph 51.

³⁰⁶ Horizontal Merger Guidelines, paragraph 52.

³⁰⁷ Horizontal Merger Guidelines, paragraph 55.

coordinating before the merger, either by making the coordination more robust or by permitting firms to coordinate on even higher prices,³⁰⁸ for example by facilitating the detection of deviation, limiting the ability and incentives of some market players to deviate and allowing more efficient retaliation.³⁰⁹

9. COMPETITIVE ASSESSMENT BEVERAGE CANS: NON-COORDINATED EFFECTS

9.1. Overview of the market dynamics and effects of the Transaction across the regional clusters

- (298) Despite the local/regional nature of the geographic markets, competition has a strong EEA-wide element.
- (299) Certain features affecting the competitive assessment in each relevant market are similar, if not identical, across all relevant markets within the EEA. These features include: (i) the lack of intensity of competition between beverage can manufacturers; (ii) the fact that the Transaction reduces the number of players from 4 to 3; (iii) the closeness of competition between the Parties; (iv) the inability of the four beverage can manufacturers to compete on an equal footing; (v) differences between large customers and other customers; (vi) the importance of having a network of plants; (vii) the Parties' role as main innovators; (viii) the tightness of capacity in the relevant geographic markets; (ix) the inability of customers to switch; (x) the need for customers to multi-source; (xi) the irrelevance of preferred supply-agreements and wall-to-wall supplies; (xii) the limited competitive pressure from other forms of packaging; (xiii) high barriers to entry and expansion; and (xiv) insufficient countervailing buyer power.
- (300) Given the similarity in the way competition takes place in each regional cluster, the Commission will first describe the common features that currently affect competitive conditions across the EEA (sections 9.1.1 to 9.1.16).
- (301) The Commission will then assess the impact on competition of the Transaction in each regional cluster in section 9.2 below.

³⁰⁸ Judgment in *Bertelsmann and Sony Corporation of America v Impala*, C-413/06 P, EU:C:2008:392, paragraph 122; Horizontal Merger Guidelines, paragraph 39.

³⁰⁹ Horizontal Merger Guidelines, paragraph 42.

9.1.1. The position of the Parties across the EEA

9.1.1.1. The Parties are the two largest beverage can manufacturers in the EEA

(302) As set out in Table 5, the Parties are the two largest beverage can manufacturers in the EEA, their sales volumes representing respectively [30-40] % (Rexam) and [30-40] % (Ball) of the total EEA-volume in 2014.

Table 5: Sales and capacity shares of beverage can manufacturers (in volume) in 2014 (all sizes, aluminium and steel cans) as presented by the Notifying Party

EEA	Sales	Capacity
Ball	[30-40]%	[20-30] %
Rexam	[30-40] %	[30-40] %
Combined	[60-70] %	[60-70] %
Crown	[10-20] %	[20-30] %
Can-Pack	[10-20] %	[10-20] %
Other	[0-5] %	[0-5] %

Source: Form CO

(303) Rexam is the largest player in the EEA in terms of both sales volumes and capacity. Ball is the second largest, followed by Crown and Can-Pack.

(304) Rexam currently sells more than [...] the volumes of the third largest player Crown, and about [...] the volumes of the fourth player, Can-Pack. Rexam itself publicly states on its website that *'Europe is the largest of our regional markets and we are the leading can maker with more than 40% market share.'*³¹⁰

(305) Ball currently sells close to [...] % more volumes than Crown and sells more than [...] the volumes of Can-Pack.

(306) The merged entity would be more than [...] times larger in terms of sales volumes than the current third largest player, Crown. As regards Can-Pack, the merged entity would be more than [...] times larger in terms of sales volumes.

9.1.1.2. The merged entity would be the largest player in terms of sales volumes in the EEA

(307) The merged entity would be by far the largest player in the EEA, accounting for [60-70] % of sales volumes, and the increment the Transaction would bring about is significant ([30-40] %).

(308) Furthermore, the market position of the Parties, Crown and Can-Pack in the EEA, despite a slight increase of Can-Pack's market position since 2012, has remained stable over the last

³¹⁰ Rexam website: <http://www.rexam.com/index.asp?pageid=256> Last accessed on 28.09.2015, ID 3002.

years, as evidenced by Figure 13. This is also confirmed by the Parties' internal documents³¹¹ and by the responses to the market investigation.³¹²

Figure 13: Shares of supply of beverage cans EEA 2010-2014

[...]

Source: Form CO, Annex 21

(309) Moreover, the Parties expect the market to remain stable in the future, as illustrated in Figure 14.

Figure 14: Rexam's projections for European shares of supply of beverage cans 2015-2017

[...]

Source: Rexam's internal document, 'Can-Pack view in BCE Strategic Plan 2014-16', slide 5

9.1.1.3. The merged entity would be the largest player in terms of total capacity in the EEA

(310) The merged entity would control [60-70] % of overall capacity in the EEA (roughly [...] out of [...] billion cans), and the increment the Transaction would bring about is [20-30] %.³¹³ This has a number of consequences.

(311) First, Crown and Can-Pack, which have a joint capacity of around [...] billion cans, could serve only a fraction of the [...] billion demand for beverage cans in the EEA. By contrast, the merged entity would be able to serve about [...] % of the demand.

(312) Second, the Parties' combined capacity underestimates their competitive position in the EEA for several reasons.

(313) In the first place, it does not include Ball's Belgrade plant, which, albeit located outside the EEA, serves [...] the EEA (see recital (53) above).

(314) In the second place, it also does not take into account future expansion plans (see section 5.1.4). For example, Rexam's new Widnau plant, which started production in October 2015, will [...] ([...] billion cans) in the EEA despite the fact that it is not located in the EEA, as Rexam plans to [...].³¹⁴

9.1.1.4. The Transaction would lead to a further increase in concentration levels across the EEA

(315) The supplier base in the EEA for beverage cans is already concentrated. Only four competitors are active, apart from the vertically integrated Polish player BagPak which cannot be considered as being active in the merchant market (see recital (50)).

³¹¹ Form CO, Attachment G, RFI 1, Exhibit H10, 'BCE Strategic Plan 2015-2017', slide 15.

³¹² 'We consider the can beverage market as a very stable market, basically run by the three BCME-members.' 'No significant developments in the last 15 years. The can supply market has been relatively stable for this period, with a limited number of competitors.' Questionnaire to Customers (Q1), question 66, ID 1609.

³¹³ Based on information obtained from the Parties and from competitors, the merged entity would account for [60-70]-[60-70] % of capacity in the EEA on a forward-looking basis, including the Saarlouis plant, the [...] plant, and the closure of the Berlin plant. The Commission notes that the [60-70]-[60-70] % capacity figure is likely to be an under-estimate of the combined strength of the merged entity, as it does not take into account Rexam's plant in Widnau, and the fact that the Helvetia's capacity in Saarlouis may not represent a significant competitive constraint on the merged entity (see section 9.1.13).

³¹⁴ See recital (651).

- (316) The Transaction would give rise to a high post-Transaction HHI level and HHI delta, at EEA level, as shown in Table 6. These HHI level and delta are well above the levels at which the Commission would be unlikely to identify horizontal competition concerns.
- (317) This analysis is useful inasmuch as it helps characterise competitive conditions and the choices left to customers post-Transaction in the EEA. This analysis will also be carried out for each relevant market.

Table 6: HHI levels based on volume figures 2014 as presented by the Notifying Party

	EEA
Pre-transaction HHI	[2500-3000]
Post-transaction HHI	[5000-5500]
HHI Delta	[2000-2500]

Source: Reply to RFI 2

9.1.2. Intensity of competition pre-Transaction

9.1.2.1. The Notifying Party's views

- (318) The Notifying Party claims that competition is strong, including among the members of the Beverage Can Makers Europe ('BCME')³¹⁵ trade association (Ball, Rexam and Crown), as evidenced by the material fluctuation of the beverage can manufacturers' volume shares in the various regions over the past few years.³¹⁶

9.1.2.2. The Commission's assessment

- (319) The Commission has reached the conclusion that pre-Transaction competition for the supply of beverage cans in the EEA cannot be characterised as strong. This is for several reasons.
- (320) First, the variable margins of the Parties (approximately between [...] % and [...] %) are high.³¹⁷ These margins are even higher if they are calculated based on the price excluding the LME-hedged aluminium cost.
- (321) Second, the Parties' pricing behaviour indicates the existence of localised market power.
- (322) As detailed in section 7.1.3.2, both Parties, when deciding what price to offer for each individual customer filling location [...]. In particular both Parties are [...] ³¹⁸ to [...].
- Ball uses its [...] as key elements of its pricing strategy for each customer.
 - Rexam is [...], which will allow it to assess its [...].
- (323) Third, customers describe the market as one with limited free capacity available in each production plant³¹⁹ and where potential switches of large volumes will be avoided as much as

³¹⁵ <http://www.bcme.org/home.htm> Last accessed on 28.09.2015, ID 2998.

³¹⁶ Reply to the Article 6(1)(c) Decision, paragraph 5.3.

³¹⁷ Reply to the Article 6(1)(c) Decision, figure 3.2.

³¹⁸ [...].

³¹⁹ 'We think [there] is a limited intensity competition because of the limited capacities' Questionnaire to Customers (Q1), question 97, ID 1609.

possible. One customer pointed out that beverage can manufacturers *'know that stability is in the interest of their market'*.³²⁰ Some respondents to the market investigation described the beverage can sector in the EEA as with a somewhat limited intensity of competition: *'We believe there is very limited competition between the beverage can manufacturers'; 'the intensity of competition is already very low amongst the four suppliers'*.³²¹

- (324) Fourth, the aggregated country level information about historical beverage can fillings by Ball, Rexam and Crown that the BCME trade association collects and shares might allow them to have good information about the identity of each other's customers and allow them to observe each other's actions. This was emphasised by certain customers that responded to the market investigation:

*'The quarterly BCME report states available capacities';³²² 'Beverage Can Makers Europe (BCME) publish data concerning can making capacities';³²³ 'Information von BCME';³²⁴ 'The BCME sends a report on an annual basis where they give an indication of the total capacities per plant. Obviously, they do not share the overcapacity or capacity shortage per plant, but they do give an estimate of the total demand per country and the development over the last five years divided between beer and carbonated soft drinks.'*³²⁵

*'The suppliers are openly telling about sales, capacity, capex etc.'*³²⁶ *'You can [access] this Information via Internet. Can supplier give Information about this.'*³²⁷ *'We get good information t[h]rough Meetings With different Suppliers.'*³²⁸

*'[T]he can manufacturers know the market very well and can perfectly judge which production plant of which manufacturer has capacity left open and which ones do not.'*³²⁹

- (325) Fifth, certain customers that responded to the market investigation indicated a general lack of interest, in particular of Ball, Rexam and Crown, in acquiring new customers.³³⁰ A large beverage producer described that *'[d]uring [its] recent tender Rexam did not try to compete with Ball and Crown in France, Switzerland and Greece, as Ball and Crown have plants better situated to serve these markets. The same for Ball and Crown, who did not try to compete with Rexam on the Scandinavian markets.'*³³¹

- (326) One customer noted that *'the can producers very much stick to their footprint.'*³³² In this regard, a customer further adds that *'[i]n bidding procedures Crown normally protects its margins and does not compete for volume. For these reasons Crown only offers competitive conditions in*

³²⁰ Questionnaire to Customers (Q1), question 97, ID 1609.

³²¹ Questionnaire to Customers (Q1), question 97, ID 1609.

³²² Questionnaire to Customers (Q1), question 96.1.1, ID 1609.

³²³ Questionnaire to Customers (Q1), question 96.1.1, ID 1609.

³²⁴ Questionnaire to Customers (Q1), question 96.1.1, ID 1609.

³²⁵ Questionnaire to Customers (Q1), question 96.1.1, ID 1609.

³²⁶ Questionnaire to Customers (Q1), question 96.1.1, ID 1609.

³²⁷ Questionnaire to Customers (Q1), question 96.1.1, ID 1609.

³²⁸ Questionnaire to Customers (Q1), question 96.1.1, ID 1609.

³²⁹ Questionnaire to Customers (Q1), question 74.2, ID 1609.

³³⁰ *'For example in [...] we have never received a serious proposal from Rexam, despite the fact that both [...] have overcapacities in [...] and our purchasing prices are higher than in other countries. In [...] we observe a similar picture, where BCME member do not seem to have any interest in supplying other companies than their existing customers.'* Questionnaire to Customers (Q1), question 47, ID 1609.

³³¹ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 334.

³³² Questionnaire to Customers (Q1), question 97, ID 1609.

*regions where Crown has beverage cans plants [...].*³³³ Crown's perceived positioning is explained by a customer as being due to the fact *'that Crown is more focused on markets outside the EEA, like Asia and America.'*³³⁴ Overall, as another customer pointed out no beverage can manufacturer *'is very ag[g]ressive to get more volumes.'*³³⁵

(327) These statements are in line with indications stemming from the Parties' internal documents.³³⁶ For example, [...],³³⁷ while Can-Pack has been a more [...] player.³³⁸ In analysing their options to [...] with a plant, Ball notes that [...].³³⁹

(328) The perception that certain customers have of Can-Pack is somewhat different. They view Can-Pack as a player that *'broke [the] ranks'*³⁴⁰ and made efforts to gain new customers and new volumes even though it may not always have been ideally located to do so. Can-Pack's more aggressive pricing strategy brought some movement in the market and motivated the other players, in particular Rexam, to compete more fiercely. As one major customer notes, *'[h]istorically, prior to 2011, all members of the BCME (Ball, Rexam and Crown) had been pricing cans within Europe based on the highest cost country, being Germany. BCME members th[e]n began to come under pressure in Eastern Europe when Can-Pack invested in Poland and other markets like Romania. The BCME came under further pressure when Can-Pack invested in UK. In [customer's] view, Rexam then decided to break out from the BCME model and started to compete head to head with Can-Pack (and the BCME members). Ball has during this period (2011-2015) remained the least competitive supplier overall for [customer] in EEA.'*³⁴¹

(329) Other customers described Can-Pack as follows: *'Big 3 seem to have similar approach, where [Can-Pack] opens the market'. 'Before Can Pack started the business and started to be ag[g]ressive on the market I never got an offer from Crown or Ball. Just have a look at the history and then you can see that these 3 players did split the market/countries between themselves.'* *'The three BCME-members have known each other for a long time. They all aim for stability in the market and a good alignment between demand and production capacity. Can-Pack has entered the market much later. They aim for volume growth, which obviously goes against the objectives of the other three, but they also wish to benefit from healthy margins and conditions, since their global growth strategy requires significant investments.'*³⁴² *'Can-Pack growth into the European can supply market: Pricing pre-2010 was significantly higher prior to the growth of Can-Pack in the region. Can-Pack had a positive effect on driving the overall can price level down, with other suppliers such as Rexam eventually following these more competitive prices.'*³⁴³ *'The market changed when Can Pack entered the market. My prices would be 10 - 20% higher than today if they didn't exist on the market.'*³⁴⁴ *'Can Pack entered*

333 Questionnaire to Customers (Q2), question 34.1, ID 2664.

334 Agreed non-confidential minutes of a call with a customer, 27.08.2015, ID 2716.

335 Questionnaire to Customers (Q2), question 41.1, ID 2664.

336 Rexam's internal document 'BCE Strategic Plan 2015-2017', slide 23; Rexam's internal document 'Can Pack Review', slide 33; Rexam's internal document 'Coke Global Bid GAC/DAR/DWG Update', slide 16.

337 [...]

338 Ball's internal document 'BPE Review Deep Dive Bonn', slide 35.

339 Form CO, Attachment G, RFI 1, Exhibit H.190, 'Project [...]'.

340 Agreed non-confidential minutes of a meeting with a customer, 27.08.2015, ID 2982.

341 Questionnaire to Customers (Q1), question 97, ID 1609.

342 Questionnaire to Customers (Q1), question 62.1, ID 1609.

343 Questionnaire to Customers (Q1), question 66, ID 1609.

344 Questionnaire to Customers (Q1), question 66, ID 1609.

the market and started to be ag[g]ressive on our market year 2009'.³⁴⁵ 'Can Pack is always known as the supplier which is most eager to offer competitive conditions and thus "rock the boat". [...] Can Pack is not the member of the can industry association (while the other three players are) and therefore the challenger of the remaining three.'³⁴⁶

9.1.3. *The Transaction reduces the number of players from 4 to 3 in the EEA*

9.1.3.1. The Notifying Party's views

(330) The Notifying Party submits that Crown and Can-Pack will continue to be able to compete effectively against the merged entity post-Transaction.³⁴⁷

9.1.3.2. The Commission's assessment

(331) For the reasons set out in this section, the Commission has reached the conclusion that most customers of the Parties will, post-Transaction, face a choice between only two closely located competitors: the merged entity and either Crown or Can-Pack (see section 9.2 below). In certain regional clusters, the Transaction would even lead to a reduction of number of players from two to one, namely the merged entity.

(332) This conclusion is confirmed by an analysis of the actual plant-level transaction data of the Parties and their estimates of Crown's and Can-Pack's transactions.

(333) First, Crown or Can-Pack owns the closest competing plant (for at least [...] % of volumes each) for Ball customers supplied by only [...] of Ball's 10 plants ([...]). For the other [...] plants, Crown or Can-Pack accounts for only a small share of sales as the closest competing plant (less than [...] % for all the [...] plants, and less than [...] % for [...] of these plants).³⁴⁸

(334) Second, Crown or Can-Pack owns the closest competing plant (for at least [...] % of customers each) for only [...] of Rexam's 17 plants ([...]). For the other [...] plants, Crown or Can-Pack accounts for less than [...] % (and often [...] %).

Figure 15: Share of Rexam and Ball sales by plant for which Crown or Can-Pack will own the closest competing plant post-Transaction

[...]

Source: Parties' transaction data

(335) Third, in the case of Crown plants selling into the EEA, Ball owns the closest competing plant for [...] % of sales, whilst Rexam owns the closest competing plant for [...] % of sales (see Table 5 in Annex A to this Decision). In particular, for [...] of the eight Crown plants selling into the EEA, Ball and Rexam each account for [...] % of sales or more³⁴⁹ as the closest competing plant (these [...] plants are [...]).

(336) Fourth, in the case of Can-Pack, Ball owns the closest competing plant for [...] % of sales, whilst Rexam owns the closest competing plant for [...] % of sales (see Table 6 in Annex A to this Decision). In particular, for [...] of the five Can-Pack plants selling into the EEA, Ball and Rexam each account for [...] % of sales or more as the closest competing plant (these [...] plants are [...]).

³⁴⁵ Questionnaire to Customers (Q1), question 74.2.1, ID 1609.

³⁴⁶ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 157.

³⁴⁷ Reply to the Article 6(1)(c) Decision, paragraph 4.67 and Annex 6, Reply to the SO, paragraph 5.5-5.7.

³⁴⁸ The underlying data for this analysis is provided in Annex A to this Decision.

³⁴⁹ This share is even higher in the actual sales data of Crown.

- (337) Fifth, customers that responded to the market investigation highlighted the fact that the Transaction would create a leading player in the EEA³⁵⁰ through the combination of Ball and Rexam, which are considered the *'two biggest suppliers of cans within the European region.'*³⁵¹ In particular customers consider that the remaining competitors would have no incentive to undercut the merged entity but would simply raise their prices.³⁵² In this context it is worth quoting a customer's response to the market investigation in full:

'[Customer] anticipates that after the merger Ball-Rexam will become a powerful dominant market player which will gain a lot of bargaining power in the selling process. [Customer] estimates that it will be likely that the selling prices will be increased by Ball-Rexam which will probably also result in price increases of the other can suppliers in the market.' And *'[t]he transaction might lead to higher prices, also for end-consumers. The reason is that Ball Rexam will become a large player driving the market prices and that other can manufacturers might be still competitive but will increase their prices as well. The power of the new organisation might be so strong that it will be difficult for market competitiveness to remain in place for small customers (can fillers) who do not have multiple filling locations worldwide. The new Ball Rexam organisation is likely to experience less to no competition from other can suppliers'*.³⁵³

9.1.4. The Parties are close competitors

9.1.4.1. The Notifying Party's views

- (338) In its Reply to the SO, the Notifying Party claims that the Commission overstates the Parties' closeness of competition. In particular, the Commission adopts an unduly rigid approach to assessing closeness of competition which is at odds with market reality. In particular, by simply assessing whether the Parties' plants are closest or second closest alternatives, the Commission fails to recognise the true nature of competition, as demonstrated by current patterns of supply.³⁵⁴ The Notifying Party argues that [...] % of the Parties' EEA volumes were supplied from a plant which was not the closest to the customer.³⁵⁵

9.1.4.2. The Commission's assessment

- (339) For the reasons set out in this section, the Commission has reached the conclusion that the Parties are close competitors.
- (340) First, customers that responded to the market investigation consider the Parties as each other's closest competitors in terms of customer service and reliability, rating them consistently as the best among the four beverage can manufacturers.³⁵⁶

*'Ball and Rexam are very [c]lose to each other in all [t]erms.'*³⁵⁷

³⁵⁰ *'Greater dominance of the market / reduced competition'; 'Very high market power of the new company'; 'With the planned transaction, we basically have no choice anymore purchasing large volumes from anybody else than the new Ball company.'; '[The] 2 market leaders with largest can format product range and the largest capacity [are] merging'.* Questionnaire to Customers (Q1), questions 100.1 and 101.1, ID 1609.

³⁵¹ Agreed non-confidential minutes of a call with a customer, 07.05.2015, ID 326.

³⁵² *'Prices definitely will increase'; '[N]ew company might be able to control the capacity and [...] increase prices'.* Questionnaire to Customers (Q1), questions 100 and 101, ID 1609.

³⁵³ Agreed non-confidential minutes of a call with a customer, 19.05.2015, ID 1212.

³⁵⁴ Reply to the SO, Paragraph 4.20.

³⁵⁵ Reply to the SO, Paragraph 2.19.

³⁵⁶ Questionnaire to Customers (Q1), question 60, ID 1609.

*'We see [Ball and Rexam] as the best [o]ption[s] in [t]erms of [q]uality, [p]rices, [flexibility] and reliability.'*³⁵⁸

(341) Second, as explained in detail in section 9.1.8, customers that responded to the market investigation also regard the Parties as the main innovators:

*'I perceive Rexam and Ball as quite close competitors in terms of service, prices, innovation. The others are followers or more specialised, for our demand I don't see them on the same level.'*³⁵⁹

(342) Third, as explained in section 9.1.5, neither Can-Pack nor Crown benefits from a network of plants similar to that of Ball or Rexam.

(343) Fourth, the Parties' internal documents indicate that Ball and Rexam have the largest product portfolios, while Crown is mostly focused on normal /standard and Can-Pack on large sizes. Ball and Rexam also have a higher share of slim and sleek cans than Crown and Can-Pack and the Transaction will reinforce this position, making them an important supplier for key customers that have higher demands for specialty cans.

Figure 16: Ball internal document on competitors' portfolio

[...]

Source: Ball's internal document, 'BevMod 2.0 From the "Ente" to the "Porsche"'

(344) Customers also rate Ball and Rexam as best as regards portfolio of can types and sizes offered to customers:³⁶⁰ *'Ball and Rexam are the biggest Producer with most types and sizes from cans.'*³⁶¹

(345) Fifth, Ball³⁶² and Rexam³⁶³ are perceived by the majority of respondents to the market investigation as unavoidable suppliers and challengers to each other. For instance, market participants *'regard Ball as a key competitor for Rexam'*. Market participants state, among others, that there is a need for both Ball and Rexam to *'keep up competition'* and as *'a challenger of the prices, of a comparable basis'*.³⁶⁴

³⁵⁷ *'Ball and Rexam are close competitors regarding quality and services.'* Questionnaire to Customers (Q1), question 62.1, ID 1609.

³⁵⁸ Questionnaire to Customers (Q1), question 64, ID 1609. *'Ball and Rexam are the biggest [p]roducers with most types and sizes [of] cans. The[ir] customer [s]ervice has big experi[e]nce.'* Questionnaire to Customers (Q1), question 60.7, ID 1609.

³⁵⁹ *'Ball and Rexam [...] are Close competitors in Terms of capacity, Innovation and quality'* Questionnaire to Customers (Q1), question 62.1, ID 1609.

³⁶⁰ *'Ball and Rexam [...] provide most broad range of sizes.'*; *'Ball and Rexam are the biggest Producer with most types and sizes from cans. The[i]r customer Service has big [experience].'* Questionnaire to Customers (Q1), question 60.7, ID 1609.

³⁶¹ Questionnaire to Customers (Q1), question 60.7, ID 1609. *'Regarding their market position (degree of innovation, service, quality, capacity) we consider Ball and Rexam to be comparable.'* Courtesy translation from the German original *'Wir halten Ball und Rexam von der Marktposition (Innovationsgrad, Service, Qualität, Kapazität) vergleichbar.'* Questionnaire to Customers (Q1), question 62.1, ID 1609.

³⁶² As regards Ball as a necessary supplier, market participants state: *'Ball's global production capacities are necessary from a capacity requirements point of view'*; *'[Ball] dominant in terms of capacity'*; *'Rexam needs an equal competitor'*. Questionnaire to Customers (Q1), question 63.1, ID 1609.

³⁶³ As regards Rexam as a necessary supplier, market participants state: *'Rexam's global production capacities are necessary from a capacity requirements point of view'*; *'Ball needs a competitor'*. Questionnaire to Customers (Q1), question 64.1, ID 1609.

³⁶⁴ Questionnaire to Customers (Q1), question 63.1, ID 1609.

- (346) Sixth, the Commission has conducted a quantitative analysis of the identity of the closest and second closest competing plant for each customer (Figure 17 and Figure 18 as well as Annex A to this Decision). The Notifying Party's observation (see recital (338)) about current patterns of supply reflects the capacity-constrained nature of competition in the beverage can market. In a capacity-constrained industry like the beverage can industry, such an analysis provides a measure, albeit not the only relevant one, of the geographical closeness of the Parties, based on the location of their plant. The analysis also provides useful complementary evidence on the likelihood and strength of non-coordinated effects.
- (347) The analysis of geographic closeness shows that Rexam is the closest competing plant to Ball's customers for [...] % of Ball's sales in the EEA and Switzerland. This is two times larger than the average share for Crown, and close to [...] times larger than the average share for Can-Pack.
- (348) Moreover, out of the 10 Ball plants that sell into the EEA, there is [...] Ball [...] ([...]) for which Rexam does not account for at least the relative majority of sales as either the first or second closest competing plant:
- Rexam owns [...] of the plants that are closest to the absolute majority of Ball's customers: [...] (above [...] % of their respective sales), [...] (above [...] % of sales) and [...] (above [...] % of sales). These [...] Ball plants are located in the [...] regions (selling volumes to customers located in these regions, and also to customers located in [...] and [...], especially in the case of [...]);
 - For an [...] plant ([...]), Rexam is the closest competing plant for the largest share of volumes (over [...] %). This plant largely sells to customers located in the [...] and [...] regions;
 - Rexam is Ball's closest competitor even when one considers the position of the second closest competing plant from the perspective of Ball's customers. Rexam owns the second closest competing plant for [...] % of Ball's sales, well above the corresponding shares for Crown ([...] %) and Can-Pack ([...] %). If one looks at the individual Ball plants, Rexam owns the second closest competing plant for the majority of sales from [...] plants of its 10 plants selling into the EEA ([...] (above [...] % of sales), [...] (above [...] %), [...] (above [...] %), and [...] ([...] %)). For another plant ([...]), Rexam accounts for a [...] % share of volume as the second closest competing plant.
- (349) Second, Ball is the closest competing plant to Rexam's customers for [...] % of Rexam's sales to customers located in the EEA and Switzerland. This is roughly [...] times larger than the share for Crown and more than [...] times larger than the share for Can-Pack.
- (350) In particular, out of the 17 Rexam plants that sell into the EEA, there are only [...] plants (out of 17 plants) for which Ball is neither the closest or second closest competitor for the majority of sales. [...] of these plants are located in [...], [...]in [...], [...]in [...], and [...]in [...]:
- Ball owns [...]of the 17 plants that are the closest to the customers of Rexam. This is the case for [...] (above [...] % of their sales), [...] (above [...] % of sales) and [...] (above [...] %). The plants are located in the [...] regions (selling volumes to customers located in these regions, and also to customers located in [...] regions);
 - Ball is also the closest competitor for over [...] % of sales from Rexam's plant in [...];
 - Ball owns the second closest competing plant to Rexam for a sizeable share of sales ([...] % of volumes). At plant level, Ball is the second closest competitor for the absolute majority of sales for [...] (over [...] % of sales), and [...] (more than [...] % of sales).

Ball is also the second closest competing plant to Rexam for over [...] % of sales from the [...] and [...] plants.

- (351) Third, post-Transaction, the distance from the closest competing plants would increase significantly for customers served by Ball and Rexam:
- the distance to the closest competitor would on average [...] for Ball customers for whom Rexam is the closest competing plant, from [...] km to [...] km (see Table 3 and 4 of Annex A to this Decision). For all but [...] of the Ball plants, the increase in distance would exceed [...] km. Similarly, if one considers Ball customers for whom Rexam is the second closest competing plant, the distance would more than [...], from [...] km to [...] km;
 - the distance to the closest competitor would increase from 353 km to just over [...] km for Rexam customers for whom Ball is the closest competing plant. For all but [...] of the Rexam plants, the increase in distance would exceed [...] km. In terms of the second closest competing plant, the equivalent increase would be from [...] km to over [...] km.

Figure 17: Share of Ball's volumes for which Rexam is the closest (in blue) or the second closest (in red) plant

[...]

Source: Ball and Rexam transaction data

Figure 18: Share of Rexam's volumes for which Ball is the closest (in blue) or the second closest (in red) plant

[...]

Source: Ball and Rexam transaction data

- (352) Seventh, as described in detail in recital (229), the Parties take into account the location of the closest competing plant in their pricing.

9.1.5. *The ability of the four beverage can manufacturers to compete on an equal footing*

9.1.5.1. The Notifying Party's views

- (353) In its Reply to the Article 6(1)(c) Decision, the Notifying Party made the following arguments.
- (354) First, post-Transaction, both Crown and Can-Pack will continue to compete aggressively against the merged entity for a significant proportion of the overall volume of large customers.
- (355) Second, regarding Crown, which has one plant less than Ball's EEA plant portfolio, it can be considered equivalent to Ball in terms of geographic coverage and financial strength.³⁶⁵
- (356) Third, regarding Can-Pack, despite a relatively lower number of plants compared to the Parties, it can supply in locations further away due to its production cost advantages.³⁶⁶
- (357) In its Reply to the SO, the Notifying Party made the additional argument that both Can-Pack and Crown are sophisticated, global suppliers, both of whom can and do compete effectively with Ball and Rexam.

9.1.5.2. The Commission's assessment

- (358) The Commission has reached the conclusion that post-Transaction neither Crown nor Can-Pack will be able to compete on an equal footing with the Parties. This is for a number of reasons.

³⁶⁵ Reply to the Article 6(1)(c) Decision, paragraph 4.45.

³⁶⁶ Reply to the Article 6(1)(c) Decision, paragraph 4.86.

- (359) First, it is important for a supplier to have a sufficiently wide network of beverage can manufacturing plants within the EEA³⁶⁷. Neither Crown nor Can-Pack benefits, however, from a network of plants similar to that of Ball or Rexam, let alone the merged entity.³⁶⁸
- (360) This is confirmed by the responses of both customers and competitors to the market investigation, as well as internal documents and public statements by the Parties.
- (361) Regarding customers that responded to the market investigation, Carlsberg explained that only Ball and Rexam *'are able to supply to multiple filling locations in Europe and they are willing to transport their cans longer distances, and if needed, subsidize the freight cost to win the business. As to Crown, Carlsberg considers Crown a small player on the European market, with limited production facilities, unlike Ball and Rexam that can benefit from their large production network, in case of capacity issues in one or the other European region.'* *'Can Pack is perceived as a relatively small supplier, which is primarily active in Poland, Finland, Russia, India and the UK.'*³⁶⁹
- (362) SABMiller also stated the following: *'One has to consider that unlike Can-Pack and Crown, it is only Ball's and Rexam's plant networks that provide comprehensive footprint match with SABMiller brewery network, which has so far stimulated the competitive "network" environment between Ball and Rexam. If Ball and Rexam become one, "network" competition will disappear, as Can-Pack and Crown will not be able to compete from a "network" pricing perspective, which we fear will result in less supplier competition and significantly higher can prices to SABMiller.'*³⁷⁰
- (363) Regarding competitors that responded to the market investigation, a competitor explained that it applies a strategy that allows it *'to leverage/ trade off certain regions in order to receive better prices in other regions. [...] As a result being absent from an important geographic area is a serious competitive disadvantage and the better geographic coverage one has, the more opportunities appear'*.³⁷¹
- (364) Regarding the internal documents of the Parties, one of Ball's internal documents states that *'[...]'*.³⁷²

³⁶⁷ *'[...] it's important that they have a network of plants.'* Questionnaire to Customers (Q1), question 59, ID 1609; *'to leverage technical, financial and supply contingency solutions'* Questionnaire to Customers (Q1), question 59, ID 1609; *'to be flexible'* Questionnaire to Customers (Q1), question 59, ID 1609; *'When more plant are available to the supplier, there is less chance to experience shortages.'* Questionnaire to Customers (Q1), question 59, ID 1609; *'better for security of supply'* Questionnaire to Customers (Q1), question 59, ID 1609; *'This ensures us we can be supplied by alternative locations (in case of supply issues).'* Questionnaire to Customers (Q1), question 59, ID 1609.

³⁶⁸ *'[U]nlike Can-Pack and Crown, it is only Ball's and Rexam's plant networks that provide comprehensive footprint match with [our] network'* Questionnaire to Customers (Q1), questions 59, ID 1609; *'Can Pack is perceived as a relatively small supplier, which is primarily active in Poland, Finland, Russia, India and the UK. Ball and Rexam are clearly the leaders: they are able to supply to multiple filling locations in Europe and they are willing to transport their cans longer distances, and if needed, subsidize the freight cost to win the business. As to Crown, [customer] considers Crown a small player on the European market, with limited production facilities, unlike Ball and Rexam that can benefit from their large production network, in case of capacity issues in one or the other European region.'* See agreed non-confidential minutes of a call with a customer, 04.05.2015. ID 334. *'Ball and Rexam, as they are the hugest Players in the market. Only these two Players are covering most countries in Europe, in particu[la]r Germany'* Questionnaire to Customers (Q1), question 61.2, ID 1609. '

³⁶⁹ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 334.

³⁷⁰ Questionnaire to Customers (Q1), question 59, ID 1609.

³⁷¹ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

³⁷² Ball's internal document, '[...]', slide 4.

- (365) Regarding public statements by the Parties, in November 2011, Rexam's CEO told investors during a conference call that the *'location of the manufacturing footprint is absolutely key compared to our customer's filling plants to optimize both freight and logistic costs.'*³⁷³
- (366) Second, the merged entity would control approximately two-thirds of all EEA-plants and have a geographical coverage in terms of number of plants three times larger than its next competitor. The merged entity would have a total of 24 plants in the EEA post-Transaction, plus one plant close to the borders of the EEA, Belgrade, which also serves [...] the EEA.³⁷⁴ This does not take into account the Parties' expansion plans either (see section 5.1.4 above).
- (367) Third, Crown and Can-Pack are perceived by customers to a certain extent as being capacity-constrained and, on certain occasions, unable to quote or refusing to quote for some volumes: *'Rexam and Ball are therefore the only two companies who can supply us with the volumes we require.'*³⁷⁵ *'We do not have any sourcing contract with Crown, because they are at full capacity.'*³⁷⁶ *'Crown is no alternative because they have not enough capacity'*³⁷⁷; *'Crown not having capacity.'*³⁷⁸ *'At the last tender, Crown did not make an offer, arguing to lack available capacities (however, they indicated they aimed at offering at a later stage). Also [Can-Pack] only offered a small, limited available capacity. Hence, only the remaining Ball and Rexam are able to make an offer in the dimension needed by us.'*³⁷⁹ *'[Can-Pack] refused [to provide a quotation] due to lack of spare capacity.'*³⁸⁰
- (368) Fourth, many customers view the Parties as the best beverage can manufacturers in terms of customer service, innovation, flexibility in meeting additional demand, reliability or portfolio of can types and sizes offered. As a customer puts it: *'Crown is not a supplier because of inferior quality of their products and their less competitive pricing. Can-Pack only has a low share of [customer's] volumes because of severe quality issues, comparable to those of Crown. Transport security and materials used by Can-Pack are also problematic. Volume-wise Can-Pack is considered to be a minor player on the market not suitable for delivering higher volumes. This has not improved over the last 15 years. Moreover, Can-Pack has no backup can-plant from where it could supply cans, if another plant cannot deliver the requested volumes. The other competitors have at least 4 alternative plants. Ball and Rexam are also more active in innovation.'*³⁸¹ *'Even with Can-Pack as a potential competitive threat, a significant concern remains as Can-Pack is less flexible in terms of volume variability, legal terms and service than Rexam.'*³⁸²

³⁷³ Rexam. *Edited Transcript, REX L – Rexam PLC Investor.*
https://www.rexam.com/files/presentations/investorseminar1/investor_seminar_nov11_transcript.pdf. Last accessed on 28.09.2015, ID 3000.

³⁷⁴ See recital (53). Two of Rexam's Russian plants also deliver to the EEA, [...].

³⁷⁵ Questionnaire to Customers (Q1), question 6.1, ID 1609.

³⁷⁶ Courtesy translation from the Spanish original: *'[con] Crown no tenemos contrato de suministro, por que tienen su capacidad completa'* Questionnaire to Customers (Q1), question 60.7, ID 1609.

³⁷⁷ Questionnaire to Customers (Q1), question 61, ID 1609.

³⁷⁸ Questionnaire to Customers (Q1), question 65.1, ID 1609.

³⁷⁹ Courtesy translation from the German original *'Crown hat bei der letzten Ausschreibung kein Preisangebot abgegeben, mit der Begründung, keine hinreichende verfügbare Kapazität zu haben (man hat aber signalisiert, langfristig in weiteren Gesprächen anbieten zu wollen). Auch Can-Pack hat nur eine geringe, limitierte verfügbare Kapazität angeboten. Somit verbleiben nur Ball und Rexam die in der Größenordnung anbieten, die unsererseits benötigt wird.'* Questionnaire to Customers (Q1), question 65.1, ID 1609.

³⁸⁰ Questionnaire to Customers (Q1), question 65.1, ID 1609.

³⁸¹ Agreed non-confidential minutes of call with a customer, 13.05.2015. ID 248.

³⁸² Questionnaire to Customers (Q1), question 97, ID 1609.

(369) Or as another customer states: *'Ball and Rexam are the biggest Producer with most types and sizes from cans. The[ir] customer [s]ervice has big experi[e]nce'*.³⁸³ *'I feel Ball and Rexam are market leaders and truly focussed on beverage cans and provide most broad range of sizes. Crown is also active in a lot more metal packaging types. Can-Pack is maybe low in price against good quality but have in general longer lead times/transport time and offer less innovation'*.³⁸⁴ *'Rexam and Ball have been key competitors for several years in terms of innovation, service, quality, price and capacity. Other suppliers Crown and [Can-Pack] have not focused on soft drinks can supply to the same extent'*.³⁸⁵ *'[Can-Pack] offers a limited number of different can sizes.'*³⁸⁶

(370) Fifth, Crown and Can-Pack would be unable to compete effectively against the merged entity due to the lack of geographical coverage. This was highlighted by a number of customers that responded to the market investigation:

*'Regional can-makers are too small on a European scale if they do not have at least an EU-wide footprint.'*³⁸⁷

*'[P]ost-merger the merged entity with a very large market share and large geographical coverage will have more leverage against its customers. In the long run this can lead to reduced competition in the can market.'*³⁸⁸

*'Post-merger the big players will have enough power to crowd out the smaller players, such as Can-Pack (which is the only supplier in Europe without a presence in the Americas or Asia which would give it room to manoeuvre in this space).'*³⁸⁹

*'The merged entity will pool volumes for procurement and R&D purposes. This will not necessarily make other players (like Can Pack) less competitive but it will be more difficult for these players to keep up with the merged entity.'*³⁹⁰

*'Ball and Rexam already each have a more complete geographical coverage than other EEA can makers. If combined, they would have the majority of installed capacity in each region in the EEA with exception of Eastern Europe. In addition, the combined entity would have an almost monopolistic position in the European heartland region of the EEA which is the fastest growing region in the EEA. Ball and Rexam combined would have a significantly wider range of can sizes than any competitor in the EEA. In light of these advantages it would be extremely difficult for other can makers to compete with the combined entity.'*³⁹¹

'The proposed transaction will create a dominant and near-monopolistic beverage can company in the EEA. We are concerned that the two remaining smaller players will not be able to compete with this entity in the future. Post transaction the merged entity will be able to leverage its advantages in terms of size, product scope and geographic coverage to the detriment of the two remaining competitors in the EEA and, ultimately, of

³⁸³ Questionnaire to Customers (Q1), question 60.7, ID 1609.

³⁸⁴ Questionnaire to Customers (Q1), question 60.7, ID 1609.

³⁸⁵ Questionnaire to Customers (Q1), question 62.1, ID 1609.

³⁸⁶ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

³⁸⁷ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

³⁸⁸ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

³⁸⁹ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

³⁹⁰ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 157.

³⁹¹ A competitor's non-confidential reply to RFI of 15.06.2015, ID 1129.

*its customers. [...] We are concerned that the combined entity will be able to exclude the remaining competitors in the EEA as a result of this quasi-monopolistic market share and will thus remain uncontested by any type of competition in the future.*³⁹²

(371) Sixth, there are a number of additional reasons why Can-Pack would be unable to compete against the merged entity.

(372) In the first place, Can-Pack is perceived by certain customers as not being innovative or service-oriented enough (on innovation, see section 9.1.8). In relation to Can-Pack's service level, customers have pointed out that:

'[N]ot much experience with Can-[P]ack and there we also had some Quality issues'.³⁹³

*'Can Pack offers good prices, but it does not offer assistance for technical services or special services for printed lids etc.'*³⁹⁴

*'[Can-Pack] normally does just what is needed; No above and beyond, restrictive contracts and relatively stable performance but very limited innovation.'*³⁹⁵

'I have the impression that the service provided by [Can-Pack] is not as good as Ball's.'
*'Can-Pack [cannot] meet our quality requirements currently, so we see not a close competition relation to Ball and Rexam.'*³⁹⁶

*'Both Ball and Rexam are best can suppliers in terms of service level and innovation. Can Pack appears as having the lowest spend on innovation and capacity to innovate. As a result post-merger it is hard to say whether [Can-Pack] will live up to the challenge of competing with the merged entity.'*³⁹⁷

*'Ball and Rexam tend to be more focused on value added solutions and technical service while Can-Pack tends to be more focused on price. Crown is somewhat in the middle.'*³⁹⁸

(373) Certain customers also consider Can-Pack's logistics capacity and flexibility as being limited.³⁹⁹

(374) In the second place, Can-Pack's product range is somewhat limited in terms of the number of different sizes available.⁴⁰⁰ This was confirmed by Can-Pack, Crown and customers that responded to the market investigation. Can-Pack stated that its most common beverage can is the 50 cl can that is mainly used to contain beer.⁴⁰¹ Can-Pack also explained that although like other beverage can manufacturers, it offers a full range of can sizes, given that each of its

³⁹² A competitor's non-confidential reply to RFI of 15.06.2015, ID 1129.

³⁹³ Questionnaire to Customers (Q1), question 60.7, ID 1609.

³⁹⁴ Questionnaire to Customers (Q1), question 60.7, ID 1609. Courtesy translation from the Spanish original: *'Can Pack tiene buen precio, pero no tiene asistencia de servicio técnico ni servicios especiales de impresión tapas etc.'*

³⁹⁵ Questionnaire to Customers (Q1), question 60.7, ID 1609.

³⁹⁶ Questionnaire to Customers (Q1), question 62.1, ID 1609.

³⁹⁷ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 334.

³⁹⁸ A competitor's non-confidential reply to RFI of 15.06.2015, ID 1129.

³⁹⁹ Questionnaire to Customers (Q1), question 86, ID 1609.

⁴⁰⁰ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065. See also: *'Can-Pack is not a valid alternative for Ball because it does not produce the can types [customer] mainly needs (Can-Pack only produces "standard" cans.)'* Courtesy translation from the Italian original: *'Can-Pack non rappresenta una valida alternativa a Ball perché non produce i tipi di lattine di cui [cliente] ha principalmente bisogno (Can-Pack produce solamente lattine "standard").'* Agreed non-confidential minutes of a call with a customer, 07.08.2015, ID 2524.

⁴⁰¹ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

production lines has the tooling only for a number of shapes and sizes, it cannot manufacture a complete product range in all of its plants.⁴⁰²

- (375) Crown stated that it does not see Can-Pack's strategy as one of trying to fulfil all different customer needs but rather one of focusing on investments in operations and offering simple standard can sizes.⁴⁰³
- (376) Customers and competitors that responded to the market investigation indicated that, although it offers specialty cans to a limited extent, Can-Pack's main focus is on producing standard and bigger cans for breweries.⁴⁰⁴
- (377) In the third place, due to its lack of extensive geographical coverage, Can-Pack is not a suitable main beverage can manufacturer for large customers in the EEA. This was confirmed by Can-Pack, customers that responded to the market investigation and the Parties' volume data.
- (378) Can-Pack itself indicated that it typically focuses on customers 'closer to home'.⁴⁰⁵
- (379) A number of customers that responded to the market investigation stated as follows.

*'Can-Pack offered to supply sleek cans from Kiev (Ukraine), but this supply chain appeared to be unreliable and too long. Currently only Ball and Rexam can be seen as viable suppliers of larger can volumes in the Benelux.'*⁴⁰⁶

*'Can-Pack's share has grown a bit, but it is still considered a small competitor. It was awarded volumes by [customer] in the Polish market because it has a strong presence there with two can-plants, but also in the UK and Romania. In many other EEA markets, however, where [customer] is active in, Can-Pack is not present.'*⁴⁰⁷

*'Volume-wise Can-Pack is considered to be a minor player on the market not suitable for delivering higher volumes. This has not improved over the last 15 years. Moreover, Can-Pack has no backup can-plant from where it could supply cans, if another plant cannot deliver the requested volumes.'*⁴⁰⁸

*'[Can-Pack] has to deliver the Cans over a [l]ong distance. This is the Problem for [Can-Pack] to be the first supplier for us.'*⁴⁰⁹

*'[Can-Pack]'s footprint has limited overlap with Carlsberg'*⁴¹⁰

*'[I]n bidding procedures Can-Pack cannot compete against suppliers with sufficient plant network that offer competitive conditions on an EEA-wide basis, such as Rexam. For this reason Can-Pack's lowest priced bids are in some regions not accepted.'*⁴¹¹

- (380) As for the Parties' volume data, it shows that contrary to the Notifying Party's claim,⁴¹² Can-Pack never supplies the majority of the volumes to any large customer.⁴¹³

⁴⁰² A competitor's non-confidential reply to RFI of 15.06.2015, ID 2572.

⁴⁰³ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁴⁰⁴ Agreed non-confidential minutes of a call with a customer, 07.05.2015, ID 326; Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁴⁰⁵ Can-Pack's economic submission, ID 3440.

⁴⁰⁶ Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 331.

⁴⁰⁷ Agreed non-confidential minutes of a call with a customer, 12.05.2015, ID 468.

⁴⁰⁸ Agreed non-confidential minutes of a call with a customer, 13.05.2015, ID 248.

⁴⁰⁹ Questionnaire to Customers (Q2), question 35.1, ID 2664.

⁴¹⁰ Questionnaire to Customers (Q2), question 35.1, ID 2664.

⁴¹¹ Questionnaire to Customers (Q2), question 35.1, ID 2664.

- (381) Indeed, Can-Pack indicated that it does not compete as main supplier in Northern France, the Benelux and Germany because it is unable to meet customer requirements (for example, just-in-time delivery and flexibility) when supplying from Poland. Can-Pack estimates that its share of volume supplied as main supplier in Northern France, Benelux and Germany is less than [...]%.⁴¹⁴
- (382) In the fourth place, only the Parties are able to compete on an equal footing for small and large customers, while Crown and Can-Pack focus on either small or large customers. This is confirmed by Table 7, which shows that while the Parties hold similar shares for large (that is to say customers purchasing more than 500 million cans per year) and small customers (that is to say customers purchasing less than 500 million cans per year), Can-Pack's share with large customers is less than [...] of its share of smaller customers and Crown's share with smaller customers is nearly [...] of its share of large customers.

Table 7: Market shares of large volume customers in the EEA and non-EEA countries in [...]

Market shares (%) based on customers purchasing

	<i>below 500 million cans / year</i>	<i>above 500 million cans / year</i>	<i>All</i>
<i>Ball</i>	<i>[30-40]</i>	<i>[30-40]</i>	<i>[30-40]</i>
<i>Can-Pack</i>	<i>[20-30]</i>	<i>[10-20]</i>	<i>[10-20]</i>
<i>Crown</i>	<i>[10-20]</i>	<i>[10-20]</i>	<i>[10-20]</i>
<i>Rexam</i>	<i>[30-40]</i>	<i>[40-50]</i>	<i>[40-50]</i>

Source: Parties' transaction data and their estimates of competitor's sales

9.1.6. *Large customers versus other customers*

- (383) Customers include manufacturers of many different types of beverages and of many different sizes (in terms of the volumes of cans procured). Broadly speaking, customers can be grouped according to their scale, namely (i) large customers⁴¹⁵ that are usually well-known brand owners with sophisticated purchasing requirements, high quality expectations and complex logistic requirements which use global or pan-European tendering processes and (ii) other smaller customers that are more local (with generally one or two filling locations) and have less

⁴¹² Reply to the SO, Annex 1.

⁴¹³ Parties' transaction data and their estimates of competitor's sales.

⁴¹⁴ Can-Pack's economic submission, ID 3440.

⁴¹⁵ Large customers include: AB InBev, Bavaria, Brasserie Champigneulles, Britvic, Carlsberg, Coca-Cola Enterprises, Coca-Cola Erfrischungsgetränke AG, Coca-Cola Hellenic, Coca-Cola Iberian Partners, Molson Coors, Diageo, Heineken, Karlsberg Brauerei, Lidl, Mahou San Miguel, Nestlé, Oettinger Brauerei, Pepsico, Red Bull, Refresco, Royal Unibrew, S.A. DAMM, SABMiller and Schweppes (see footnote 6).

flexibility in negotiating commercial terms with beverage can manufacturers due to their more limited scale.⁴¹⁶

9.1.6.1. The Notifying Party's views

- (384) According to the Notifying Party, the size of customers varies, with a continual spectrum in terms of total EEA volume demand. Any distinction between customers is for internal analysis purposes and it is not based on volume or value of sales to those customers, but on the way in which the Notifying Party needs to structure its sales team in order to serve the customer's requirements most effectively.⁴¹⁷
- (385) Large customers have different purchasing requirements in the sense that they require more complex services due to sophisticated logistics. Negotiations with key accounts⁴¹⁸ in the EEA are conducted by a key account manager, a key account director and in some cases, the vice president of sales. Tenders from these customers are often organised on a global basis and therefore involve group-level coordination. For all other customers, negotiations are conducted by a sales manager, a general manager and in some cases, a sales director.⁴¹⁹
- (386) In its Reply to the SO,⁴²⁰ the Notifying Party claims that the relevant evidence clearly shows that large customers typically either tender on a global basis or, more often, tender on an intra-EEA (regional) basis. Of the recent tenders organised by large customers, none took place on a pan-European basis.
- (387) In Annex 1 of its Reply to the SO, the Notifying Party also acknowledges that certain cost savings can result from serving large customers. However, according to the Notifying Party, these are overstated by the Commission. According to the Notifying Party, the number of graphics changes requested by a customer (which bears no relationship to customer size) is a far more important driver of operating costs than customer size.

9.1.6.2. The Commission's assessment

- (388) For the reasons set out in this section, the Commission has reached the conclusion that: (i) there are differences in the needs and demands of large customers and smaller local or regional customers; and (ii) beverage can manufacturers treat large customers differently to smaller local or regional customers.
- (389) First, large customers accounted for more than 75 % of the EEA demand for beverage cans and for about [...] % of the Parties' EEA sales between 2012 and 2014.
- (390) Second, large customers have a large network of filling plants and prefer to source from beverage can manufacturers that match their own geographic footprint and have a spread of stock keeping units (SKUs). This has been confirmed by both competitors and customers during the market investigation. According to a competitor '*large multi-national customers prefer to deal with large suppliers who have a presence in a number of countries / geographic regions*'; '*[i]t would be more difficult for a small player to deal with the proliferation of can sizes*'⁴²¹ and '*regional can-makers are too small on a European scale if they do not have at least*

⁴¹⁶ The main large customers in the EEA are presented in Figure 4.

⁴¹⁷ Reply to the Article 6(1)(c) Decision, paragraphs 2.4 to 2.25.

⁴¹⁸ As part of a restructuring of its operations in 2015, the Notifying Party no longer refers to [...]. Reply to RFI 6 of 23.07.2015, question 13.

⁴¹⁹ Reply to RFI 6 of 23.07.2015, question 11.

⁴²⁰ Reply to the SO, paragraph 5.29.

⁴²¹ A competitor's non-confidential reply to RFI of 15.06.2015, ID 1129.

an EU-wide footprint.⁴²² A competitor also highlighted that *'there has emerged a fundamental difference between purchasing behaviour of - and the commercial conditions obtained by - [large customers] on the one hand and local / regional customers on the other hand'* and that large customers *'increasingly view their demand and the corresponding sourcing process in a global context.'*⁴²³

- (391) Sourcing from beverage can manufacturers that match their own geographic footprint and have a spread of stock keeping units provides large customers with a number of benefits.
- (392) In the first place, large customers tend to get better terms and conditions when they pool their volumes across different filling locations with the same supplier. A large customer also noted that *'all buyers with annual contract volumes that exceed 500 million cans are considered as strategic customers by the can suppliers. Thus, in these cases can suppliers are willing to lower their pricing terms and provide additional services as well as allocate additional resources to the buyer'*⁴²⁴ or *'because Coca Cola and Pepsi have best price clauses in their contracts which are known to all three BCME-members there is a minimum price for regular cans which is more or less known to the bigger buyers in the market.'*⁴²⁵
- (393) In particular, large customers negotiate volume based rebates. Rebates can be linked to overall volume targets between the beverage can manufacturer and customer or to specific volume targets per filling plant or a combination of both. For example, a volume rebate is offered by beverage can manufacturers for annual contract volumes that exceed [...] million cans. These contracts are usually coupled with long-term supply agreements as this allows beverage can manufacturers to optimise asset utilisation rates.⁴²⁶ Rebates are offered by geographic regions (global or pan-European) or by bottler.⁴²⁷ The scale of the rebates will, however, depend on *'the allocation of the volume over the various countries, the product mix and the number of alternative suppliers in such markets'*.⁴²⁸
- (394) Generally, the customer must meet an overall European-wide (or even global) volume target with specific regional or filling location-by-filling location volume targets built within this overall target: *'[...]'*⁴²⁹
- (395) Moreover, Ball's [...] automatically attaches a certain [...].⁴³⁰

⁴²² Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

⁴²³ A competitor's non-confidential reply to RFI of 15.06.2015, ID 2572.

⁴²⁴ Questionnaire to Customers (Q2), question 10.1, ID 2664.

⁴²⁵ Questionnaire to Customers (Q1), question 96.2.1, ID 1609.

⁴²⁶ *'better pricing terms at a local level are generally offered by can suppliers when the annual contract volumes exceed [...] million cans. In such case can suppliers offer buyers volume rebates amounting to approximately EUR [...] per 1000 cans. In the event that the annual contract volume reaches [...]cans, can suppliers normally offer an additional volume rebate of EUR [...] per 1000 cans. All buyers with annual contract volumes that exceed [...] million cans are considered as strategic customers by the can suppliers. Thus, in these cases can suppliers are willing to lower their pricing terms and provide additional services as well as allocate additional resources to the buyer'* Questionnaire to Customers (Q2), question 10.1, ID 2664. *'Contracts with both suppliers contain volume rebates (activated once a certain amount of cans is reached, for instance for every 1,000 cans EUR 2 discount).'* Agreed non-confidential minutes of a call with a customer, 07.05.2015, ID 326.

⁴²⁷ *'[...] Rexam, Ball and Crown offered rebates, either at global, pan-European or bottler level. If their offer is not well judged in one particular region, suppliers try to compensate for this by offering a better global rebate.'* Agreed non-confidential minutes of a call with a customer, 02.09.2015, ID 2888.

⁴²⁸ Questionnaire to Customers (Q2), question 11.1, ID 2664.

⁴²⁹ See Ball's email of 19 March 2014 from [...] to [...], [...], and others, Subject: " FW: Open letter to CEPG ".

⁴³⁰ The Notifying Party argues that the [...].

- (396) In the second place, beverage can manufacturers normally have limited storage space for their can supplies, and large customers may receive several can shipments a day. Therefore, security of supplies is a key concern for these customers as insufficient or delayed can deliveries may lead to production stoppages. As explained by one large customer: *'In case of supply issues at a plant, the can supplier can use their production network across EEA to source cans. This increases supply security and is a big advantage compared to smaller can makers who have fewer plants.'* *'Suppliers with a sufficient geographic footprint can react to production issues by temporarily or permanently sourcing cans from other locations. This increases security of supply, and often enables access to a wider product range.'*⁴³¹
- (397) In the third place, beverage can manufacturers prioritise demand of large customers in particular in peak season when supply shortages can occur. As a customer pointed out: *'in high season, when cans are requested, there are issues with can availability. Since [customer] does not need such big amounts of cans as for instance Coca-Cola, it does happen that its orders are satisfied in the second and further ranks of importance'*.⁴³²
- (398) In the fourth place, large customers prefer to choose beverage can manufacturers with a wide footprint to ensure the overall cost related to the sourcing of cans across all filling plants in the EEA is as low as possible. As a customer pointed out: *'the isolated supply cost for an individual plant is far less relevant than the overall cost of supply to [customer]'s entire operations in the EEA'*.⁴³³
- (399) Beverage can manufacturers also gain certain benefits from doing business with large customers: (i) efficiency gains when producing different can sizes on one line (the fewer customers for a line, the fewer changeovers if producing different sizes), (ii) productivity gains owing to a higher volume of cans produced (can lines are set up to run high volumes at high efficiency), or (iii) optimisation of freight routes over a larger network.
- (400) For example, some large customers stated that *'scale [...] allows can makers to have larger production runs and therefore higher efficiency gains'* and *'[...] a greater volume of beverage cans enables the supplier to optimise his assets utilisation rates.'*⁴³⁴
- (401) The internal documents of the Parties also acknowledge the importance of footprint alignment with key customers: [...] ⁴³⁵ as well as the portfolio of the beverage can manufacturer [...].⁴³⁶
- (402) Third, large customers tend to issue tenders at pan-European or global level. This was confirmed by both large customers and competitors that responded to the market investigation.
- (403) Large customers that responded to the market investigation indicated that *'[e]ntire global volumes of [customer] are pooled in such a tender and suppliers can bid for the entire pool or a proportion of it'*⁴³⁷ and have *'[c]entralized purchasing at [customer] for the global needs'*.⁴³⁸
- (404) One major customer explained that the term 'regional tenders' is defined in its internal business organisation as entire Europe.⁴³⁹ Another major customer also defines Europe as a 'global

⁴³¹ Questionnaire to Customers (Q2), question 19.1, ID 2664.

⁴³² Agreed non-confidential minutes of a call with a customer, 07.05.2015, ID 326.

⁴³³ Questionnaire to Customers (Q2), question 16.1, ID 2664.

⁴³⁴ Questionnaire to Customers (Q2), question 10.1, ID 2664.

⁴³⁵ Rexam's internal document 'Rexam Support Documentation, [...]', slide 4.

⁴³⁶ Ball's internal document, 'Can size meeting June 6th 2013', slide 25.

⁴³⁷ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 334.

⁴³⁸ Questionnaire to Customers (Q1), question 47.1, ID 1609.

⁴³⁹ Questionnaire to Customers (Q2), question 26.1, ID 2664.

region' and runs pan-European tenders: *'In Europe, [customer] has a pan-European approach and the four suppliers are encouraged to submit an offer for all locations.'*⁴⁴⁰

- (405) Two major customers run global tenders: *'Last year, [customer] conducted a global tender for beverage cans for 3 to 5 years for all their regions.'*⁴⁴¹ *'[Large customer] invited 28 can suppliers from all around the world to tender for all volumes globally.'*⁴⁴²
- (406) Competitors that responded to the market investigation stated that sourcing has evolved to become more global or European-wide for large customers and acknowledged that *'[p]an-European or global customers typically negotiate contracts and prices through a central or corporate procurement function in order to leverage their scale and achieve better prices than local entities would be able to achieve on their own.'*⁴⁴³ And *'[n]ow procurement of cans by global beverage producers often follows a more complex global tender process and the local subsidiaries/filling plants are losing influence over who their can supplier(s) is/are and which the terms of purchase are.'*⁴⁴⁴ Moreover, *'the way in which sales contracts are negotiated with [Large Global Customers (LGCs)] has undergone a significant change in the recent past [...]. This means that while historically (and still today, for smaller customers) contracts were negotiated at local level – the purchasing department of the individual filling plant being responsible for the sourcing decisions, for the LGCs this function has moved up to group level (and sometimes even dedicated purchasing entities). Contracts are negotiated and purchasing decisions made at this level.'*⁴⁴⁵ *'[A] large majority of Crown's cans are supplied to large customers who organise international tenders. The majority of negotiations are held on either a European-wide or global level (although some national tenders are held for local customers). The larger customers organise global or pan-European tenders in order to leverage their scale. For example there was a global tender process in which more than 55 billion cans have been awarded (about 15% of global demand). Generally contracts are awarded for 1-2 years, a 3-5 years contract can be considered a long one.'*⁴⁴⁶
- (407) Fourth, large customers tend to have longer contracts than smaller local or regional customers. Local customers tend to conclude one-year contracts, regional customers 1-3 year contracts and large customers 3-5 years contracts.⁴⁴⁷

9.1.7. Importance of having a network of plants

9.1.7.1. The Notifying Party's views

- (408) The Notifying Party argues that competition is regional and that therefore there is no significant network effect in having a network of plants.⁴⁴⁸ Furthermore it submits that while there is an advantage in having multiple plants, this essentially consists in the fact that having a broad network increases the likelihood of being well placed to serve customers. In the Notifying

⁴⁴⁰ Agreed non-confidential minutes of a meeting with a customer, 27.08.2015, ID 2982.

⁴⁴¹ Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2724.

⁴⁴² Agreed non-confidential minutes of a call with a customer, 02.09.2015, ID 2888.

⁴⁴³ A competitor's non-confidential reply to RFI of 15.06.2015, ID 1129.

⁴⁴⁴ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

⁴⁴⁵ A competitor's non-confidential reply to RFI of 15.06.2015, ID 2572.

⁴⁴⁶ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁴⁴⁷ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261. *'The length for supply-contracts with [customer] is usually from 1 to 2 years.'* Agreed non-confidential minutes of a call with a customer, 13.05.2015, ID 248. Questionnaire to Customers (Q1), question 75, ID 1609 : *'In most cases the length of the contracts was for on[e] year'.*

⁴⁴⁸ Reply to the Article 6(1)(c) Decision, paragraph 4.40, ID 1448.

Party's view, this advantage is sufficiently captured in the regional analysis and does not require an assessment of network effects.⁴⁴⁹ It further argues that any network advantage the Parties may have does not prevent Can-Pack or Crown from competing effectively both pre- and post-Transaction.⁴⁵⁰

(409) The Notifying Party also argues that as competition primarily occurs on a local basis, there is no need to have (or significant benefit in having) a pan-European network of plants.⁴⁵¹

(410) The Notifying Party further argues that Ball and Rexam do not have a pan-European network and that large (key) customers do not require pan-European suppliers.⁴⁵²

9.1.7.2. The Commission's assessment

(411) The Commission has reached the conclusion that Ball and Rexam have a pan-European network and that such network offers them a competitive advantage, in particular in obtaining orders from large customers. This is for the following reasons.

(412) First, a beverage can manufacturer that has a broad network of plants can better guarantee its customers that in case of issues with one plant, another plant can step-in to supply them.⁴⁵³ Although the Notifying Party argues that it is unnecessary to have a broad network to ensure security of supply as outages are fairly rare,⁴⁵⁴ a number of large customers that responded to the market investigation highlighted the importance to them that a beverage can manufacturer has a large network of plants.⁴⁵⁵

(413) As one major customer points out: *'it is [...] footprint that enables a company like Rexam to compete effectively everywhere in the EU. It can supply cans quickly and securely anywhere and then optimise supply through (sponsored) investments, optimised logistics, wall-to-wall plants etc. at a later stage without taking much risk. A smaller player cannot implement any such strategy because it will often need to make investments to be able to supply before being certain to secure the relevant contract.'*⁴⁵⁶

(414) This was also confirmed by a competitor that responded to the market investigation and which underlined that *'the benefits a large network entails during peak seasons or if capacity problems arise: Customers value the availability of back up plants with spare capacity that can be utilised in cases where the primary manufacturing plant experiences outages or capacity shortages. Given the importance of having a sufficient supply of beverage cans available at the required time, the threat of non-delivery of required volumes is a serious one. Having a large network allows the supplier to shift volumes and still meet customer demand. Even if this comes at an additional cost, it distinguishes a supplier with a large network from its smaller competitors who do not dispose of such backup facilities.'*⁴⁵⁷

(415) Second, having a network of plants allows a beverage can manufacturer to offer a wider product portfolio. Although according to the Notifying Party it is possible to manufacture a

⁴⁴⁹ Reply to the Article 6(1)(c) Decision, paragraph 4.39, ID 1448.

⁴⁵⁰ Reply to the Article 6(1)(c) Decision, paragraph 4.40, ID 1448.

⁴⁵¹ Reply to the SO, paragraph 5.28.

⁴⁵² Reply to the Article 6(1)(c) Decision, section 4, ID 1448.

⁴⁵³ Questionnaire to Customers (Q1), question 59, ID 1609 and Questionnaire to Customers (Q2), question 19.1, ID 2664. See also agreed non-confidential minutes of a call with a customer, 18.08.2015, ID 2866.

⁴⁵⁴ Reply to the SO, Annex 1.

⁴⁵⁵ Questionnaire to Customers (Q2), question 19.1, ID 2664. See also paragraph (396).

⁴⁵⁶ Third party comments to the SO, ID 3424.

⁴⁵⁷ Third party comments to the SO, ID 3451.

range of sizes on a single line, having a network of plants allows a beverage can manufacturer to manufacture a wide range of cans efficiently. This is because a network of plants allows a beverage can manufacturer to concentrate the production of formats for which demand is lower in a limited number of plants, which in turn reduces production costs as production lines do not need to be stopped in order to adjust them to the new formats.⁴⁵⁸

- (416) This is confirmed by a comparison across beverage can manufacturers between the number of lines in a plant and the actually produced can sizes in that plant. While [...] produced on average around one can size per line in their EEA plants in 2014, [...], produced more than two can sizes.⁴⁵⁹
- (417) This is also confirmed by customers and competitors that responded to the market investigation and by internal Rexam documents.
- (418) A customer explained as follows: '*[it] uses several sizes of cans and the demand in the market (consumption/volume and type of drinks) changes all the time (goes up and down from one moment to the next), which means that the flexibility at the supplier is very important to supply according to [the customer's] demands.*'⁴⁶⁰
- (419) A competitor explained that '*It would also be more difficult for a small player to deal with the proliferation of can sizes ([...]). A big player can produce test sizes in one plant and ship them, a smaller one does not have so many plants where such test sizes could be manufactured so its risk is higher.*'⁴⁶¹
- (420) Another competitor pointed out the '*connection between the size of a can manufacturer's network and the number of production sites it has on the one hand and the ability to offer a comprehensive range of can types and sizes on the other hand. While it is technically correct that all manufacturers could produce all types and sizes of beverage cans (subject to the possible exclusionary use of IP rights by some suppliers with regard to certain can sizes), it is not commercially effective to do so in a single plant or a small number of plants.*'⁴⁶²
- (421) This competitor also underlines that this is mainly for two reasons:
- On the one hand, less switching reduces per unit costs as '*[f]ocussing production on any line on a small number of can sizes therefore reduces the relative tooling costs per unit produced.*'⁴⁶³
 - On the other hand, less switching also reduces production downtimes.
- (422) Overall, '*the ability to effectively offer complete ranges of can sizes very much depends on the number of plants a manufacturer has amongst which the production of the portfolio can be spread.*'⁴⁶⁴

⁴⁵⁸ See for instance, '(ii) more plants ensures better innovation and product flexibility (different can types and sizes) since not many plants are able to switch quickly between different formats.', Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2724. 'In particular, a network could potentially allow a can manufacturer to produce different can types on different (specialised) lines and hence to limit the cost of frequently switching.' Agreed non-confidential minutes of a meeting with a customer, 31.08.2015, ID 2961. And agreed non-confidential minutes of a call with a customer, 18.08.2015, ID 2866.

⁴⁵⁹ Transaction data of the Parties and their estimate of Crown and Can-Pack sales. The actual third party sales data confirms this finding.

⁴⁶⁰ Questionnaire to Customers (Q2), question 19.1, ID 2664.

⁴⁶¹ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁴⁶² Third party comments to the SO, ID 3451.

⁴⁶³ Third party comments to the SO, ID 3451.

- (423) As for Rexam, an internal email dated 14 April 2014 states as follows: '[...]'⁴⁶⁵
- (424) Third, having a network of plants allows a beverage can manufacturer to optimise its costs by using its cheaper capacity before that of plants that have higher production costs. For example, [...], see section 7.1.3.2 above) which is [...]'⁴⁶⁶
- (425) Fourth, having a network of plants allows a beverage can manufacturer to try and leverage its position in geographic areas in which there is less competition to obtain volumes in geographic areas in which there is more competition. This was confirmed by both customers and competitors that responded to the market investigation.

*'Contracts with can suppliers are concluded having a broad European perspective in mind. As a result a can supplier can offer substantive discount in one region provided that Molson Coors agrees to grant volumes in another location at a less interesting price. Thus prices differ per filling location and Molson Coors aims at choosing the best mix for its purposes.'*⁴⁶⁷

*'[S]uppliers [often] offer a "package deal" with the intention to gain a certain level of volume in order to achieve lowest DDP prices (incl. additional discounts). Rexam and Ball have used this strategy for EEA. With Ball - to gain discount on final DDP for [...] and [...] ([...] million pcs), we had to compromise on the price for [...] in [...] ([...] million pcs) With Rexam – to gain better prices for [...], we had to maintain our current volume in [...], and in general increase our volume share with Rexam.'*⁴⁶⁸

*'ability to bid for multiple filling locations gives a supplier the ability to tailor a bid to take the customer's focus on the overall price per can for all of its filling locations into account. This means that smaller suppliers may not be awarded contracts even if they offer the best price for a specific location.'*⁴⁶⁹

- (426) Fifth, by having a network of plants, a beverage can manufacturer that is able to supply customers in different EEA regions can win more sales by offering volume rebates to customers on the basis of their total purchases which cannot be matched by beverage can manufacturers with a smaller footprint (see section 9.1.7). This was explained by several customers that responded to the market investigation:

*'Utilizing global can volumes to attract lowest DDP price per filling site Single sourcing in markets to obtain most competitive price Bundling volumes across multiple markets to attract overall lower prices from suppliers and generating a volume in which [customer] become a prioritized customer due to size of revenue share leading to strategic partnerships. Supplier footprint matching that of [customer] generates better prices than sourcing from suppliers with plants that are further away'*⁴⁷⁰

'[w]ithin the last tender for the financial years 2015-2017 in the EEA, Rexam and Can-Pack have demonstrated willingness to reduce and harmonise the conversion cost

⁴⁶⁴ Third party comments to the SO, ID 3451.

⁴⁶⁵ Rexam's email of 14 April 2014 from [...] to [...], Subject: 'AW: [...]'.
⁴⁶⁶ Rexam's internal document, '[...]', slide 4.

⁴⁶⁷ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 157.

⁴⁶⁸ Questionnaire to Customers (Q1), question 73.1, ID 1609.

⁴⁶⁹ Questionnaire to Customers (Q1), question 73.1, ID 1609.

⁴⁷⁰ Third party comments to the SO, ID 3451.

⁴⁷⁰ Questionnaire to Customers (Q1), question 53.1, ID 1609.

*component of offered can pricing across the entire EEA area, in order to compete for larger total volume of business in the EEA.*⁴⁷¹

(427) Sixth, [...].⁴⁷²

9.1.8. *The Parties are the main innovators*

9.1.8.1. The Notifying Party's views

(428) The Notifying Party submits that although innovation is not a key parameter of competition in the beverage can industry, Crown and Can-Pack each have very strong innovation capabilities, which is confirmed by the Parties' internal documents.⁴⁷³

(429) Regarding Crown, the Notifying Party submits that Crown is well-positioned to develop new innovations from its research centre in the UK and a number of 'excellence centres' globally. For example, Crown was able to use its experience in food can manufacturing in its development of the '360 degree' can end.⁴⁷⁴

(430) As for Can-Pack, Ball considers it to be particularly strong in [...], while Rexam describes Can-Pack's plants as [...].⁴⁷⁵

9.1.8.2. The Commission's assessment

(431) The Commission has reached the conclusion that the Parties are the main innovators with respect to the supply of beverage cans in the EEA. This is for the following reasons.

(432) First, the innovations of Crown and Can-Pack are limited in terms of number and breadth as compared to the long list of innovations brought to the market by the Parties.

Figure 19: The Parties' and their competitors' innovations in the beverage can industry

[...]

Source: Ball's internal document, "Product Innovation" projectMaster file

(433) Second, customers that responded to the market investigation considered that Rexam and Ball are the main innovators with respect to the supply of beverage cans in the EEA (with Rexam as number one, followed by Ball):⁴⁷⁶ *'Both Ball and Rexam are best can suppliers in terms of service level and innovation. Can Pack appears as having the lowest spend on innovation and capacity to innovate. As a result post-merger it is hard to say whether Can Pack will live up to the challenge of competing with the merged entity.'*⁴⁷⁷ *'By and large, Rexam and Ball are the leading innovators in the market.'*⁴⁷⁸

⁴⁷¹ Questionnaire to Customers (Q1), question 73.1, ID 1609.

⁴⁷² Reply to RFI 17 of 28.10.2015, [...], ID 3448: '[...]

⁴⁷³ Reply to the Article 6(1)(c) Decision, paragraph 4.68, ID 1448.

⁴⁷⁴ Reply to the Article 6(1)(c) Decision, paragraph 4.71, ID 1448.

⁴⁷⁵ Reply to the Article 6(1)(c) Decision, paragraph 4.72, ID 1448.

⁴⁷⁶ *'Ball and R[e]xam are the most innovative and with highest capacity to produce sleek cans and aluminium cans'; 'In addition, Ball and Rexam are the can manufacturers characterised by innovative solutions whereas Can-Pack for instance lacks this innovation support and is less willing to take customary contractual risks.'* Questionnaire to Customers (Q1), question 62.1, ID 1609. See also Questionnaire to Customers (Q1), question 60, ID 1609.

⁴⁷⁷ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 334.

⁴⁷⁸ Agreed non-confidential minutes of a call with a customer, 18.08.2015, ID 2866.

(434) This was also indicated by one supplier of the Parties:

*'In Europe, the beverage can manufacturers can be divided into two groups regarding their ability to innovate. Ball and Rexam stand out from Can-Pack and Crown in this respect. While each beverage can manufacturer tries to improve their product, Ball and Rexam today account for nearly all innovation projects currently conducted with Novelis. Also these projects follow a more long-term approach. In general, Europe is more active regarding innovation than North-America, driven in part by the absence of soft tolling in Europe.'*⁴⁷⁹

(435) Third, the innovation capabilities of the Parties are demonstrated by the fact that they are the only two beverage can players that offer aluminium bottles in the EEA.⁴⁸⁰ These products are considered by customers to be 'a product of the future.'⁴⁸¹ This is also confirmed by an internal document of Rexam (see Figure 20), where it is underlined that [...].

Figure 20: Rexam's internal document on aluminium bottles

[...]

Source: Rexam's internal document, 'Beverage Cans strategy 2014-16', slide 36

(436) Fourth, the Transaction may reduce the current levels of innovation of the Parties. This was stated by a number of customers that responded to the market investigation:

*'Currently both Rexam and Ball compete vividly on innovation (for instance aluminium bottle) but this can change after the merger.'*⁴⁸²

*'It is to be expected that there will be less innovation projects post-merger because the innovation is partly driven by the fact that the merging parties are currently competing against each other.'*⁴⁸³

*'The proposed transaction will rather lead to less innovation as the merger entity will focus on limiting costs and the two R&D departments are likely to be reduced to one smaller department. The merged entity can use its scale to lower the costs. However, prices for customers will likely increase and not decrease.'*⁴⁸⁴

(437) A competitor that responded to the market investigation also noted that the 'notified transaction will only increase this problem. It artificially creates a behemoth that smaller players cannot hope to compete against.'⁴⁸⁵

9.1.9. Capacity is tight in the EEA

9.1.9.1. The Notifying Party's views

(438) The Notifying Party argues that both Crown and Can-Pack would have spare capacity to supply any customers that wish to switch suppliers post-Transaction.

⁴⁷⁹ Agreed non-confidential minutes of a call with a supplier, 18.05.2015, ID 1199.

⁴⁸⁰ Apart from the Parties, only two non-beverage can suppliers are active in aluminium bottles in the EEA, Ardagh and Alucan (see section 11).

⁴⁸¹ Agreed non-confidential minutes of a call with a supplier, 26.06.2015, ID 1160.

⁴⁸² Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 334.

⁴⁸³ Agreed non-confidential minutes of a call with a supplier, 18.05.2015, ID 1199. '[H]igher prices, less innovation (as Ball would likely close Rexam's innovation-centre) and even further consolidation of the market.' Agreed non-confidential minutes of a call with a customer, 12.05.2015, ID 468.

⁴⁸⁴ Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 331.

⁴⁸⁵ Third party comments to the SO, ID 3451.

(439) Regarding Can-Pack, it has spare capacity at its plants in the UK and Poland. Can-Pack's plant in Morocco is also able to supply into some of the southern regions of the EEA.⁴⁸⁶

(440) As for Crown, it has capacity available at its plants in Spain, France, the UK and Slovakia.⁴⁸⁷

9.1.9.2. The Commission's' assessment

(441) The Commission has reached the conclusion that there is currently limited spare capacity in relation to the supply of beverage cans in the EEA. As a result, if the merged entity were to increase prices post-Transaction, competitors would have insufficient spare capacity to counteract such an increase. Moreover, Post-Transaction, the merged entity would have the incentive to do so.⁴⁸⁸

(442) First, as the Notifying Party notes in the Form CO,⁴⁸⁹ capacity utilisation is high in the industry (above 90 %).⁴⁹⁰ This was also confirmed both by competitors (*'[competitor] believes that the industry in general currently is operating very close to capacity'*⁴⁹¹) and customers that responded to the market investigation:

*'there is currently no additional capacity in the market.'*⁴⁹²

*'[t]he industry has traditionally been very tight (capacity wise).'*⁴⁹³

*'Ball and Rexam typically try to limit capacity.'*⁴⁹⁴

(443) In particular, contrary to the Notifying Party's claim⁴⁹⁵, Can-Pack confirmed that it *'does not have spare capacity in its Polish and UK plants that would allow it to increase its output in a way that would effectively restrain the merged entity in an appreciable way.'* Can-Pack also confirmed that the capacity utilisation at all of its EEA plants is above 90 %.⁴⁹⁶

(444) Second, the capacities of the Parties are important from the point of view of total capacity in the EEA as Crown and Can-Pack are unable to serve large volumes, due to their limited capacity.

(445) The overall spare capacity in 2014 of Crown and Can-Pack for plants located in the EEA was equivalent to only between 5 to 10 % of the combined sales of the Parties to EEA customers in 2014.⁴⁹⁷ Crown and Can-Pack would, therefore, not be able to supply sufficient additional volumes to customers in case of a price increase by the merged entity.

⁴⁸⁶ Form CO, paragraph 6.322, Reply to the SO, paragraph 5.20.

⁴⁸⁷ Form CO, paragraph 6.435.

⁴⁸⁸ See paragraph 32 of the Horizontal Merger Guidelines: *'When market conditions are such that the competitors of the merging parties are unlikely to increase their supply substantially if prices increase, the merging firms may have an incentive to reduce output below the combined premerger levels, thereby raising market prices. The merger increases the incentive to reduce output by giving the merged firm a larger base of sales on which to enjoy the higher margins resulting from an increase in prices induced by the output reduction'*.

⁴⁸⁹ Form CO, paragraph 6.241.

⁴⁹⁰ There can be slight regional differences in capacity utilisation. For instance, Ball points out in one internal document: '[...]'. Ball's internal document 'Erik Bouts On-Boarding BPE Sales, Marketing, Innovation', slide 2, ID 2006-77115.

⁴⁹¹ A competitor's non-confidential reply to RFI of 15.06.2015, ID 2572.

⁴⁹² Questionnaire to Customers (Q2), question 51.1, ID 2664.

⁴⁹³ Agreed non-confidential minutes of a meeting with a customer, 27.08.2015, ID 2982.

⁴⁹⁴ Agreed non-confidential minutes of a call with a customer, 20.08.2015, ID 2496.

⁴⁹⁵ Reply to the SO, paragraph 5.20.

⁴⁹⁶ Third party comments to the SO, revised confidentiality, ID 3495.

⁴⁹⁷ Parties' and competitors data.

- (446) The same conclusion holds within the France, Iberia, North-East Europe, South-East Europe and UK and Ireland, regions where Crown or Can-Pack own production capacity. On the basis of 2014 data, the combined spare capacity owned by Crown and Can-Pack, in all but one of these regions, did not exceed 25 % of the sales of the merged entity within that region.
- (447) The only exception was North-East Europe, where the combined spare capacity of Crown and Can-Pack was between 30 to 40 % of the combined sales of the merged entity in 2014.⁴⁹⁸ Even this level of spare capacity would, however, be unlikely to allow Crown and Can-Pack to supply sufficient additional volumes to customers in North-East Europe in case of a price increase by the merged entity. This is because some of Crown's and Can-Pack's spare capacity located in North-East Europe is likely to be directed to customers in other regions, as both Crown and Can-Pack currently sell significant amounts of the cans they produce in North-East Europe outside the cluster.⁴⁹⁹
- (448) Customers that responded to the market investigation also confirmed the importance of the capacities of the Parties from the point of view of total capacity in the EEA:
- 'Rexam's global production capacities are necessary from a capacity requirements point of view';⁵⁰⁰ [Rexam] is the only producer that supplies us with the quantity our company needs.'⁵⁰¹*
- 'Other suppliers, like Crown or [Can-Pack], have been unable to thoroughly fulfil our demands since 2013 – according to Crown and [Can-Pack] due to a lack of capacities.'⁵⁰²*
- 'We buy our cans from companies like Ball and Rexam. Other manufacturers like Crown and [Can-Pack] have never been able to deliver 100% of the quantities needed.'⁵⁰³*
- '[Customer] would not be able to switch from all can-manufacturers to just Can-Pack and Crown due to capacity constraints.'⁵⁰⁴*
- (449) Third, if any spare capacity exists, it tends to be for steel cans rather than for aluminium cans: *'[...] suppliers [...] have limited spare capacity. Capacity utilisation rates vary by supplier, region, can type and metal type. For instance, capacity utilisation is generally tighter on aluminium cans than on steel cans. Indeed, most suppliers of aluminium cans have a capacity utilisation rate of around 85-90%. The 10-15% of spare capacity is generally used to cover*

⁴⁹⁸ The levels of spare capacity estimated by third parties is even lower in 2015, implying that the 2014 data overstate the ability of third parties to increase output to offset a price increase.

⁴⁹⁹ Moreover, the Commission also notes that in the presence of binding capacity constraints, even if competitors hold relatively large spare capacity, this spare capacity may not be sufficient to prevent significant non-coordinated effects arising from a large increase in concentration and a significant consolidation of capacity (see M.6471-Outokumpu/Inoxum, decision of 7.11.2012 and M.6905- Ineos/SOLVAY/JV, decision of 8.05.2014).
Questionnaire to Customers (Q1), question 64.1, ID 1609.

⁵⁰⁰ Questionnaire to Customers (Q1), question 64.1, ID 1609.
⁵⁰¹ Courtesy translation from the Spanish original: *'Es el único proveedor que nos suministra las cantidades que nuestra empresa necesita.'*

⁵⁰² Courtesy translation from the German original *'Andere Lieferanten wie Crown und Canpack konnten unsere Bedarfe seit 2013 nicht vollständig anbieten – Grund hierfür waren laut Crown und Canpack unzureichende Kapazitäten.'*
Questionnaire to Customers (Q1), question 6.1, ID 1609.

⁵⁰³ Courtesy translation from the German original *'Dosen kaufen wir bei den Firmen Ball und Rexam zu. Andere Hersteller wie Crown und Canpack konnten die benötigte Menge nie zu 100 % anbieten.'* Questionnaire to Customers (Q1), question 14.1, ID 1609.

⁵⁰⁴ Agreed non-confidential minutes of a call with a customer, 12.05.2015, ID 468.

*seasonality and unforeseen demand, which are largely linked to changes in weather, promotions and events.*⁵⁰⁵

(450) Fourth, in practice, there is little or no overcapacity due to the seasonality of demand:

*'[d]emand for beverage cans depends on the demand for beverages by end consumers which in turn varies with the season: Consumption of beverages is low in the winter time, grows during spring and peaks in summer to gradually sink in autumn to reach its winter low. For this reason, demand for beverage cans in Q1 of any given year tends to be very low, it picks up and reaches its peak in the summer months, ebbing down to a very low volume in November (with a larger demand in December (due to Christmas and the New Year)).'*⁵⁰⁶

(451) Capacity is particularly tight in the 'peak' (that is to say in the summer) season, when the weather is hot and there is more demand for beverages: *'Due to seasonal peaks and lows, there are times - mostly in summer - where capacity is not sufficient to satisfy market demand.'* *'Especially in summer time the production capacity is not enough.'*⁵⁰⁷ One of the competitors explains that while *'[t]heoretically installed capacity per annum exceeds production in the market in Europe; however, in practice there is no overcapacity due to the seasonality of demand.'*⁵⁰⁸

(452) Ball in particular had difficulties in meeting demand, in particular during recent peak seasons: *'[t]here has been a shortage on [...] cans from Ball last year (2014) and this year (2015).'*⁵⁰⁹ *'Ball for instance has recently had huge problems with capacity; it used its network to balance it out. In [...], Ball delivered to [customer] not from its [...] plant, but also from [...] due to capacity constraints.'*⁵¹⁰ *'Especially Ball had problems in the past to deliver cans in time.'*⁵¹¹ Ball also pointed out [...] in internal documents: *'[...]'*⁵¹²

(453) Manufacturing cans in the low season (the first quarter of a given year) and storing them until peak season in summer is also possible only to a limited extent. It is for instance not possible to produce cans in December for the following summer given that customer demand changes (in particular in terms of the printing on the cans): *'[a]s some design[s] are changed in early summer there is a[l]lways a battle how to get the volume on time.'*⁵¹³

(454) As a competitor puts it, *'[d]esign considerations influence demand for beverage cans. Because labels are actually printed onto the can during the process of producing the can (not, as in the case of bottles, during the filling process) customers must specify the design at the time the can*

⁵⁰⁵ Questionnaire to Customers (Q1), question 57, ID 1609.

⁵⁰⁶ A competitor's non-confidential reply to RFI of 15.06.2015, ID 2572.

⁵⁰⁷ Courtesy translation from the German original: *'Da nahezu alle Kunden für Getränkedosen in den Sommermonaten die höchsten Bedarfe haben – so auch wir – scheinen alle Dosenhersteller in den Monaten April bis September voll ausgelastet zu sein. Wir erleben – so wie auch letztes Jahr – dass unsere Lieferanten (insbesondere Ball) die Kundenbestellungen nicht vollumfänglich bedienen können. Seit mehreren Wochen müssen wir Kürzungen unserer Bestellmenge hinnehmen oder Verschiebungen der Anlieferung gegenüber dem Planliefertag. Diese Kürzungen (obwohl innerhalb vertraglich vereinbarter Mengenschranken) bedeuten für uns einen hohen Aufwand zur Umplanung der Abfülllinie bis hin zur Teilweisen Lieferunfähigkeit ggü. unseren Kunden.'* Questionnaire to Customers (Q1), question 57, ID 1609.

⁵⁰⁸ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

⁵⁰⁹ Questionnaire to Customers (Q1), question 22, ID 1609.

⁵¹⁰ Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2724.

⁵¹¹ Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 226.

⁵¹² Ball's internal document, 'B102 BPE Strategic Plan 2015-2017'.

⁵¹³ Questionnaire to Customers (Q1), question 57, ID 1609.

is manufactured. Thus, manufacturing beverage cans is only possible once the customer has decided on the design of the can. Two factors have a large influence on when this will be the case. Firstly, formal labelling requirements tend to change frequently and require adaptation of the label – as do changes in the list of ingredients that go into the product. Secondly, and very importantly, customers do not freeze designs and therefore do not order beverage cans (or draw down pre-agreed volumes in longer term contracts) more than 6 months in advance of the expected sale of the beverage to the end consumer. These two facts – that marketing campaigns are not finalized early and food & safety labelling regulations regularly change at rather short notice – means can manufacturers cannot produce cans too far in advance. This means that, production rates pick up in Q1 when the orders come in and considerable stock is produced (with the usual costs of financing stock to be taken into consideration when setting production levels). Demand in Q2 is largely served out of current production and plants usually reach breakeven in May. The stock is then drawn down from June through to the end of summer to complement a three shift production at full capacity during that time. Demand then drops off and reaches a very low point in November – a time during which yearly maintenance work is being undertaken. This means that the figures for installed capacity are relevant only when considering whether a supplier can meet peak demand. Annual capacity is not a meaningful concept as certain times do not show any demand and cans cannot be produced for building of stocks.⁵¹⁴

- (455) *Fifth, while, capacity is even tighter for 'specialty' cans (as they are produced at fewer locations and demand is growing), standard cans also experience shortages: 'Every year there are capacity constraints on basically all sizes and types. The specialty cans produced in campaigns are the obvious ones, but this year we experience a shortage in the regular 33cl alu capacity and we have also had years where the 25cl alu capacity was short.'⁵¹⁵*
- (456) *Sixth, the merged entity may consolidate capacity post-Transaction. According to one customer: '[Customer] anticipates that, after the merger is completed, the merged entity is likely to close plants, in order to optimise costs, footprint and utilisation. Rexam has already announced it is closing the Berlin can plant',⁵¹⁶ 'One risk of the transaction is the potential closure of can plants by the merged entity for economic reasons. This might lead to less capacity and larger transportation distances, and therefore to a reduction of the security of supplies and flexibility. The level of service might also decrease post-merger. Then, due to the scale of the merged entity, prices will likely increase, especially for smaller beverage manufacturers as they do not have the same leverage as bigger customers such as Coca-Cola.'⁵¹⁷ 'Due to probable capacity constraints even before the proposed transaction some can manufacturers are no option for [customer] in certain regions. This will probably worsen post-merger, reducing the number of available options, or where a reduction is not to be expected strengthening one can manufacturer significantly due to larger scale overall.'⁵¹⁸*

⁵¹⁴ A competitor's non-confidential reply to RFI of 15.06.2015, ID 2572.

⁵¹⁵ Questionnaire to Customers (Q1), question 57.1, ID 1609.

⁵¹⁶ Agreed non-confidential minutes of a call with a customer, 19.05.2015, ID 1212.

⁵¹⁷ Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 226.

⁵¹⁸ Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 331.

- (457) Seventh, future capacity expansions are unlikely to offer customers sufficient switching opportunities post-Transaction in the next 3 to 5 years. Although some capacity expansion has occurred as listed in this recital, capacity expansion is nonetheless limited in size and major expansions have a lead time of several years:
- between 2012 and 2014, the Parties installed additional net capacity for the production of about [...] billion cans in the EEA;⁵¹⁹
 - between 2010 and 2014, Crown added new capacity only when opening its new Kechnec plant in Slovakia; and
 - Can-Pack has only opened one facility in Finland and added capacity in at Scunthorpe in the UK.
- (458) Eighth, in the event the merged entity were to raise prices it is unlikely that another beverage can manufacturer already active in the EEA could expand in a timely manner so as to defeat a price increase.⁵²⁰ This is for several reasons.
- (459) In the first place, this is due to the lead time of building up additional capacity: *'It takes too much time to get additional capacity up and running. This would take at least 2 years.'*⁵²¹
- (460) In the second place, other suppliers may lack the incentive to build up such additional capacity. Given the limited number of beverage can manufacturers, competitors may prefer to follow a price increase by the merged entity post-Transaction, as this would increase their profits:

*'We do not consider it as realistic, that another supplier would be able to defeat a price increase both in terms of execution time and volume. We also have significant concern, that in case of a change in prices competitors would rather take on the chance of increasing their margin, than defeating the price increase by extending their production.'*⁵²²

*'I believe other parties would prefer to slightly follow the price increase instead of building a lot more capacity.'*⁵²³

*'[Customer] fears that the expansion into new specific areas post-Transaction will be extremely unlikely given that smaller suppliers are unlikely to challenge the merged entity as an unassailable market leader with the ability to punish any smaller supplier through reclaiming any volume that the smaller supplier may have attracted through a more competitive offer elsewhere. Indeed, the merged entity could react to any competition by a smaller player by "punishing" aggressive offers and reclaiming the corresponding volumes. It would have the financial muscle to sustain such a strategy over a very long period of time and smaller players would quickly understand that it will no longer be in their interest to compete aggressively with the merged entity. Thus, in the end smaller suppliers would follow the merged entity's strategy to increase prices.'*⁵²⁴

⁵¹⁹ Form CO, Annex 10.

⁵²⁰ Questionnaire to Customers (Q2), question 54, ID 2664 and Questionnaire to Customers (Q4), question 23, ID 2786.

⁵²¹ Questionnaire to Customers (Q2), question 54.1, ID 2664.

⁵²² Questionnaire to Customers (Q4), question 23.1, ID 2786.

⁵²³ Questionnaire to Customers (Q4), question 23.1, ID 2786.

⁵²⁴ Questionnaire to Customers (Q2), question 54.1, ID 2664.

9.1.10. Switching possibilities for customers in the EEA are limited

9.1.10.1. The Notifying Party's views

- (461) According to the Notifying Party, it is quick and easy to switch for customers between cans produced by different beverage can manufacturers in the EEA because cans of the same size and type are produced to the same specifications across all suppliers, and can be filled in the same way.⁵²⁵
- (462) The Notifying Party provides examples of customers recently switching to other suppliers: in the Nordics, [...] switched [...] % of its volume requirements from Rexam to Can-Pack in 2014⁵²⁶; in [...], the Notifying Party believes that [...] switched [...] million cans from Rexam to Crown in 2014⁵²⁷; in [...], [...] switched [...] million ([...] % of its volume) from Ball to Can-Pack⁵²⁸ in 2012 and [...] switched from Rexam to Crown ([...]) in 2013⁵²⁹, in [...], Ball lost volume to Crown for [...] ([...]) and [...] (lost [...] million cans) in 2013⁵³⁰. Crown also lost volumes from [...] to Ball and Can-Pack in [...] and to Ball in [...] ([...]) in 2015⁵³¹.
- (463) Customers, in the course of negotiations, also use the threat of switching volumes to other materials, especially PET which form a particularly strong constraint in respect of customers who have in-house PET bottling facilities. For example, in 2013, [...] threatened to switch volumes from cans to other materials in order to put pressure on Ball to lower its prices in its filling location in [...]. According to the Notifying Party, this was the key reason that led it to lower its prices in [...].⁵³²

9.1.10.2. The Commission's assessment

- (464) The Commission has reached the conclusion that switching possibilities for customers in the EEA are limited. This is for the following reasons.
- (465) First, switching is hindered by the fact that capacity is tight, as explained in section 9.1.9. Large volumes are reserved for large customers and '*given the significant can volumes that [large customer] sources in the EEA, the specific can portfolio per filling location and the tight production capacity and limited product portfolio of can suppliers, it is very challenging if not impossible for [large customer] to move significant can volumes from one supplier to another for most if not all its filling plants*'.⁵³³ '*We believe there is very limited competition between the beverage can manufacturers, because there are only four producers and they all fill large parts of their production capacity with large volumes from long term customers, like Coca Cola, Pepsi and the large beer producers. As a consequence, there is limited free capacity available in each production plant and potential switches of volumes will be avoided as much as possible, because the beverage can manufacturers know that stability is in the interest of their market*'.⁵³⁴

⁵²⁵ Form CO, paragraph 8.42.

⁵²⁶ Reply to the Article 6(1)(c) Decision, paragraph 4.11, ID 1448.

⁵²⁷ Form CO, paragraph 6.341.

⁵²⁸ Form CO, paragraph 6.219.

⁵²⁹ Form CO, paragraph 6.434.

⁵³⁰ Form CO, paragraph 6.357.

⁵³¹ Form CO, paragraph 6.362.

⁵³² Form CO, paragraph 6.95.

⁵³³ Agreed non-confidential minutes of a call with a customer, 18.08.2015, ID 2866.

⁵³⁴ Questionnaire to Customers (Q1), question 97, ID 1609.

- (466) Second, as shown in section 9.1.9, the level of spare capacity owned by Crown and Can-Pack is limited, both at the EEA level and in individual regional clusters.
- (467) Third, even in cases where customers have switched in the past, such switching was limited to a small percentage of the overall demand of customers as the alternative beverage can manufacturers lacked the capacities necessary to cover all of their volumes.⁵³⁵
- (468) As explained by a customer, *'[customer] would not be able to switch from all can-manufacturers to just Can-Pack and Crown due to capacity constraints. Especially for [customer]'s filling locations in the Netherlands no competitor of Ball/Rexam would be able to provide the total amount of cans needed by [customer]. Even without consideration of transportation costs, shifting all volumes away from Ball and Rexam is not an option.'*⁵³⁶
- (469) Similarly, Molson Coors explained that the reason why they switched was *'the introduction of an alternative/backup supplier for our filling plant that was dependant on one supplier prior to that'*.⁵³⁷ This volume covers, however, only [...] % of Molson Coors' demand.
- (470) More generally, a majority of both small⁵³⁸ and large⁵³⁹ customers that responded to the market investigation indicated that if the merged entity were to raise prices by a small but significant amount (5-10 %), Crown and Can-Pack would have insufficient capacity to allow customers to switch all their volumes to them.
- (471) Fourth, two-thirds of customers have not switched significant volumes of their beverage can supplies⁵⁴⁰ from one beverage can manufacturer to another during the past 3 years in the EEA.⁵⁴¹ Customers highlighted that the switching of large volumes happens infrequently.⁵⁴²
- (472) Fifth, a majority of customers that responded to the market investigation explained that they could not change suppliers quickly and without incurring significant costs.⁵⁴³ In particular, developing the design and printing would be costly.⁵⁴⁴
- (473) In particular, one major customer explained that *'the total lead time to switch a supplier is between 6 and 12 months and could cost a few hundred thousand euros'* while another stated that in case they wanted to switch full volumes to another supplier: *'both parties will have to invest time in ensuring that all supply chain related operations are coordinated. For a complete supply switch in Poland next year, we have 1 year to complete the alignment, tests, SLAs, artwork, etc. with the supplier, in order to ensure successful supply from January 1*

535 Questionnaire to Customers (Q1), question 55, ID 1609. See also agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2938: *'[Customer's] cans volumes are small and hence this could be potentially be overcome by trying to switch volumes to another supplier. Maybe with bigger volumes this would not be feasible'*.

536 Agreed non-confidential minutes of a call with a customer, 12.05.2015, ID 468.

537 Questionnaire to Customers (Q1), question 55, ID 1609.

538 Questionnaire to Customers (Q4), question 22, ID 2786.

539 Questionnaire to Customers (Q2), question 52, ID 2664.

540 That is to say more than 10 % of their overall yearly demand.

541 Questionnaire to Customers (Q1), question 55, ID 1609.

542 Questionnaire to Customers (Q1), question 57, ID 1609.

543 Questionnaire to Customers (Q1), question 56, ID 1609.

544 *'[C]hanging supplier means extra costs for new artworks and printing plates - so it is always involving cost', 'Developing the artworks with a different supplier is a significant cost.'* *'We use many different designs an[d] languages on our cans. If we would switch suppliers, for all those variations a new good for print would need to be developed to fit the manufacturing process of the new supplier. Such procedure would be very costly. As well it is not guaranteed that our filling stations can fill cans from another supplier without modifications in their filling line.'* Questionnaire to Customers (Q1), question 56.1, ID 1609.

2016. CAPEX investments related to the switch could amount to one time cost of 100.000 EUR – 200.000 EUR or more depending on the complexity, standards used by different suppliers, etc.⁵⁴⁵

(474) Sixth, as explained further in section 9.1.13 below, the threat of switching from cans to other materials, such as PET is not credible.

9.1.11. Multi-sourcing

9.1.11.1. The Notifying Party's views

(475) According to the Notifying Party, several customers multi-source by having more than one supplier at a specific filling location. However, in most cases a customer filling location is supplied by a single supplier.⁵⁴⁶

9.1.11.2. The Commission's assessment

(476) The Commission has reached the conclusion that multi-sourcing is an important factor in the beverage can industry, even on a filling plant level. As a result, the reduction in the number of competitive alternative suppliers post-Transaction is likely to reinforce the anticompetitive effects of the Transaction.⁵⁴⁷

(477) First, many customers in the EEA, in particular larger ones, multi-source: *'Usually volumes are split between the can manufacturers in a global tender process. Nearly all top European customers multi-source, with the exception of Red Bull [...].'*⁵⁴⁸ *'Our group strategy is to source from minimum 2 suppliers.'*⁵⁴⁹

(478) The reason why multi-sourcing for smaller customers is less frequent is due to their relatively lower volumes: *'Our volume is not that much that we can split it in two suppliers because of getting the best price';*⁵⁵⁰ *'Volume was not that much to close contracts with 2 or more suppliers';*⁵⁵¹ *'Our volume does not allow (at least it does not seem reco[m]mendable) to share sources for the same can type.'*⁵⁵²

(479) Second, multi-sourcing is important for customers because of security of supply considerations and in order to obtain better commercial terms: *'[customer] keeps two can suppliers to diversify risk and ensure it gets best conditions.'*⁵⁵³ *'[I]t is important for [customer] to have several actual or potential sources of supply for each of its plants, as business continuity. The multi-sourcing approach has also allowed [customer] to secure fair can pricing through competition between these can making plants.'*⁵⁵⁴ *'[O]ptimize costs and minimize risks of supply.'*⁵⁵⁵

(480) Third, multi-sourcing is a common practice both across multiple filling locations and at filling location level. The Parties' transaction data shows that approximately [...] of the filling

⁵⁴⁵ Questionnaire to Customers (Q2), question 37, ID 2664.

⁵⁴⁶ Form CO, paragraph 6.30.

⁵⁴⁷ See Case M.6203 - *Western Digital/Viviti Technologies* (2011).

⁵⁴⁸ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁵⁴⁹ Questionnaire to Customers (Q1), question 6.1, ID 1609.

⁵⁵⁰ Questionnaire to Customers (Q1), question 53, ID 1609.

⁵⁵¹ Questionnaire to Customers (Q1), question 53, ID 1609.

⁵⁵² Questionnaire to Customers (Q1), question 53, ID 1609.

⁵⁵³ Courtesy translation from the Polish original, Agreed non-confidential minutes of a call with a customer, 07.05.2015, ID 326.

⁵⁵⁴ Questionnaire to Customers (Q1), question 53, ID 1609.

⁵⁵⁵ Questionnaire to Customers (Q1), question 53, ID 1609.

locations in the EEA source their can requirements from two or more beverage can manufacturers for any given can size.⁵⁵⁶ This ratio is [...] ([...] %) for Rexam, [...] % of whose customers single-source; and [...] (between [...] % and [...] %) for Ball, Crown and Can-Pack.

- (481) Multi-sourcing by large customers is often due to footprint considerations: *'The production network footprints of Ball and Rexam in the EEA are especially well overlapping with each other and with [major customer's] footprint. [Major customer] has further established a global sourcing strategy which is based upon having a minimum of two strategic global suppliers of which Rexam has fulfilled one of these positions, and Ball often has the second one. Multi-sourcing from Ball and Rexam at the same time is for [major customer] often a convenient solution because of the can manufacturers' overlapping network and same level of quality and services.'*⁵⁵⁷

9.1.12. Sales to wall-to-wall customers

- (482) The Parties have six plants that are located wall-to-wall or in the immediate proximity of a customer. These are the Ball plants in Bierne (France) and Rugby (UK) and the Rexam plants in Ludesch (Austria), Milton Keynes (UK) and Wakefield (UK).⁵⁵⁸ In addition, Rexam has built a plant in Widnau (Switzerland) which started operations in 2015.
- (483) Wall-to-wall sales from Ludesch and Widnau plants are further assessed in section 9.1.13 as these plants mainly serve, or are expected to mainly serve [...].

9.1.12.1. The Notifying Party's views

- (484) The Notifying Party argues that the Parties' sales to wall-to-wall and co-located customers *'cannot be considered truly merchant market'* because of the competitive advantage which results from the co-location next to the customer. For instance the Notifying Party explains that it does not compete to supply [...] filling locations in the [...] region because of its freight cost disadvantage compared to Rexam's [...].⁵⁵⁹
- (485) In the reply to the SO, the Notifying Party argues that wall-to-wall or co-located suppliers not only offer a cost advantage but also *'a huge service, flexibility and convenience advantage'* which makes it more difficult for other suppliers to compete.⁵⁶⁰

9.1.12.2. The Commission's assessment

- (486) The Commission has reached the conclusion that while both can beverage manufacturers and customers actively try to minimise transport costs by reducing travel distances from can plants to filling stations, sales to filling locations that are in the immediate vicinity, or indeed adjacent, to a can plant should be included in the merchant market. This is for the following reasons.
- (487) First, when beverage can manufacturers are interested in developing a new customer relationship or strengthening an existing one in a geographic area where they do not have a plant in close vicinity, they accept to incur higher transport costs.⁵⁶¹

⁵⁵⁶ Commission analysis based on actual transaction data supplied by the Parties and estimates of the Notifying Party for third parties.

⁵⁵⁷ Questionnaire to Customers (Q1), question 62.1, ID 1609.

⁵⁵⁸ Rexam's Nogara and Fredericia plants are merely 'co-located', but not wall-to-wall, implying that these plants are within a certain distance, but not adjacent.

⁵⁵⁹ Reply to the Article 6(1)(c) Decision, paragraph 4.21.

⁵⁶⁰ Reply to the SO, paragraph 4.283.

- (488) Second, customers generally multi-source their can requirements and therefore do not necessarily source all of their can requirements from the closest plant.⁵⁶²
- (489) Third, customer filling locations in the immediate vicinity to a can manufacturer's plant still benefit from competition in the market because they are able to switch at least part of their demand to other beverage can manufacturers and can leverage competing offers to obtain better terms from the co-located or wall-to-wall supplier.⁵⁶³
- (490) Fourth, transport costs are low over short distances. The freight cost for transporting 1 000 cans for 200 km or less is approximately EUR [...] and about [...] % for 300 km.⁵⁶⁴ In this respect, it must be noted that both Crown and Can-Pack have plants that are located within a radius of approximately 200 km from the Parties' wall-to-wall and co-located plants in the UK. Therefore, the transport costs are comparably low. For example, regarding Ball's Rugby plant Crown owns the closest competing plant, which is on average [...] km away from the customers served by Rugby. At Milton Keynes, Crown owns the second closest competing plant, which is [...] km away from the customers served by Rexam's plant. At Wakefield both Crown and Can-Pack own plants that are the closest competing plants for a significant number of customers within 200 km from those customers on average.
- (491) Fifth, as discussed in section 7.1.3.3 above, while closeness to the filling location is a desirable attribute in a can supplier as it facilitates logistics and support, it is not a pre-condition to entering into a customer/supplier relationship.
- (492) Sixth, all contracts with wall-to-wall and co-located customers will be contestable in the short- to mid-term as they are set to expire at the latest in [...].⁵⁶⁵ The sole exception is [...] that is set to expire in [...] and is discussed separately in section 9.1.13.⁵⁶⁶

9.1.13. Sales to Red Bull

- (493) [...]. Rexam's Ludesch plant is located wall-to-wall with a Red Bull filling location operated by Rauch Fruchtsäfte, Red Bull's main contract filler.
- (494) As mentioned in section 5.1.4.3, Red Bull [...].

9.1.13.1. The Notifying Party's views

- (495) The Notifying Party argues that Rexam's sales to Red Bull should be excluded from the merchant market as they are not contestable in the short- to medium-term.
- (496) Pursuant to [...]⁵⁶⁷ and, [...]. The Notifying Party is of the view that [...].
- (497) The Notifying Party submits that sales to Red Bull are not contestable due to [...].⁵⁶⁸
- (498) First, [...]. This is for the reasons set out in recitals (499)-(500).
- (499) In the first place, [...].

⁵⁶¹ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 334: '*[A]supplier [can] actively subsidizes the transportation cost in favour of winning the business, as we have seen done by Rexam to win [customer] Poland business, or Ball to win [customer] Portugal business*'.

⁵⁶² Questionnaire to Customers (Q1), question 5, ID 1609.

⁵⁶³ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁵⁶⁴ Reply to the Article 6(1)(c) Decision, paragraph 3.8 and Figure 3.3.

⁵⁶⁵ Form CO, Attachment G, RFI 1, Exhibit K.

⁵⁶⁶ The [...] is set to expire on [...]. Form CO, Attachment G, RFI 1, Exhibit H.182, clause 10.1.

⁵⁶⁷ Form CO, Attachment G, RFI 1, Exhibit H.182, clause 2.1.

⁵⁶⁸ Reply to the SO, paragraphs 4.5-4.14.

- (500) In the second place, it is highly unlikely that [...]. Accordingly, this mechanism is only likely to be relevant where [...].
- (501) Second, [...] of Rexam's plants in [...] will be [...]. The beverage cans manufactured in these plants will, therefore, [...].
- (502) The Notifying Party further submits that on the basis of the Commission including wall-to-wall plants in the merchant market because their contracts will expire at the latest in [...], Red Bull volumes ought to be excluded from the market share calculations because they are not contestable for at least [...] more years (until at least [...]).⁵⁶⁹

9.1.13.2. The Commission's assessment

- (503) For the reasons set out in this section, the Commission has reached the conclusion that Rexam's sales to Red Bull should be included in the merchant market [...].
- (504) First, Rexam's sales to Red Bull provide an indication of its competitive strength. The fact that Rexam has won significant business from a high demand customer such as Red Bull, which accounts for nearly [...] % of total beverage can demand in the EEA, is a confirmation of Rexam's success and ability to compete.
- (505) Moreover, as explained in section 9.1.7, various advantages arise from having a broad network of plants and a greater scale than other beverage can manufacturers. It follows, that Red Bull's demand and the Rexam plants that serve it materially influence Rexam's overall competitiveness.
- (506) Second, contrary to what the Notifying Party argues, [...]. This is for the reasons set out in (507)-(511).
- (507) In the first place, the Red Bull agreement provides that Red Bull (i) [...], and (ii) that [...].⁵⁷⁰ It follows that, contrary to what the Notifying Party argues, Red Bull is [...].
- (508) In the second place, Red Bull can [...].⁵⁷¹ Red Bull can therefore [...].
- (509) In the third place, a Rexam internal document (see Figure 21) [...].⁵⁷²

Figure 21: Internal Rexam document on 25 cl cans

[...]

Source: Rexam's internal document, 'Group strategy 2015-17 – Executive strategy', dated October 2014, page 12

- (510) In the fourth place, pre-Transaction Ball was [...].
- (511) In the fifth place, Red Bull in the short-term will be mainly [...].
- (512) Third, as to the Notifying Party's argument that certain Rexam plants will mainly serve Red Bull and that therefore the beverage cans manufactured in these plants will not be available to other customers, the [...] (i) [...]; and (ii) [...].
- (513) Furthermore, in particular in a capacity-constrained industry such as the beverage can manufacturing, it is not uncommon that production lines are dedicated to the production of cans for one or more customers and that, once their capacity is fully utilised, they cannot serve other

⁵⁶⁹ Reply to the SO, paragraph 4.15.

⁵⁷⁰ Form CO, Attachment G, RFI 1, Exhibit H.182, clause 2.3.

⁵⁷¹ Form CO, Attachment G, RFI 1, Exhibit H.182, clause 2.4.

⁵⁷² Rexam's internal document, 'Group strategy 2015-17 – Executive strategy', page 12.

customers. Therefore, even assuming that Rexam's [...] plants were to mainly serve Red Bull, this would not be a unique arrangement in the industry or one that would justify excluding the capacity of these plants from the merchant market.

9.1.14. *There is limited competitive pressure from other forms of packaging*

9.1.14.1. The Notifying Party's views

- (514) The Notifying Party argues that customers can and regularly do 'flex' their packaging mix; this demonstrates that they have the ability to switch (at the very least) marginal volumes between materials such as PET or glass. The Parties monitor and react to competition from other materials on an ongoing basis. As such, even if other packaging materials are not considered as part of the same product market as beverage cans, they do impose a competitive constraint on can manufacturers.⁵⁷³
- (515) In its Reply to the SO, the Parties put forward a list of examples from internal documents to illustrate the fact that cans are constrained by other forms of packaging. Figure 22 is one of those examples.

Figure 22: Yearly market trends in packaging mix

[...]

Source: Ball's internal document 'Global Beverage Can Market based on 2012 Global Market Review'

9.1.14.2. The Commission's assessment

- (516) The Commission has reached the conclusion that there is a lack of competitive pressure from other forms of packaging (such as PET or glass) on beverage can manufacturers. This is for the following reasons.
- (517) First, competitive conditions are different for each type of beverage packaging as cost drivers are different (aluminium costs compared to oil costs).⁵⁷⁴ For example, prices for PET do not move in parallel with prices for cans. According to one competitor, this indicates that *'these products are not linked in a way that would suggest that changes in the competitive conditions of one product automatically result in parallel changes to the other product'*.⁵⁷⁵
- (518) Second, as set out in detail in section 6.1 above, a customer's choice of packaging mix is determined by end-consumer needs and is not primarily price driven. For instance, a competitor stated that the *'[p]ackaging mix [...] is not influenced by changes in prices of the different forms of packaging. Rather final customers' preferences, distribution channels, recycling and environmental issues as well as having the relevant filling lines impact the packaging choice.'*⁵⁷⁶ Customers confirm that the *'packaging mix is decided by the end consumer,*

⁵⁷³ Form CO, paragraphs 6.90-6.100.

⁵⁷⁴ Questionnaire to Customers (Q1), question 13, ID 1609: *'Price of the packaging does count but for movements between cans, pet, glass, cartons takes years to change because of pricing'* and Questionnaire to Customers (Q1), question 14.1, ID 1609: *'[C]ost driver and suppliers are in most cases very different and sometimes even different buyer are responsible for the different packaging types'; 'Different cost drivers within the packaging types, e.g. Glass – Soda Ash; Can – Aluminum, PET – Oil'; 'Many of the packaging categories have different substrates (metal, polymers, glass, paper, etc.), most of which are linked to different cost drivers'; 'Separate materials have different dynamics and most of the times different suppliers and therefore require separate tenders'.*

⁵⁷⁵ A competitor's non-confidential reply to RFI of 15.06.2015, ID 2572, and Questionnaire to Customers (Q1), question 14, ID 1609.

⁵⁷⁶ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

*beverage manufacturers will chose such packaging as is required by their clients.*⁵⁷⁷ Moreover, *'[i]n all markets, cans are unique containers not substitutable with PET/plastic bottles or glass bottles. Each of these types of packaging serves a different consumption occasion/need and consumer perception.'*⁵⁷⁸

- (519) Third, each type of packaging is purchased separately and through different tender processes, *'given that each packaging type has a totally different and independent supplier base.'*⁵⁷⁹
- (520) Fourth, more than two-thirds of all customers who responded to the market investigation indicated that in the event of a permanent 5-10 % increase in the price of cans, they would not replace any of their purchases of cans by either PET or glass bottles as they lack sufficient flexibility in terms of filling lines.
- (521) Fifth, of the respondents that indicated they would replace some purchases of cans, a vast majority said they would do so only with regard to less than 30 % of their can demand.⁵⁸⁰ This is because material changes in the packaging mix would require significant changes in bottling equipment because filling lines are specific to a certain form of beverage packaging (cans, PET, or glass) and different equipment is needed in the manufacturing process of different beverage packaging, namely de-palletising, filling, closing, labelling, and packaging.⁵⁸¹ Switching to other types of packaging would require beverage manufacturers or contract fillers to realign their business, invest in new production lines, and source different raw materials⁵⁸² (aluminium, polymer).⁵⁸³ This was confirmed by a competitor which considers that *'a filling line can't, for technical reasons, be "adjusted" to fill bottles instead of cans or vice versa. If a beverage producer wishes to make such a change, it will have to design, purchase, and install a new filling line. Such a step will take significant amount of time and incur significant costs.'*⁵⁸⁴ As customers explained *'[w]e have fixed volume capacities for each packaging material, and need to manage the mix within our production capabilities. A significant increase in any one packaging type would require investment in equipment, require the removal of existing equipment and reduce existing production capability'* and *'[a]ny large change does require planning and investment and as such usually takes 9-12 months.'*⁵⁸⁵ But even customers vertically integrated, for example in the in-house production of PET bottles, that may have a greater ability to move some can volumes to PET bottles, are unlikely to switch because, as set

⁵⁷⁷ Questionnaire to Customers (Q1), question 13, ID 1609.

⁵⁷⁸ Agreed non-confidential minutes of a call with a customer, 23.04.2015, ID 129.

⁵⁷⁹ Questionnaire to Customers (Q1), question 14 and 14.1, ID 1609. For example: *'Separate tenders are necessary because these are different supply markets with different market participants'; 'We consider different types of packaging as different and non-substitutable materials and industries with separate suppliers'; 'We see different supplier markets and our procurement function is also split in different packag[ing] area's'; 'Each package type is handled by different category teams and they are not jointly negotiated'; 'For each of the materials we conduct separate tenders beca[use] they have different suppliers. Only a few suppliers can supply more than one packaging type, but even then we do separate tenders per material'; 'Supplier base within the different types of packaging are different, no "global/regional" suppliers sell both glass bottles, PET and Cans. No volume synergies through tendering total volume of all packaging types. [...] Different contract durations due to different competitive dynamics'.*

⁵⁸⁰ Questionnaire to Customers (Q1), questions 17 and 19, ID 1609.

⁵⁸¹ A competitor's non-confidential reply to RFI of 15.06.2015, ID 2572.

⁵⁸² Customers hedge the aluminium price at the London Metal Exchange and are therefore more involved in the sourcing of the raw material for cans. As such customers can hedge against swings in raw material prices, leaving the risk of price fluctuations to their suppliers.

⁵⁸³ Questionnaire to Customers (Q1), questions 11, 15 and 17, ID 1609.

⁵⁸⁴ A competitor's non-confidential reply to RFI of 15.06.2015, ID 2572.

⁵⁸⁵ Questionnaire to Customers (Q1), question 11, ID 1609.

out above, this would *'require another filling equipment'*.⁵⁸⁶ One customer noted that *'[w]e fill all our final products packaged in beverage cans in a dedicated filling plant using a filling line which cannot switch between different forms packaging'*.⁵⁸⁷

- (522) Sixth, the Parties' internal documents⁵⁸⁸ submitted in the Reply to the SO do not support a finding that cans are materially constrained by glass, PET, and other forms of packaging.
- (523) Figure 23 analyses market trends regarding the packaging mix used by customers, rather than an analysis of substitution between cans and other forms of packaging. [...].⁵⁸⁹
- (524) Slide 30 of Ball's internal document 'BPE Presentation – Metal' and slide 16 of Ball's internal document 'Ball Corporation – IBP Demand Review' relate more to the [...].⁵⁹⁰
- (525) Slide 37 of Ball's internal document 'Region Strategic Plan 2014-2015', slide 21 of Ball's internal document 'Global Beverage Can Market based on 2012 Global Market Review', slide 23 of Ball's internal document 'BPE Presentation Metal' and Rexam's internal email from Marc Stacey to Ann Healy on 8 May 2013 indicate that regional variations in trends across the EEA with respect to the growth of one packaging type over another are the result of the specific economic situation in the country or a change in consumer behaviour: [...].⁵⁹¹; [...].⁵⁹²; or [...].⁵⁹³
- (526) Internal Rexam's emails⁵⁹⁴ that [...] switched to other types of packaging are not indicative of cans being materially constrained by other types of packaging materials as the volumes of cans that [...] switched to other types of packaging is unknown and could be insignificant compared to [...] overall demand for cans.
- (527) As regards Rexam's strategy plan for 2015-2017 which states [...].⁵⁹⁵, it relates to the supply of beverage cans in North America not the EEA.
- (528) Seventh, contrary to the Notifying Party's claims, the majority of customers have had a stable packaging mix over the past 3 years.⁵⁹⁶ As explained by customers: *'[t]he packaging portfolio is very stable and the packaging producers know very well that we are not able to switch from one to the other'*.⁵⁹⁷ *'Our overall volume mix between packaging formats has been relatively stable over the last 3 years.'*⁵⁹⁸ *'We have no flexibility in changing our packaging material.'*⁵⁹⁹ *'We have not switched significant volumes from one packaging type to another. The packaging*

⁵⁸⁶ Questionnaire to Customers (Q1), question 15.1, ID 1609.

⁵⁸⁷ Questionnaire to Customers (Q1), question 15.1, ID 1609.

⁵⁸⁸ Form CO, Attachment G, RFI 1, Exhibit H.20, slide 22.

⁵⁸⁹ Ball's internal document 'Global Beverage Can Market based on 2012 Global Market Review', slide 21.

⁵⁹⁰ Ball's internal documents 'Ball Corporation – IBP Demand Review', slide 16 and 'BPE Presentation – Metal', slide 30.

⁵⁹¹ See for example Ball's internal documents 'Region Strategic Plan 2014-2015', slide 37 and 'Global Beverage Can Market based on 2012 Global Market Review', slide 23.

⁵⁹² See for example Rexam's internal email of 8 May 2013 from Marc Stacey to Ann Healy, subject: 'FW: Pack Mix slides 20130507'.

⁵⁹³ See for example Ball's internal document 'BPE Presentation Metal', slide 23.

⁵⁹⁴ [...] Rexam's internal email of 22 April 2013 from [...] to [...]; [...]. Rexam's internal email of 5 June 2013 from [...] to [...].

⁵⁹⁵ Rexam's internal document 'Strategic Plan 2015-2017 Beverage Can North America', 2 October 2014.

⁵⁹⁶ Questionnaire to Customers (Q1), question 11, ID 1609.

⁵⁹⁷ Questionnaire to Customers (Q1), question 14.1, ID 1609.

⁵⁹⁸ Questionnaire to Customers (Q1), question 11.1, ID 1609.

⁵⁹⁹ Questionnaire to Customers (Q1), question 11.1, ID 1609.

*mix is fairly stable over time.*⁶⁰⁰ *'No flexibility to adjust volumes of each packaging material in your overall mix.'*⁶⁰¹

- (529) Eighth, most customers indicated that they have not used the threat of switching away from cans to other packaging type in their negotiations with suppliers as *'[t]his argument doesn't make sense. The market (=consumers) will decide, what they buy.'*⁶⁰² In the words of one customer, *'it is not [the customer] but the consumer that determines the packaging mix. Therefore it would not make sense to use the switching argument with a packaging supplier.'*⁶⁰³ As another customer explained *'[t]his argument would not be considered very reliable. Can makers know very well that we [cannot] easily switch to PET bottles. Energy drinks are basically always packed in alu cans. CSD's can theoretically be filled in cans and in PET, but we do not observe any movements between the two. Family sizes are normally sold in PET and portion sizes often in cans. Still drinks, juices and juice drinks are hardly sold in cans and are therefore not relevant for the switching argument.'*⁶⁰⁴
- (530) Ninth, even the minority of the customers that have used the threat of switching away from cans to other packaging types consider this argument of limited effectiveness as it *'poses a credible threat only if price increase is significant'* and *'[t]he consumer ultimately dictates the choice of packaging'*.⁶⁰⁵

9.1.15. Barriers to entry and expansion are high

9.1.15.1. The Notifying Party's views

- (531) The Notifying Party argues that barriers to entry are low.
- (532) First, any intellectual property ('IP') and know-how required to manufacture beverage cans is readily available from third parties.⁶⁰⁶
- (533) Second, the equipment required to produce beverage cans is readily available from third party suppliers such as Stolle Machinery and Belvac Production Machinery.⁶⁰⁷
- (534) Third, the aluminium or steel required to produce beverage cans are commodities which are readily accessible to new entrants.⁶⁰⁸
- (535) Fourth, in the past 10 years, Ball, Rexam, Crown and Can-Pack have each constructed plants which initially had only one line (the plants include Belgrade, Scunthorpe, Kechnec and Mäntsälä). Moreover, Helvetia has recently entered the market with a plant which initially has only one line, demonstrating that it remains economically feasible for a newly-built production facility to have only one line.
- (536) Fifth, the mere threat of entry also constrains prices. For example, Can-Pack has confirmed to the Commission that the threat of its entry into Spain resulted in the incumbent beverage can manufacturers substantially reducing prices.⁶⁰⁹

⁶⁰⁰ Questionnaire to Customers (Q1), question 11.1, ID 1609.

⁶⁰¹ Questionnaire to Customers (Q1), question 11.1, ID 1609.

⁶⁰² Questionnaire to Customers (Q1), questions 12 and 12.1, ID 1609.

⁶⁰³ Questionnaire to Customers (Q1), question 12.1, ID 1609.

⁶⁰⁴ Questionnaire to Customers (Q1), question 12.1, ID 1609.

⁶⁰⁵ Questionnaire to Customers (Q1), question 12.1, ID 1609.

⁶⁰⁶ Reply to the SO, Annex 1.

⁶⁰⁷ Form CO, paragraph 8.58.

⁶⁰⁸ Form CO, paragraph 8.58.

⁶⁰⁹ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

(537) Sixth, players from outside the EEA (for instance South African Nampak Ltd., 'Nampak') could enter the EEA. Such entry would not be prevented by certain technical agreements that prevent the use of certain technology in the EEA by these non-EEA players as these players could use another technology.⁶¹⁰

9.1.15.2. The Commission's assessment

(538) The Commission has reached the conclusion that barriers to entry⁶¹¹ and expansion are high. This is for the following reasons.

(539) First, the existence of these high barriers to entry and expansion is generally confirmed by Rexam, customers and competitors alike.

(540) As Rexam itself puts it on its website, '*[the beverage can industry] as a whole is characterised by high barriers to entry with the scale economies afforded by numerous production plants favouring the major players. Freight costs are substantial and in large regions a key driver of competitive advantage is an optimised network of plants in close proximity to customer filling locations.*'⁶¹² [...].⁶¹³

(541) As a competitor explains in detail, '*[t]here exists a number of significant barriers to entry into the European beverage can market: cost of investment – to obtain 10 % of EEA market would require a new investment of approximately 290 million EUR; entering this particular business would require specific know-how and access to the relevant technology; there exist significant economies of scale with respect to sourcing raw materials which it could be difficult to match with a single plant; the long-lasting process of purchasing machinery; to successfully enter the European market, a number of customer volum[e] commitments would be helpful to make the investment cost effective; the process of establishing a new can manufacturing plants is drawn out and [time consuming]; to be considered as a supplier by large customers new suppliers have to go through lengthy process of accreditation with each filler/bottler they would like to sell to; Quality issues.*'⁶¹⁴

(542) According to customers, '*entry barriers are high and come in form of: a) large investments needed to establish a can manufacturing plant (the investment for a greenfield plant app. EUR 150 million), b) significant start-up production scale (more than 700 million cans per year), c) technological and know-how barriers linked to capability to produce cans efficiently to be able to compete effectively, d) understanding of and compliance with local legislation and regulations, e) requirement for long-term fixed volume customer agreements for can makers to justify the investment, f) the structure of the demand which fluctuates throughout the year due to its seasonability.*' '*Very high barriers to entry e.g. high capital investment, required expertise etc.*' '*Entry barriers are high because of existing big players and required scale and investments and knowledge;*' '*Yes, the entry barriers are relatively high, because having only one plant won't be sufficient and within each plant one should have at least two efficient production lines, requiring significant investments;*' '*Yes the minimum needed scale is the most important to be*

⁶¹⁰ Form CO, paragraph 6.437.

⁶¹¹ 'Entry', in this Decision refers to entry of a new player into the EEA while 'expansion' refers to expansion by existing players within the EEA.

⁶¹² Questionnaire to Customers (Q2), question 46.1, ID 2664.

⁶¹³ See Rexam's internal document 'FY12 results announcement, Encouraging performance underpinned by Beverage Cans volume and profit growth', slide 9.

⁶¹⁴ A competitor's non-confidential reply to RFI of 15.06.2015, ID 2572.

competitive in the market.' 'Investment cost, high volume requirement: +90% capacity utilization of 2 lines for scale which is approx.1.2-1.6 Billion cans'.⁶¹⁵

- (543) Second, setting up a new, efficient beverage can manufacturing operation is costly and requires time, expertise and know-how as well as large volume long-term commitments from customers. This is demonstrated in recitals (544) to (559).
- (544) In the first place, investment costs are between approximately EUR 50-100 million for a new plant with one production line.⁶¹⁶ Such a one-line operation would have to have a minimum scale which is considered by market participants to be around at least 700 million cans per year.⁶¹⁷ A new player would also have to establish a relationship with raw material suppliers.
- (545) In the second place, setting up a new plant requires a lead time of approximately a year and a half and getting a new plant to operate efficiently takes approximately another year and a half.⁶¹⁸ It may therefore, take 3-4 years before a plant is built and running efficiently.⁶¹⁹ This was emphasised by several customers that responded to the market investigation '*Setting up a new plant takes roughly 1.5 years of construction and another 1.5 years from the start of the production to operating at full efficiency*';⁶²⁰ '*A new entrant would have to pass a number of hurdles to successfully enter the European beverage can market [including] [...] time to build a new can plant – 18-24 months reaching high production performance – 12-18 months with support from experienced staff; time to obtain the approval from customers – an estimated 6 - 12 months from starting stable production, establishing relationships with customers 1 – 3 years, [...]*'.⁶²¹
- (546) In the third place, it is unlikely that a new entrant would make the investment required to build a new plant without having first secured a sufficient volume from customers for at least a five-year period.⁶²² Such a volume commitment has to be both sufficiently large and for a longer time span.
- (547) As regards volumes, it seems that a commitment would have to represent at least 50 % of the capacity of the beverage can production plant to allow a beverage can manufacturer to make the decision to invest; even that may not be enough. For example, one of the Parties [...] ⁶²³ A minimum of 300-600 million cans is generally considered by market participants to be the minimum volume commitment:⁶²⁴ '*Efficiency is key, and therefore high volumes are required.*

⁶¹⁵ Questionnaire to Customers (Q1), question 88, ID 1609.

⁶¹⁶ Agreed non-confidential minutes of a call with a customer, 07.05.2015, ID 326. Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 157. '*Entry barriers are high in beverage can manufacturing. Apart from the scale and technical [know-how] needed [...], also considerable capital is required. The costs to build one can plant with two high speed lines and can end manufacturing is estimated at Euro 80 - 120 million.*' Questionnaire to Customers (Q1), question 88, ID 1609.

⁶¹⁷ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁶¹⁸ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁶¹⁹ '*[T]o create an efficient can plant is much more expensive and it may last 3-4 years to have it running at most optimal level*', courtesy translation from the Polish original '*Jednak budowa efektywnej fabryki jest znacznie droższa, a osiągnięcie satysfakcjonującej wydajności takie fabryki może potrwać 3-4 lata.*' Agreed non-confidential minutes of a call with a customer, 07.05.2015, ID 326.

⁶²⁰ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁶²¹ A competitor's non-confidential reply to RFI of 15.06.2015, ID 2572.

⁶²² Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261; agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 334; agreed non-confidential minutes of a call with a customer, 12.05.2015, ID 468; and agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁶²³ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 334.

⁶²⁴ Questionnaire to Customers (Q2), question 48, ID 2664.

*Single can lie is for 1.2Bn capacity so would require minimum 600M can volume before entry into market with growth potential to fill volumes and run efficiently.*⁶²⁵

- (548) As a competitor put it, *'[a]s beverage can making industry is very capital intensive, building new production capacity or considerably extending existing production lines is very risky. Thus, to some extent customers commitments are a necessary – but not a sufficient – factor in reaching a positive investment decision. It should be remembered that investing in new capacity always requires a positive business case for such an investment.*⁶²⁶ The same competitor also confirmed the necessity of both a minimum capacity commitment as well as a minimum duration of the contract: *'[p]rovided that the other requirements are met, CP would require a volume commitment of at least [...] of the total capacity of a new investment contracted by single customer for a duration of [...] years or a commitment of at least [...] of total capacity from several customers to initiate the investment.*⁶²⁷
- (549) As regards duration, a short-term commitment would not be sufficient for such an investment. As a competitor explained, *'[it] does not make investments in exchange for short-term commitment (1 year contracts) because it does not provide the necessary certainty that the investments will pay off.*⁶²⁸
- (550) One major customer explained that *'[f]or greenfield operations encouraged or initiated by [it], [it] usually commit[s] to purchase volumes for 5 years or longer.*⁶²⁹ Respondents to the market investigation explained that a minimum of 5-7 years is necessary for *'a supplier to gain a return on investment'*.⁶³⁰
- (551) The need for a new entrant to obtain a sufficiently large and long volume commitment before deciding to build a new plant is confirmed by the recent instances of expansion by the current players:
- Rexam's Fredericia plant in Denmark was sponsored by [...], whereby it contracted [...] % of its demand driven volume (approx. [...] billion cans per year) for a period of [...] years.⁶³¹
 - Before building its Finnish plant in Mäntsälä, Rexam obtained [...].⁶³² [...].⁶³³
 - [...] also sponsored Rexam's [...] plant in [...] in [...] and the addition of a new line at [...] in [...].⁶³⁴
 - Can-Pack's Scunthorpe plant, which initially had one line, was sponsored by Carlsberg via a long-term supply agreement.⁶³⁵ According to Can-Pack, the contract which facilitated Scunthorpe was *'signed for a [1-5-year] period, with an annual volume of [100-500 million cans].'* The building of the plant was also facilitated by contracts with

⁶²⁵ Questionnaire to Customers (Q1), question 88, ID 1609.

⁶²⁶ A competitor's non-confidential reply to RFI of 18.08.2015, ID 2874.

⁶²⁷ A competitor's non-confidential reply to RFI of 18.08.2015, ID 2874.

⁶²⁸ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

⁶²⁹ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 334.

⁶³⁰ Questionnaire to Customers (Q2), question 49, ID 2664.

⁶³¹ Questionnaire to Customers (Q1), question 74.3.1, ID 1609; Questionnaire to Customers (Q2), question 45.1, ID 2664.

⁶³² Reply to RFI 10 of 21.08.2015.

⁶³³ Reply to RFI 11 of 28.08.2015.

⁶³⁴ Form CO, Paragraph 1.31.

⁶³⁵ Form CO, Paragraph 6.207.

other 'selected' customers. These included a 'contract with [...] was concluded for a [1-5-year period] and a volume of [50 – 300 million cans] in each contractual year. Another contract was with [...] for a [1-5-year] period and [5 - 50 million cans] per year.'⁶³⁶

- The installation of a second line at Can-Pack's Scunthorpe plant in 2014 was sponsored⁶³⁷ by contracts with several customers: 'A [1-5-year] contract with [...] for [10 % - 50 %] of their volume requirement (estimated at 120 million cans annually) was concluded. Additionally CP entered into [1-5-year] contract with [...] for [100 – 500 million cans] annually.'⁶³⁸
- The extension at Can-Pack's Brzesko plant was facilitated by several customer contracts. According to Can-Pack these included a 'new [1-5-year] agreement with [...] as well as the extension of existing contracts with [...] for another [1-5 years]'.⁶³⁹
- Can-Pack's Finnish Hämeenlinna production facility was sponsored through a long-term supply agreement.⁶⁴⁰
- Crown's Slovak plant in Kechnec was built/expanded following volume commitments by Molson Coors⁶⁴¹ and by SAB Miller.⁶⁴² According to Crown, at least three customers contracted volumes in relation to the building of Kechnec's first line.⁶⁴³ The building of the second line also came about due to a contract with a customer.⁶⁴⁴
- Crown converted one of 4 lines in its Botcherby plant from running 44cl/50 cl cans to run 25 cl cans. According to Crown, this was necessary because of a new contract with a major customer due to its growing demand.⁶⁴⁵

(552) The need to have high long-term volume commitments from customers is in line with the fact that capacity utilisation needs to be high in order for a beverage can plant to be viable. This has been confirmed not only by competitors: '*Since manufacturing cans is a very volume sensitive business, the production line(s) need(s) to be as full as possible. It is necessary to run a can-plant 7 days a week 24 hours a day (and not just 5 days a week.*'⁶⁴⁶ '[C]apacity utilisation is a key element of a successful business strategy in this sector'⁶⁴⁷ but also by [...].⁶⁴⁸

⁶³⁶ A competitor's revised non-confidential reply to certain questions of the RFI of 18.08.2015, ID 3497. Form CO, Paragraph 6.442.

⁶³⁸ A competitor's revised non-confidential reply to certain questions of the RFI of 18.08.2015, ID 3497.

⁶³⁹ A competitor's revised non-confidential reply to certain questions of the RFI of 18.08.2015, ID 3497.

⁶⁴⁰ Form CO, Paragraph 6.415(iii).

⁶⁴¹ Questionnaire to Customers (Q1), question 89, ID 1609.

⁶⁴² Form CO, Paragraph 6.42.

⁶⁴³ 'The building of the first line in Kechnec in 2010 was associated with a [CONFIDENTIAL] year supply agreement between Crown and [CONFIDENTIAL] for approximately [CONFIDENTIAL]% of the output. We also agreed contracts with [CONFIDENTIAL] and [CONFIDENTIAL] which brought the contracted volume to approximately [CONFIDENTIAL]%. ' A competitor's non-confidential reply to RFI of 18.08.2015, ID 2537.

⁶⁴⁴ 'The second line in Kechnec came about due to a contract with [CONFIDENTIAL]. This contract had a term of [CONFIDENTIAL] years and was for approximately [CONFIDENTIAL]% of the output of the line.' A competitor's non-confidential reply to RFI of 18.08.2015, ID 2537.

⁶⁴⁵ Contrary to the Notifying Party's claim (Reply to the SO, paragraph 5.46.), Crown did not, however, build a second line at Carlisle in 2011: 'We did not build a second line in Carlisle in 2011. However, we did convert one of 4 lines in our Botcherby plant from running 44cl/50cl cans to run 25cl cans. This was necessary because we have a Global contract with [CONFIDENTIAL] for 100% of their can requirements, and their growing demand in UK for this size had exhausted our capacity.' A competitor's non-confidential reply to RFI of 18.08.2015, ID 2537.

⁶⁴⁶ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁶⁴⁷ Third party comments to the SO, ID 3451.

- (553) In the fourth place, smaller customers would be unable to 'sponsor' entry⁶⁴⁹ due to the fact that their low volumes would be insufficient to motivate an investment decision by a new entrant.⁶⁵⁰
- (554) In the fifth place, even large customers will have difficulties in sponsoring entry if their volumes (or indeed the estimated demand in the relevant geographic area) are insufficient: *'[major customer] has had discussions with Ball, [Can-Pack] and Crown concerning entry into Scandinavia but they did not lead to any concrete results – the three Scandinavian countries are very different with only Denmark having large enough market (from the perspective of can suppliers) to merit establishing a can plant. Sweden and Norway do not have sufficiently big markets and the commitment of [major customer] volumes would not have been sufficient to incite entry, a new entrant would need to find other customers as well and this could have been difficult.'*⁶⁵¹
- (555) In the sixth place, large customers are unlikely to offer other financial incentives to new suppliers in order to sponsor entry.⁶⁵² According to one customer, while it would *'consider working with a new entrant or existing supplier that is expanding[, they] would not provide financial investment.'*⁶⁵³ According to another customer, *'the investment costs are very high and the suppliers should have the financial strength themselves.'*⁶⁵⁴ Competitors also noted that *'[s]ponsored entries do not exist. [...] the can manufacturers still have the risks of the investment'*.⁶⁵⁵
- (556) In the seventh place, customers are also hesitant about sponsoring a fresh entrant in the EEA. Customers explained that *'[they] would need to be assured of that quality and service standards can be maintained and we would be conservative with regards to our exposure'*⁶⁵⁶ and *'there would be still significant challenges in identifying a credible supplier'*.⁶⁵⁷
- (557) In the eighth place, a large majority of customers indicated that they do not use the argument of sponsoring expansion or entry of new players in the commercial negotiations with beverage can manufacturers.⁶⁵⁸
- (558) In the ninth place, a certain degree of expertise and know-how is required to manufacture beverage cans efficiently. A competitor noted that *'[b]everage can-making is a highly engineered process with bespoke complex equipment and detailed operating procedures. Whilst any new entrant would be able to draw upon the expertise of equipment manufacturers during the initial install phase (at a cost), the running of a successful and efficient beverage can making facility requires a highly skilled workforce with significant ongoing technical support and input.'*⁶⁵⁹ It has been also added by the same competitor that can manufacturing needs *'[...]*

⁶⁴⁸ Reply to RFI 17 of 28.10.2015, [...], ID 3448: [...].

⁶⁴⁹ Questionnaire to Customers (Q1), question 89, ID 1609.

⁶⁵⁰ Questionnaire to Customers (Q1), question 74.3.1, ID 1609; *'[our] consumption of [c]ans is too small for such a strategy'* and Questionnaire to Customers (Q1), question 89.1, ID 1609: *'[our] total cans requirement is only 10-15% of the capacity of one can manufacturing line.'*

⁶⁵¹ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 334.

⁶⁵² Questionnaire to Customers (Q1), question 74.3, ID 1609.

⁶⁵³ Questionnaire to Customers (Q1), question 74.3.1, ID 1609.

⁶⁵⁴ Questionnaire to Customers (Q1), question 74.3.1, ID 1609.

⁶⁵⁵ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁶⁵⁶ Questionnaire to Customers (Q1), question 89.1, ID 1609.

⁶⁵⁷ Questionnaire to Customers (Q2), question 43.1, ID 2664.

⁶⁵⁸ Questionnaire to Customers (Q1), question 74.3, ID 1609.

⁶⁵⁹ A competitor's non-confidential reply to RFI of 15.06.2015, ID 1129.

*more know-how than a food can plant [...].*⁶⁶⁰ According to another competitor, *'a new market entry is unlikely as the market is very difficult for newcomers due to the fact that modern process technology (for instance for high speed lines), experience and know-how [...] are necessary to compete.*⁶⁶¹

- (559) Stolle Machinery, a well-established can plant machinery producer, also noted that *'[t]o enter the beverage can market, technological and industry-specific economical know-how is needed as well, as the industry is technologically well advanced in terms of light-gauging and production speed.*⁶⁶²
- (560) Third, it is questionable whether a new entrant with one plant and with one production line would have the necessary scale to compete efficiently. This is demonstrated in recitals (561) to (570).
- (561) In the first place, a majority of customers that responded to the market investigation considered that the minimum scale of a plant should include two production lines:⁶⁶³ *'A standard aluminium line produces approximately 750 million cans per year and generally can factories have two such lines.*⁶⁶⁴ As competitors also put it, *'[s]tarting a new plant with one line is possible, but two production lines are required for economic operation'*⁶⁶⁵ and *'[i]n general having more than one line is more efficient because it allows for a better spread of fixed costs.*⁶⁶⁶
- (562) This applies equally to EEA and non-EEA players. Respondents to the market investigation that expressed a view indicated that it is unlikely that a player currently not present would enter the EEA market within the next 3-5 years because of the need to enter with more than one plant.⁶⁶⁷ For instance a customer explained the difficulties to enter as follows: *'Entry from a supplier from Africa or Asia into the European market is highly unlikely. At least 3-4 plants would be needed to operate economically, as a certain scale and network are needed. To have a full coverage of Europe, at least 8-12 can-plants would be needed. Moreover, Asian can manufacturers are considered to produce under a lower standard. Also, the Asian and African markets have growth-potential, which is why suppliers not active in Europe would rather invest*

⁶⁶⁰ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁶⁶¹ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

⁶⁶² Agreed non-confidential minutes of a call with a supplier, 14.07.2015, ID 1403.

⁶⁶³ *'[I]n order to viably operate a can manufacturing facility, it is not sufficient to establish it with only 1 line'* A competitor's non-confidential reply to RFI of 15.06.2015, ID 2572; *'Investment cost, high volume requirement: +90% capacity utilization of 2 lines for scale which is approx. 1.2-1.6 Billion cans Investment cost for Rexam's plant in [...] was approximately [...] for a [...] line, [...] Billion can capacity plant.'* Questionnaire to Customers (Q1), question 88, ID 1609. See also agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065; Agreed non-confidential minutes of a call with a customer, 12.05.2015, ID 468; Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 331.

⁶⁶⁴ Agreed non-confidential minutes of a call with a customer, 08.05.2015, ID 298.

⁶⁶⁵ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁶⁶⁶ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

⁶⁶⁷ Questionnaire to Customers (Q2), questions 46 and 47, ID 2664. In fact, none of the respondents said that entry would be probable. See also Agreed non-confidential minutes of a call with a customer, 30.04.2015, ID 182: *'adding new capacity to the market is not straightforward and requires significant investment and time. Apart from the four main players already present in the market [customer] does not see any other can supplier who could enter the market.'*

in those regions.⁶⁶⁸ '[A]n original entry of a new beverage can supplier is not to be expected in the next 3-5 years due to considerable barriers to entry.'⁶⁶⁹

- (563) Scale also matters in obtaining good prices for the raw materials and spreading investments in R&D.
- (564) As regards raw materials, a competitor noted that '*[a] local player entering would have to make significant investments and may have to pay a higher price for metal. Some of the clients may not only be local and the large multi-national ones prefer to deal with large suppliers.*', '*[...] when entering this market, one needs to reach scale in order to purchase aluminium coil at competitive prices.*'⁶⁷⁰ A customer also noted that '*[i]f Rexam and Ball merge, they will be a very strong force on the market and they will be able to buy their raw materials at cheaper rates.*'⁶⁷¹
- (565) With regard to R&D, as stated by a competitor, '*[c]ertain investments in know-how and R&D are needed. For instance, with the recent change in regulation in France, R&D capacity was needed to quickly provide cans in line with the new requirements (BPA-free).*'⁶⁷² Moreover, this same competitor notes in relation to its R&D activities that '*[i]t would not be feasible for a player with only one plant to undertake such R&D activities.*'⁶⁷³
- (566) This is because scale allows the fixed costs of R&D to be spread over a larger volume. As a competitor explained, '*[g]iven that the costs of innovations are similar for all undertakings, the scale of a large competitor and thus the volume of products to which the innovation is applied allows for a faster and more secure return on its investment. This mechanism makes it easier for large undertakings to innovate than for smaller suppliers.*'⁶⁷⁴
- (567) In the second place, apart from scale, one production line cannot efficiently manufacture all the different types and sizes of cans required. As a competitor puts it, '*[i]t would be more difficult for a small player to deal with the proliferation of can sizes.*'⁶⁷⁵
- (568) This is because, as indicated in an internal Ball document, such a swing line would [...].⁶⁷⁶ Any new plant with just one production line would therefore most likely be limited to a few sizes of cans of one particular diameter. This was also confirmed by a competitor.⁶⁷⁷
- (569) In the third place, entry into the market with one production line is insufficient to compete effectively. The majority of large customers who expressed a view stated that it would be not sufficient for a newly build production facility to have only one line: '*it would make no sense economically for an existing supplier to build a production facility with only one line. In view of (i) the wide range of SKUs that are required by customers in the EEA markets; and (ii) the time and cost it entails to change production of specific SKUs, plants need at least two to three production lines to have a competitive cost base. This is also a reality in the market and is*

⁶⁶⁸ Agreed non-confidential minutes of a call with a customer, 12.05.2015, ID 468.

⁶⁶⁹ Questionnaire to Customers (Q2), question 46.1, ID 2664.

⁶⁷⁰ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁶⁷¹ Questionnaire to Customers (Q1), question 100.1, ID 1609.

⁶⁷² Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁶⁷³ A competitor's non-confidential reply to RFI of 18.08.2015, ID 2537.

⁶⁷⁴ Third party comments to the SO, ID 3451.

⁶⁷⁵ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁶⁷⁶ Ball's internal document, 'Minutes – Senior Management Team': [...].

⁶⁷⁷ '*Can-Pack usually calculates a total loss of up to one month in production time per year per line because of the conversion of lines in order to produce different can sizes.*' Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

*reflected in the general geographic footprint of existing suppliers in the EEA. None of the plants that have been built by existing suppliers over the last five years only have one production line.' 'Can production facility with only one line will be not flexible enough to meet customer needs of different beverage can sizes and types.' 'To have an efficient can plant a minimum of two production lines is necessary to spread the fixed costs over a larger amount of cans. This number is also acknowledged by the can industry.'*⁶⁷⁸

(570) In the fourth place, a majority of customers that responded to the market investigation indicated that it is important for a supplier to have more than one plant in Europe so as to be able to produce a wide range of can sizes and ensure security of supply.⁶⁷⁹ This was also confirmed by a competitor (*'[l]arge multi-national customers prefer to deal with large suppliers who have a presence in a number of countries / geographic regions'*⁶⁸⁰) and by [...] ⁶⁸¹)

(571) Fourth, the existence of high barriers to entry is confirmed by the fact that few new plants supplying the EEA have been built in the past three years and no major new entry is expected within the next 3-5 years, as also set out in recital (562).⁶⁸²

(572) Fifth, incentives for current can producers to build new plants are generally low:

*'Generally Ball, Rexam and Crown [...] have little interest in expanding capacities, because a high utilization rate is ideal to operate a can plant economically. Limiting capacity allows for higher margins.'*⁶⁸³

*'Although Ball and Rexam have sufficient production capacity, they are inflexible and focus on maintaining their margins. Ball and Rexam typically try to limit capacity.'*⁶⁸⁴

*'[Crown] has sufficient financial resources, [but] it will probably not expand, because they like the status quo with limited capacity and attractive margins.'*⁶⁸⁵

*'The example of Can-Pack, which started 25 years ago and has a market share of an estimated 13% today, shows that market entry is difficult. Can-Pack is the only player who succeeded to enter into the market on a long term basis in the past 25 years.'*⁶⁸⁶

(573) [...] As a competitor notes, *'Rexam [...] heavily investing in the production of slim cans in Austria and Switzerland [...] may lead to the closing [off] older facilities in other regions due to environment constraints and older equipment.'*⁶⁸⁷ *'Also [...] could deliver volumes now originating from the Berlin plant, which is due to close.'*⁶⁸⁸

⁶⁷⁸ Questionnaire to Customers (Q2), question 3, ID 2664.

⁶⁷⁹ Questionnaire to Customers (Q2), question 19, ID 2664; Questionnaire to Customers (Q4), question 10, ID 2786.

⁶⁸⁰ A competitor's non-confidential reply to RFI of 15.06.2015, ID 1129.

⁶⁸¹ See recital (427).

⁶⁸² Questionnaire to Customers (Q1), question 87, ID 1609. Questionnaire to Customers (Q2), question 46, ID 2664. See also Agreed non-confidential minutes of a call with a customer, 30.04.2015, ID 182: *'adding new capacity to the market is not straightforward and requires significant investment and time. Apart from the four main players already present in the market [customer] does not see any other can supplier who could enter the market.'*

⁶⁸³ Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 331.

⁶⁸⁴ Agreed non-confidential minutes of a call with a customer, 20.08.2015, ID 2496.

⁶⁸⁵ Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 331.

⁶⁸⁶ Agreed non-confidential minutes of a call with a customer, 19.05.2015, ID 1212.

⁶⁸⁷ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

⁶⁸⁸ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 334.

- (574) Rexam itself acknowledges in a public statement that *'the important thing is that the industry is very disciplined about keeping supply and demand in balance in the markets in which we operate.'*⁶⁸⁹ [...].
- (575) As for Can-Pack, apart from expansion in Sweden and Finland,⁶⁹⁰ it cannot be regarded as an actual or potential new entrant across the EEA. Can-Pack started supplying beverage cans in the EEA in 1994 (that is, more than 20 years ago), following which it expanded its footprint over a 20 year-period to five plants. Can-Pack has opened three plants in the EEA outside Poland and is otherwise focusing on expansion outside the EEA. Even Can-Pack describes *'[i]ts market entry in the UK [as] one of few positive examples of entries into an existing market.'*⁶⁹¹
- (576) There have also been several examples of failed attempts to enter,⁶⁹² including Can-Pack's failed attempt in 2014 to enter Spain.⁶⁹³
- (577) Sixth, it is doubtful whether the mere threat of entry constrains prices, as the Notifying Party claims. This is for a number of reasons. In the first place, the Notifying Party merely presents one example: Can-Pack's attempt to enter Spain. In the second place, it is unclear to what extent prices have been 'constrained' at a general level and not only for some large customers. In the third place, apart from Crown and Can-Pack, no other player can credibly envisage entry or expansion plans in the EEA. In the fourth place, it is also questionable whether any possible price reductions as a result of Can-Pack's failed plans in Spain would be maintained in the long term. As a large customer puts it, *'it is not clear whether, after this failed attempt, [confidential] would be able to come back to Spain in the future, leaving the incumbent players the opportunity to again raise prices at the next round of negotiations (in 3-4 years' time).'*⁶⁹⁴
- (578) Seventh, the new plant recently built by Helvetia highlights both the difficulties in entering the beverage can market in a manner that would enable a new entrant to exercise any meaningful competitive constraint on existing players and that the high entry barriers go beyond the mere building of the plant. This is for the reasons set out in recitals (579)-(584).
- (579) In the first place, Helvetia is only a small player with an initial capacity of 1.2 billion cans⁶⁹⁵, that is to say, 3 % of total EEA demand. Customers seriously question whether *'Helvetia will be able to make any meaningful change in the current competitive landscape.'*⁶⁹⁶ Essentially, Helvetia will not be an option for most customers: *'[...] the capacity will be only 1,2 Billion cans. No real competition [...] to Rexam and Ball.'*⁶⁹⁷ According to a large customer with

⁶⁸⁹ Rexam. Edited Transcript, REX L – Rexam PLC Investor. https://www.rexam.com/files/presentations/investorseminar1/investor_seminar_nov11_transcript.pdf. Last accessed on 28.09.2015, ID 3000.

⁶⁹⁰ Questionnaire to Customers (Q1), questions 86 and 87, ID 1609.

⁶⁹¹ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

⁶⁹² *'[Competitor] cites a few examples of failed entry: in 1997 Skoda with the Ejpovice plant (bankrupt after ca. 18 months since start, bought by Ball, later taken over by Rexam) and Rusal (Russian aluminium producer), the facility of which was also eventually bought by Rexam.'* Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

⁶⁹³ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

⁶⁹⁴ Agreed non-confidential minutes of a call with a customer, 02.09.2015, ID 2888.

⁶⁹⁵ *'Due to its insufficient capacity it would only be a suitable supplier for a few customers with high demands.'* (Courtesy translation from the German original: *'Die Anlagenkapazität ist viel zu gering und könnte nur wenige große Abnehmer von Dosen beliefern.'*); Questionnaire to Customers (Q1), question 90.1, ID 1609.

⁶⁹⁶ Agreed non-confidential minutes of a call with a customer, 12.05.2015, ID 468.

⁶⁹⁷ Questionnaire to Customers (Q1), question 90, ID 1609.

experience in the beverage industry, *'it is likely that in three years or less, the plant will either shut down or be bought by one of the major players. According to [this customer], the chances of a commercial success are very small.'*⁶⁹⁸

- (580) In the second place, Helvetia will produce only 33 cl and 50 cl standard cans, and not a full range of can sizes and types. For instance it will not produce sleek or slim cans.⁶⁹⁹
- (581) In the third place, as explained by one large customer, it is *'also unclear how Helvetia will deal with the question of can ends. Indeed, a can ends production facility is efficient at around 4 billion units a year, while Helvetia will produce only around 1 billion cans a year. Whether setting up an efficient scale of can end operation would be efficient, is questionable.'*⁷⁰⁰
- (582) In the fourth place, Helvetia's one plant operation cannot compete on equal footing with Ball and Rexam. As a customer pointed out *'Helvetia is not a credible entrant and will not be a credible competitor. The very little progress that Helvetia appears to have made since the announcement of its plans to build a new production facility strongly reinforces SABMiller's doubts that this potential supplier will succeed in establishing a viable business. In any event, in view of the fact that the competitive strength of a supplier will largely depend on the size of its network, it is clear that even assuming that Helvetia's plant becomes operational, it will not appreciably alter the competitive landscape or challenge any of the other can manufacturers. The merged entity would have more than ten times Helvetia's capacity and Helvetia will face significant obstacles because of its small size. In these circumstances it is not only unlikely but impossible that Helvetia would be an appreciable constraint for the merged entity in the near future.'*⁷⁰¹ And *'This new manufacturer will not increase competition. We don't expect a new reliable supplier. It seems to be a fake!'*⁷⁰²
- (583) In the fifth place, certain customers are sceptical as to the long-term viability and competitiveness of Helvetia, mainly due to the fact that it is a one-plant operation.

*'The experience with previous can mergers and remedies shows that a stand-alone plant like Helvetia will over time fail or be acquired by one of the larger players. And as long as it does not have any significant turnover this can even be done without any merger control review.'*⁷⁰³

*'[I]t is likely that in three years or less, the plant will either shut down or be bought by one of the major players. According to [customer], the chances of a commercial success are very small.'*⁷⁰⁴

*'[O]ne entrant with just one can plant has not enough scale to significantly influence the market.'*⁷⁰⁵

- (584) In the sixth place, customers would consider buying from Helvetia only under strict conditions; in particular with regard to required can sizes at the right quality and qualification for the

⁶⁹⁸ Agreed non-confidential minutes of a call with a customer, 18.08.2015, ID 2866.

⁶⁹⁹ Questionnaire to Customers (Q2), question 61.1, ID 2664. This was confirmed by Helvetia. A competitor's non-confidential reply to RFI of 28.07.2015, ID 1573.

⁷⁰⁰ Agreed non-confidential minutes of a meeting with a customer, 27.08.2015, ID 2982.

⁷⁰¹ Third party comments to the SO, ID 3424.

⁷⁰² Questionnaire to Customers (Q1), question 90.1, ID 1609.

⁷⁰³ Third party comments to the SO, ID 3424.

⁷⁰⁴ Agreed non-confidential minutes of a call with a customer, 18.08.2015, ID 2866.

⁷⁰⁵ Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 331.

customers' filling plants.⁷⁰⁶ As a customer puts it: *'It is still very unclear whether Helvetia will be able to produce cans of sufficient quality at a reasonable price.'*⁷⁰⁷ Another customer declares that, *'[i]n any event, [customer] would have to check the quality of Helvetia's production before contracting any volume.'*⁷⁰⁸ Although, as the Notifying Party pointed out, the majority of large customers stated that they would 'consider' buying cans from Helvetia, this would be only subject to various criteria relating to general terms and conditions, quality specifications, reliability and, etc..

*'If Helvetia was able to demonstrate the ability to meet CCE's requirements.'*⁷⁰⁹

*'SABMiller would be willing to purchase only very limited volumes of beverage cans from Helvetia only in case Helvetia would offer very low prices and overall very favourable conditions.'*⁷¹⁰

*'[W]e could consider purchasing from Helvetia, if they were competitive, produced the required can sizes at the right quality and qualification for our filling plants.'*⁷¹¹

- (585) Eighth, the large majority of customers do not consider Helvetia as a credible new entrant. This again highlights that the barriers to entry go far beyond the mere building of a plant. This is for the following reasons outlined in recitals (586)-(592).
- (586) In the first place, a majority of customers that responded to the market investigation were unaware of the existence of such a 'new entrant'.⁷¹²
- (587) In the second place, a majority of customers are neither in discussions to become a customer of Helvetia,⁷¹³ nor are they aware who Helvetia's clients or sponsor(s) are or could be.⁷¹⁴
- (588) In the third place, despite a press article⁷¹⁵ indicating that Helvetia will have two 'key customers'⁷¹⁶, a major beer and a major beverage producer, the Commission has been unable to identify a single purchaser of beverage cans that has, to date, already effectively contracted volumes with Helvetia:
- regarding the large beer producer mentioned in the article, it declared to the Commission that *'[i]f Rexam does [...], Helvetia or somebody else might be a commercial option for [the large beer producer]. This has to be evaluated though. In any event, [customer]'s volumes are now in general tied to contracts for the next 3-5 years'*⁷¹⁷ (emphasis added);
 - regarding the large soft drink manufacturer mentioned in the article, it denied being the customer in question.⁷¹⁸

⁷⁰⁶ Questionnaire to Customers (Q2), question 60.1, ID 2664.

⁷⁰⁷ Agreed non-confidential minutes of a meeting with a customer, 27.08.2015, ID 2982.

⁷⁰⁸ Agreed non-confidential minutes of a call with a customer, 26.08.2015, ID 2957.

⁷⁰⁹ Questionnaire to Customers (Q2), question 60.1, ID 2664.

⁷¹⁰ Questionnaire to Customers (Q2), question 60.1, ID 2664.

⁷¹¹ Questionnaire to Customers (Q2), question 60.1, ID 2664.

⁷¹² Questionnaire to Customers (Q1), question 87, ID 1609.

⁷¹³ Questionnaire to Customers, (Q2) question 55, ID 2664.

⁷¹⁴ Questionnaire to Customers, (Q2) question 57, ID 2664.

⁷¹⁵ The Canmaker, July 2015, 'Helvetia drinks can plant to be 'benchmark' in Europe'. Id:1448-5, Reply to the Article 6(1)(c) Decision, Annex 2.

⁷¹⁶ The Canmaker, July 2015, 'Helvetia drinks can plant to be 'benchmark' in Europe'. Id:1448-5, Reply to the Article 6(1)(c) Decision, Annex 2.

⁷¹⁷ Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2724.

⁷¹⁸ Email from customer of 16 July 2015, ID 1301.

- (589) In the fourth place, none of the respondents to the market investigation stated that they are in any way (that is to say ownership or sponsorship) involved with Helvetia.⁷¹⁹
- (590) In the fifth place, market participants have reservations with regard to purchasing cans from the Helvetia because of the lack of public knowledge about the owners of Helvetia:⁷²⁰ *'This new manufacturer will not increase competition. We don't expect a new reliable supplier. It seems to be a fake!'* *'To date, only little information exists about the "Project" Saarlouis. We know about a project under construction. Currently, we cannot [assess] whether this manufacturer can be a potential supplier for us.'*⁷²¹ *'According to rumours, the possible new entrant named Helvetia would be a self-manufacturing operation by a German brewery, based not far from Saarlouis, where Helvetia's plant is being built, although these rumours are not substantiated.'*⁷²² *'According to rumours that plant is financed by a group of (mostly financial) investors who over time bought breweries. Apparently the investors are experiencing problems with setting-up the plant, so that production will only be able to start by the end of 2015 or the beginning of 2016. Al[t]hough Can Pack does not have any knowledge of the owners' 'medium to long term strategic plans, market rumours suggest that the plant will likely be self-supplying those breweries owned by the investors and not selling on the market.'*⁷²³
- (591) The internal documents of the Parties also show that they are not sure who the real owner of Helvetia is. They have diverging opinions on who could be the owners. Ball was confident that the owner *'is [...]*'.⁷²⁴ On the other hand, Rexam believed that the owner *'is a [...]*'.⁷²⁵
- (592) This confusion and secrecy about the owners of Helvetia is perceived by market participants as a valid reason against contracting with Helvetia:

*'The fact that the identity of the final owners of Helvetia is kept secret is a problem for [customer]. Indeed, in the event that the owner is a competitor of [customer], [customer] runs the risks of committing a certain volume and then of not being adequately supplied by Helvetia.'*⁷²⁶

⁷¹⁹ See Questionnaire to Customers (Q2), question 56, ID 2664 for sponsorship. See Questionnaire to Customers (Q2), questions 62 and 63, ID 2664 for contracting. The three large customers that have contacted Helvetia or have been contacted by Helvetia have respectively declared on the subject: *'[contracting with Helvetia] has to be evaluated though. In any event, [customer]'s volumes are now in general tied to contracts for the next 3-5 years, and in Poland next 3-7 years.'* Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2724. As late as 22 May 2015, *'no one ha[d] reached out to [customer] about the possibility to supply cans from there.'* Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 226. *'It is still very unclear whether Helvetia will be able to produce cans of sufficient quality at a reasonable price.'* Agreed non-confidential minutes of a meeting with a customer, 27.08.2015, ID 2982.

⁷²⁰ Helvetia did not disclose information about the identity of its owners in response to a request for information sent pursuant to Article 11(2) of the Merger Regulation. RFI of 28.08.2015, ID 2694.

⁷²¹ Courtesy translation from the German original *'Bezüglich des "Projektes" Saarlouis ist bisher wenig bekannt. Wir wissen von einem im Bau befindlichen Projekt. Ob dieser Hersteller für uns ein potentieller Lieferant sein kann, können wir derzeit nicht einschätzen.'* Questionnaire to Customers (Q1), question 90.1, ID 1609.

⁷²² Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁷²³ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

⁷²⁴ Ball's internal email of 22 December 2014 from Dirk Schoenberger to Frank Weekers, Subject: 'Re: information', ID 1748-8316.

⁷²⁵ Rexam's internal email of 30 October 2014 'Re: Rexam Key Customers and Competitors', ID 1750-15523.

⁷²⁶ Agreed non-confidential minutes of a call with a customer, 26.08.2015, ID 2957.

*'It is unclear who Helvetia's shareholder is, but most likely this shareholder will get most of the can volumes. Therefore [customer] does not really consider Helvetia as a competitor for its volumes.'*⁷²⁷

*'For [large customer] such obscurity is not acceptable, as trust and understanding the strategy of the supplier is crucial. [large customer]'s products are consumer goods and [large customer] must be able to tell its customers and consumers from whom their materials are sourced from.'*⁷²⁸

- (593) Ninth, the existence of high barriers to entry is confirmed by the fact that non-EEA beverage can manufacturers do not envisage starting to supply beverage cans in the EEA within the next 3-5 years.⁷²⁹
- Nampak, a beverage can manufacturer from Africa, has acknowledged that it has limited knowledge of the European can market and *'no plan to enter any EEA countries within the next 24 months.'*⁷³⁰
 - GZI Industries, another African beverage can manufacturer *'also has no plans to enter the EEA beverage can market.'*⁷³¹
- (594) There seem to be a number of reasons why non-EEA beverage can manufacturers do not envisage starting to supply beverage cans in the EEA within the next 3-5 years.
- (595) In the first place, emerging markets are considered by market participants as having a higher growth potential: *'the European market is rather stable and therefore probably less interesting to invest in that in emerging countries where demand for beverage cans grows much faster.'*⁷³²
- (596) In the second place, certain technical agreements limit the ability of non-EEA beverage can manufacturers to use the technology they are currently using in territories outside the EEA within the EEA: *'Besides, some players have technical license agreements with one of the three can players. These agreements prevent them from competing with each other. Such an agreement exists between [Nampak] and Crown or between [...] and [...].'*⁷³³
- (597) In the third place, the technical capability of non-EEA players to meet European standards without technical support from the incumbents was also questioned: *'[customer] does not consider that either Nampa[c]k or other can suppliers from outside of EU (for instance Australian players) could enter the EU. There is no more space for a new supplier in the European market. Also Nampa[j]k's technical capabilities are not necessarily up to the required standard.'*⁷³⁴ *'[A] new player needs technical support and it is unlikely that the global players*

⁷²⁷ Agreed non-confidential minutes of a call with a customer, 27.08.2015, ID 2716.

⁷²⁸ Agreed non-confidential minutes of a call with a customer, 18.08.2015, ID 2866.

⁷²⁹ Questionnaire to Customers (Q2), questions 46 and 47, ID 2664. See also agreed non-confidential minutes of a call with a customer, 30.04.2015, ID 182: *'adding new capacity to the market is not straightforward and requires significant investment and time. Apart from the four main players already present in the market [customer] does not see any other can supplier who could enter the market.'*

⁷³⁰ Email from Nampak, ID 634.

⁷³¹ Email from GZI, ID 593.

⁷³² Questionnaire to Customers (Q1), question 88, ID 1609; *'it seems to [customer] that since Europe has mature can markets, investment/entry is more likely to happen in Asia, Africa, Latin America.'*, Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 157.

⁷³³ Agreed non-confidential minutes of a call with a customer, 12.05.2015, ID 468.

⁷³⁴ Agreed non-confidential minutes of a call with a customer, 28.04.2015, ID 164.

*(Crown, Rexam & Ball) would conclude a technical license agreements with a new player in Europe, as this player would compete with them.*⁷³⁵

- (598) Tenth, there seems to be various mechanisms by which the Parties would have the ability and incentive to make the expansion of smaller firms and potential competitors more difficult. For example, given that the merged entity would be the only one in the market able to supply large volume orders to multiple major customers, it could threaten to increase the price of volumes or stop delivering the volumes the customer cannot get from another supplier if the customer were to consider committing volumes to support a new entrant. In a capacity-constrained industry where spare capacity is limited and old capacity is closed down when new capacity is built, this type of behaviour may well discourage customers from committing volumes to support entry or expansion.

9.1.16. *Insufficient countervailing buyer power*

9.1.16.1. The Notifying Party's views

- (599) According to the Notifying Party, there are a number of powerful and sophisticated customers, who can, and already do, exert countervailing buyer power.
- (600) First, those customers regularly use tenders and could switch volumes not only between competing beverage can manufacturers but also for other forms of packaging such as glass bottles, PET bottles and cartons. Losing a proportion of volumes from a large customer to a competitor can have a serious impact on plant economics since, for example, the top two customers at each of Ball's plants which make sales into the EEA on average account for over [...] % of the plant's annual volume sales. For Rexam, the equivalent figure is over [...] %.⁷³⁶
- (601) Second, customers can choose to self-supply a proportion of their packaging requirements. The Notifying Party has provided one example of self-supply in the EEA: the Polish brewer Van Pur produces its own cans from its affiliated BagPak plant in Stalowa Wola in Poland. The Notifying Party also points to the fact that as some of the Parties' customers have in-house production for other types of packaging, they could also do the same for beverage cans.⁷³⁷
- (602) Third, customers can sponsor entry and expansion. The Notifying Party has provided a number of examples which allegedly show sponsoring entry by beverage producers. These include: (i) Carlsberg sponsoring Can-Pack to build plants in the UK and Finland; (ii) Red Bull sponsoring Rexam to build a plant at [...] in [...] in [...] and the addition of new line at [...] in 2013; and (iii) Helvetia's entry at Saarlouis, Germany.⁷³⁸
- (603) Moreover, even if only large customers were able to exert some of these threats (namely sponsored entry and self-supply), the Notifying Party asserts that other customers also benefit indirectly since any new entry or expansion increases the available capacity in the market for all customers.⁷³⁹
- (604) The Notifying Party also submits that both Ball and Rexam are heavily dependent on orders from large customers and therefore customers exert buyer power by threatening to switch. For

⁷³⁵ Questionnaire to Customers (Q1), question 87.1, ID 1609.

⁷³⁶ Form CO, paragraph 6.33 and Reply to the SO, paragraph 5.58.

⁷³⁷ Form CO, paragraph 6.48.

⁷³⁸ Form CO, Paragraph 1.31.

⁷³⁹ Reply to the Article 6(1)(c) Decision, 4.132.

example, the top two customer groups at each of Ball's EEA plants on average account for over [...] % of the plant's annual volume sales. For Rexam the equivalent figure is over [...] %.⁷⁴⁰

- (605) The Notifying Party further argues that the beneficial commercial terms that customers negotiate with the Parties are indicative of buyer power. For example as regards [...].⁷⁴¹
- (606) As for small customers, although in general they have smaller volume requirements and shorter contract terms, the Notifying Party submits that they are often able to buy opportunistically where suppliers need to fill capacity at a specific plant in their region. This flexibility of small customers can be used to impose a degree of buyer power on their suppliers.⁷⁴²

9.1.16.2. The Commission's assessment

- (607) The Commission has reached the conclusion that even large customers are currently unable to exert sufficient countervailing buyer power and that this would not change post-Transaction.
- (608) Moreover, even if certain large customers were able to exert a degree of buyer power,⁷⁴³ this is not the case for the many smaller customers⁷⁴⁴ that represent 22 % of demand.⁷⁴⁵ As a customer put it, *'the can manufacturers deal with many smaller customers who have very limited countervailing power towards the can manufacturers.'*⁷⁴⁶
- (609) There are a number of reasons why large customers are currently unable to exert countervailing buyer power.
- (610) First, the scale and geographic footprint of the Parties gives them a degree of market power over large customers. As one internal Ball document explains: *'[...]'*⁷⁴⁷
- (611) Second, tight capacity⁷⁴⁸ makes switching or the threat of switching difficult or even impossible. As a large customer points out *'Capacity is tight in the industry, especially during the high season, and therefore suppliers exercise a high power over their customers.'*⁷⁴⁹ *'In general, it can be said that customers compete with each other for large capacities from the suppliers.'*⁷⁵⁰ *'In a way, customers have to compete for the capacity of the can manufacturers.'*⁷⁵¹ A smaller customer also underlines that *'[c]urrently [customer] must "fight" to obtain its can supplies due to the strong demand in the market. The main suppliers do not have available capacity.'*⁷⁵²

⁷⁴⁰ Reply to the SO, paragraph 5.58.

⁷⁴¹ Reply to the SO, paragraph 5.61.

⁷⁴² Reply to the SO, paragraph 5.68.

⁷⁴³ Coca-Cola's demand, for instance, represented 20-25 % of the total EEA demand. Moreover, the five and ten largest customers (Coca Cola (all four subsidiaries together), Heineken, Carlsberg, Red Bull, Sab, Pepsi Co, AB Inbev, Bavaria, Mahou and Coors) demand account for 52 % and 64 % of EEA demand respectively. See Form CO, Annex 21 and Reply to Article 6(1)(c) Decision, Annex 5.

⁷⁴⁴ Customers with an annual demand lower than 600 million cans.

⁷⁴⁵ Besides its large customers, the Parties have a total number of customers of over [...] (Ball) and over [...] (Rexam) in 2014. See Form CO, Annex 28.

⁷⁴⁶ Questionnaire to Customers (Q1), question 57, ID 1609.

⁷⁴⁷ See Ball's internal email of 30 June 2014 from [...] to [...] and [...], Subject: [...].

⁷⁴⁸ See section 9.1.9.

⁷⁴⁹ Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 331.

⁷⁵⁰ Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2724.

⁷⁵¹ Agreed non-confidential minutes of a meeting with a customer, 31.08.2015, ID 2961.

⁷⁵² Courtesy translation from the Italian original: *'Attualmente [cliente] deve "combattere" per ottenere le forniture di lattine a causa della forte domanda. I principali fornitori di lattine non hanno capacità disponibile.'* Agreed non-confidential minutes of a call with a customer, 07.08.2015, ID 2524.

- (612) Third, while many large customers would like to source can bodies and can ends separately in the EEA (like they do in other parts of the world), the beverage can manufacturers do not allow this: *'Already today both Ball and Rexam have significant market power. This is shown, among others, by the fact that they both are able to bundle can ends and can bodies.'*⁷⁵³ *'Can ends travel much more easily than can bodies and are all based on the same standard. Can ends from one producer are compatible with can bodies with another producer. Can ends are essentially a commodity product. For this reason, [large customer] constantly asks can manufacturers to quote separately for can bodies and can ends, but the can manufacturers have always refused to do so. The invoice price billed by the manufacturers for can ends is fictitious; they are intentionally not transparent on this price in order to increase their bargaining power. If beverage manufacturers were able to tender for can ends and can bodies separately they would be able to receive quotations from other can end manufacturers (given that can ends can travel further), and get lower prices overall.'*⁷⁵⁴ Another large customer explains that *'[c]an suppliers refuse to treat can ends separately from can bodies in Europe. For instance [one can manufacturer] has can ends production in France but did not quote for all volumes in France, because can bodies are sold only together with ends. [Large customer] tenders can ends and bodies separately, but suppliers — refuse to negotiate bodies and ends separately.'*⁷⁵⁵
- (613) As explained by a competitor, *'[t]here are independent providers of can ends in the Middle East and in China'*.⁷⁵⁶ Another competitor states: *'Some [of its can ends] are imported from Crown's US operations. Since can ends are easily transportable and it is an open market, they are also sometimes imported from Saudi Arabia.'*⁷⁵⁷ Therefore, absent the current supplier power of the can manufacturers, customers might source their can ends separately from can bodies.
- (614) Indeed, customers also explain that sourcing can bodies and can ends separately is possible outside the EEA. For example, *'[i]t is possible to tender separately for cans and ends in some parts of the world like the US, Mexico and Canada.[...] Indeed, most lids are interchangeable provided that the diameter is the right one, so there is no technical limitation'*.⁷⁵⁸ *'Buying ends separately'* is also *'done for instance in Latin America.'*⁷⁵⁹ Another large customer notes that that it *'can actually buy bodies and ends separately in other markets, where [confidential] are not key players, for instance in the Middle East or in China.'*⁷⁶⁰ In essence, it seems that can ends and can bodies can be bought separately in certain areas of the world, but not in Europe.
- (615) The fact that large customers failed to convince the Parties to implement an approach in the EEA followed in other parts of the world suggests that even pre-Transaction, large customers do not possess the extent of buyer power claimed by the Notifying Party.

⁷⁵³ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 334.

⁷⁵⁴ Agreed non-confidential minutes of a meeting with a customer, 27.08.2015, ID 2982.

⁷⁵⁵ Agreed non-confidential minutes of a call with a customer, 02.09.2015, ID 2888.

⁷⁵⁶ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

⁷⁵⁷ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065.

⁷⁵⁸ Agreed non-confidential minutes of a meeting with a customer, 31.08.2015, ID 2961.

⁷⁵⁹ Agreed non-confidential minutes of a meeting with a customer, 27.08.2015, ID 2982.

⁷⁶⁰ Agreed non-confidential minutes of a call with a customer, 02.09.2015, ID 2888.

- (616) Fourth, suppliers can charge prices without giving detailed information on their costs to large customers. The prices of beverage can manufacturers consist of three major elements:
- The raw material cost (aluminium) which is linked to the LME⁷⁶¹;
 - Conversion costs, which is the actual cost of manufacturing the product; and
 - Transport costs.
- (617) Large customers explained, however, that beverage can manufacturers are not willing to present all those cost elements in a clear manner. One major customer *'would want to have more transparency on the cost of aluminium coil, as today this is hidden within "conversion cost". [...] None of the can suppliers are willing to open up the conversion "black box".'*⁷⁶² *'The can manufacturers pricing is not transparent, especially not as regards the purchasing-process of raw materials.'*⁷⁶³ *'There have been several vain attempts to gain more price transparency in the EEA. A remarkable example is that whereas Rexam Europe does not disclose LME premiums used in price calculation models, Rexam South America does.'*⁷⁶⁴ For others, *'[o]nly the aluminium part is specified separately'*.⁷⁶⁵
- (618) Fifth, while [...] ⁷⁶⁶ [...]⁷⁶⁷, [...] ⁷⁶⁸.
- (619) Regarding Ball, email exchanges between Ball's employees from 2014 show how it [...].
 '[...]'⁷⁶⁹
- (620) Regarding Rexam, in 2014, it was still '[...]'.⁷⁷⁰ In addition Rexam's CEO explained that [...].⁷⁷¹
- (621) Sixth, according to a customer, the bargaining strength of beverage can manufacturers is reflected in their ability to impose minimum volume purchases.⁷⁷²

⁷⁶¹ The London Metal Exchange ('LME') is the main centre for industrial metals trading, including aluminium. *'90% of the world's aluminium futures business is conducted on the LME'*. See <https://www.lme.com/> (Last accessed 28.09.2015). Two components of the aluminium price can typically be distinguished: the aluminium price and the premium. Agreed non-confidential minutes of a call with a packaging manufacturer, 28.05.2015, ID 311.

⁷⁶² Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 334.

⁷⁶³ Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 226.

⁷⁶⁴ Questionnaire to customers (Q1), question 79.1, ID 1609.

⁷⁶⁵ Questionnaire to customers (Q1), question 79.1, ID 1609.

⁷⁶⁶ Under a soft tolling agreement, customers purchase aluminium themselves and the beverage can manufactures are merely 'converters'. *'In the North-American market self-supply as well as [soft tolling] is much more common than in Europe.'* Agreed non-confidential minutes of a call with a supplier, 13.05.2015, ID 1163. As explained by another aluminium supplier, this is partly due to the fact that *'in Europe can manufacturers are stronger and they have strong negotiation power vis-à-vis their aluminium suppliers.'* Agreed non-confidential minutes of a call with a supplier, 18.05.2015, ID 1199.

⁷⁶⁷ [...]. Reply to RFI 14 of 11.09.2015, question 5. See also Reply to the SO, paragraph 5.61.

⁷⁶⁸ Rexam's internal document, 'Coca Cola global tender: [...] analysis'; and Ball internal email from [...] to [...], Subject: 'RE: [...]'.
⁷⁶⁹ Rexam's internal email of 17 July 2014 from [...] to [...], [...], [...], [...], Subject: 'Response to [...]'

⁷⁷⁰ Rexam's internal document '[...]'.
⁷⁷¹ Reply to RFI 17 of 28.10.2015, [...], ID 3448: '[...]'

⁷⁷² *'Of course there are always can types with some overcapacity and others are very tight. We try to use this as an argument in our advantage, but the can manufacturers do this even stronger in their advantage. Since they know which volumes and types we use they require us to purchase minimum volumes of one type to receive a certain volume of a can type that is tight in supply capacity.'* Questionnaire to Customers (Q1), question 74.4.1, ID 1609.

- (622) Seventh, the relative transparency of the beverage can market with regards to capacity, planned capacity, who provides which volumes to which customer⁷⁷³ and expansion plans of competitors is also liable to limit buyer power.⁷⁷⁴
- (623) Eighth, not only do customers not self-supply in the EEA,⁷⁷⁵ the overwhelming majority of customers have not even considered starting in-house can production⁷⁷⁶ and thus will not start self-supplying cans in the EEA over the next 5 years.⁷⁷⁷ This is for a number of reasons, as demonstrated in recitals (624) to (640).
- (624) In the first place, customers consider that the investment required to start self-manufacturing beverage cans is high: *'The barriers to entry into beverage can manufacturing are very high, as this is a capital intensive business, with large long term investment required. We would not consider starting to produce beverage cans in-house.'*⁷⁷⁸ Customers also highlighted that apart from a can body line, they would also have to invest in a can end line. See for example section 9.2 below where it is explained how this could be a problem for Helvetia.
- (625) In the second place, as discussed in section 9.1.15 above, setting up a new beverage can manufacturing operation requires a considerable lead time. The majority of customers responding to the market investigation stated that it would take a beverage manufacturer (from the moment when it would take the business decision to do so) more than a year to be able to start producing beverage cans for self-supply.⁷⁷⁹ In addition, adapting an existing business organisation to be able to start producing beverage cans for self-supply is considered to be too high/unbearable a cost for the majority of customers.⁷⁸⁰

⁷⁷³ Ball's internal document 'Key Account Beer Strategies', slides 2-9; Rexam's internal document 'BCE Strategic Plan 2015-2017', slides 29 and 30; Rexam's internal document 'Carlsberg Global Key Account Plan', slide 14; Rexam's internal document 'Coca Cola Global Key Account Plan', slide 23.

⁷⁷⁴ Form CO, Paragraphs 6.73, 6.220, 6.253 and 6.435; Ball's internal document 'BPE Strategic Plan 2014-2016', slides 51; Rexam's internal document 'Strategic Plan 2013-2015 BCE&A – BCE pack', slides 37-41; Rexam's internal document 'BCE Strategic Plan 2014-2016', slides 46-51; Rexam's internal document 'Can Pack Review', slides 19, 20; Rexam's internal document 'Capital Expenditure Request - Supplementary Questions', p. 5 and 6.

⁷⁷⁵ Questionnaire to Customers (Q1), question 91, ID 1609.

⁷⁷⁶ Questionnaire to Customers (Q1), questions 92 and 93, ID 1609. With the exception of Polish brewer Van Pur as indicated in recital (601).

⁷⁷⁷ Questionnaire to Customers (Q2), question 7, ID 2664.

⁷⁷⁸ Questionnaire to Customers (Q1), question 74.1.1, ID 1609. And also *'[f]or Europe, this is an unlikely strategy due to high capital costs and due to availability of cans at competitive prices.'* Questionnaire to Customers (Q1), question 74.1.1, ID 1609. *'Self-supply is not a viable business option for [customer]. Besides that it is not [customer]'s core competence, [customer] would like to give priority to investments in their own core business, [...]'* Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 331.

⁷⁷⁹ Questionnaire to Customers (Q1), question 94, ID 1609.

⁷⁸⁰ Questionnaire to Customers (Q1), question 93, ID 1609.

(626) In the third place, customers consider they have insufficient demand of cans for an efficient scale. Customers, even large ones, agree that self-supply needs a critical volume. The minimum annual can demand from which customers consider it could potentially make sense to start self-supplying is 600 million cans. As a major beverage can equipment manufacturer puts it: *'The possibility to self-supply is to a great extent a question of volume. One needs volume for being efficient. With a demand of 500 million cans annually, a self-supplying operation is economically not justifiable.'*⁷⁸¹

*'[Self-supply] only applicable for more than 1-2 bn cans p.a.'*⁷⁸²

*'Our can volumes are too small to manufacture in-house.'*⁷⁸³

*'We will not produce cans on our own as the volume of cans we use is not cost efficient for such production.'*⁷⁸⁴

Small customers state: *'Our total can demand is only 10-15% of the capacity of a can manufacturing line.'*⁷⁸⁵

*'Our volumes per plant and in total are not sufficient to consider self supply.'*⁷⁸⁶

*'[Small customer] has never considered starting its own cans production line, it does not have a sufficient volume nor the required financial capacities to do so.'*⁷⁸⁷

(627) In the fourth place, it is questionable whether EEA customers are able to self-supply. One competitor explained that it does not believe that customers can credibly threaten starting in-house beverage can production due to the complexity of the can business.⁷⁸⁸ Similarly, a supplier of the Parties stated that it did *'not believe that self-manufacturing of cans or soft tolling by beverage manufacturers in Europe will really happen. In contrast to the North-American market, self-supplying of beverage cans is not a viable option for beverage manufacturers because in Europe can manufacturers are stronger'*.⁷⁸⁹ This supplier also explained that *'[in] Europe, [it] has not been approached by beverage manufacturers and beverage fillers in order to assess the possibility of them purchasing aluminium to self-produce beverage cans.'*⁷⁹⁰

(628) In the fifth place, the proliferation of can types and sizes means that customers are unlikely to be able to satisfy all their can needs via in-house production. As a customer explains setting up a can plant for self-supply *'is not a viable option for [customer], because it will not provide the necessary certainty of enough stocks for high season, and would not provide the various can sizes/SKUs needed.'*⁷⁹¹ *'For [another large customer] self-manufacturing is not an option, since*

⁷⁸¹ Agreed non-confidential minutes of a call with a supplier, 14.07.2015, ID 1403.

⁷⁸² Questionnaire to Customers (Q1), question 74.1.1, ID 1609.

⁷⁸³ Questionnaire to Customers (Q1), question 74.1.1, ID 1609.

⁷⁸⁴ Questionnaire to Customers (Q1), question 74.1.1, ID 1609.

⁷⁸⁵ Questionnaire to Customers (Q1), question 91.1, ID 1609.

⁷⁸⁶ Questionnaire to Customers (Q1), question 91.1, ID 1609.

⁷⁸⁷ Courtesy translation from the French original: *'[customer] n'a jamais envisagé de monter elle-même sa propre ligne de production de canettes, elle n'a ni le volume suffisant ni les moyens financiers nécessaires.'* Agreed non-confidential minutes of a call with a customer, 12.08.2015, ID 1800.

⁷⁸⁸ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261 and a competitor's non-confidential reply to RFI of 15.06.2015, ID 2572.

⁷⁸⁹ Agreed non-confidential minutes of a call with a supplier, 18.05.2015, ID 1199.

⁷⁹⁰ Agreed non-confidential minutes of a call with a supplier, 18.05.2015, ID 1199.

⁷⁹¹ Agreed non-confidential minutes of a call with a customer, 19.05.2015, ID 1212.

*they would have to produce 4-5 different formats and one factory would be too small a scale.*⁷⁹²

- (629) In the sixth place, self-supply would be less cost-efficient as customers would encounter disadvantages when purchasing the raw materials. As customers put it:

*'Building one can line requires an investment of approximately USD 80 million. But to create an efficient can plant is much more expensive and it may last 3-4 years to have it running at most optimal level. Can plant is technologically complex and constructing an efficient line necessitates good [synchronization] of its consecutive elements (body makers, cutters, washers etc.) and adjustment of their output so that the total output is most efficient. Also the operating workers need to be trained properly.'*⁷⁹³

*'Can making is a capital intensive business (estimated EUR 60 million to be invested in a plant), thus only the largest breweries (Carlsberg, Heineken, ABI) could maybe consider [self-supply]. Even they would still be at a great disadvantage as compared to can manufacturers in particular when it comes to purchasing of raw materials.'*⁷⁹⁴

- (630) Van Pur, the only customer which is also self-manufacturing beverage cans in Europe,⁷⁹⁵ acknowledged the challenges linked to its small scale.⁷⁹⁶ It also stated *'its scale is not sufficient for hedging'*⁷⁹⁷

- (631) In the seventh place, self-supply may be unworkable for large customers (those which would potentially have the necessary minimum demand for a can making operation) as their demand is often split between different geographic areas in the EEA: *'[i]n house production is not realistic with the volumes we require, in particular because our demand is divided over five different locations.'*⁷⁹⁸ *'Moreover, several countries must be served and transportation distances between the filling plants are too long.'*⁷⁹⁹

⁷⁹² Agreed non-confidential minutes of a call with a customer, 23.04.2015, ID 129.

⁷⁹³ Courtesy translation from the Polish original: *'Budowa jednej linii produkującej puszki to wydatek rzędu \$ 80 milionów. Jednak budowa efektywnej fabryki jest znacznie droższa, a osiągnięcie satysfakcjonującej wydajności takie fabryki może potrwać 3-4 lata. Fabryka puszek jest technologicznie skomplikowana, konstrukcja efektywnej linii wymaga odpowiedniej synchronizacji poszczególnych jej elementów (pras, bodymakerów, trymerów, myjek etc.), dostosowania ich wydajności tak aby tworzyły najbardziej optymalną całość, przeszkolenia obsługujących ją pracowników etc.'* Agreed non-confidential minutes of a call with a customer, 07.05.2015, ID 326. *'No because we don't have the Money to invest. We don't have the know-how to do this. Our can volume is too small to do this'*. Questionnaire to Customers (Q1), question 74.4.1. ID 1609. *'Our can volumes are too small to manufacture in-house'*. Questionnaire to Customers (Q1), question 74.4.1 ID 1609.

⁷⁹⁴ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 157.

⁷⁹⁵ Van Pur sells in 50 countries in Europe. <http://www.vanpur.com/> Last accessed on 12.09.2015, ID 3004.

⁷⁹⁶ *'Działalność [BagPak] napotyka różne wyzwania – z uwagi na jej mniejszą skalę w porównaniu do innych producentów puszek [BagPak] nie ma możliwości porównywalnej dystrybucji i pokrywania kosztów, jest też mniej elastyczny niż inni.'* Courtesy English translation: *'Can production of [BagPak] meets various challenges - due to its smaller scale, [BagPak] is not able to spread and cover its costs in a comparable manner to the other can producers, it is also less flexible.'* Agreed non-confidential minutes of a call with a customer, 08.05.2015, ID 298.

⁷⁹⁷ Courtesy translation from the Polish original: *'gdyż nie dysponuje wystarczającą skalą'*. Agreed non-confidential minutes of a call with a customer, 08.05.2015, ID 298.

⁷⁹⁸ Questionnaire to Customers (Q1), question 74.4.1, ID 1609.

⁷⁹⁹ Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 331.

(632) In the eighth place, beverage producers prefer to focus on their core business and not invest capital in such vertical integration.⁸⁰⁰

'We focus on our core business not producing packaging'; 'Self Manufacturing of cans is not a competence of CCE'.⁸⁰¹

'That represents a different type of investment compared to our main activity.' 'No self-supply due to high investment costs and lack of in house capabilities due to the fact that producing cans is not a core activity. [Customer] is a beverage company not a packaging company.'⁸⁰²

'Self-supply would only be possible after an investment of about EUR 100 million. [customer] prefers to invest in its core-business, the production of beer.'⁸⁰³

(633) In the ninth place, even if a customer were to consider self-supply, it would require the necessary know-how to develop such a business.⁸⁰⁴

'We don't have the [know-how] to do this.'⁸⁰⁵

'We do not have the [technology].'⁸⁰⁶

'To enter the beverage can market, technological and industry-specific economical know-how is needed as well, as the industry is technologically well advanced in terms of light-gauging and production speed.'⁸⁰⁷

(634) In the tenth place, self-supply appears to be less common in the EEA than in other parts of the world, notably in North America, China and the Middle East. As two of the Parties' main suppliers put it, *'[s]elf-supply appears to differ between regions, for instance it seems more common in the US, China and the Middle East than in Europe'⁸⁰⁸* and *'[i]n the North-American market self-supply as well as [soft tolling] is much more common than in Europe. Unlike Europe the Middle East has a strong interest in self-supply because upstream integration is much more common in the Middle East, where beverage manufacturers seem to appreciate the control and autonomy resulting from vertical integration. In Europe the beverage manufacturers and beverage fillers chose a different business model, focusing on their core business, and rely on can manufacturers.'⁸⁰⁹*

(635) The reason mentioned for self-supply being more common in North America than in the EEA seems to be mainly the scale of beverage can demand: *'[T]he breweries in the US are "gigantic", for instance the one for which Molson Coors does [self-supply] is 3 times bigger than its biggest brewery in Europe.'⁸¹⁰* Both beverage can manufacturing and beverage filling plants are larger in the US than in Europe: *'On average, sales of one can plant amount to approximately 2-3 billion in the US and 1.5-2 billion in Europe (the smaller plants producing*

⁸⁰⁰ *'[Customer] focuses on its core competences'; 'Self Manufacturing of cans is not a competence of [customer]'; 'self-supply of beverage cans is not our core competence'. Questionnaire to Customers (Q1), question 91.1, ID 1609.*

⁸⁰¹ Questionnaire to Customers (Q1), question 74.4.1, ID 1609.

⁸⁰² Questionnaire to Customers (Q1), question 91.1, ID 1609.

⁸⁰³ Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 226.

⁸⁰⁴ Agreed non-confidential minutes of a call with a packaging manufacturer, 28.05.2015, ID 311.

⁸⁰⁵ Questionnaire to Customers (Q1), question 74.1.1, ID 1609.

⁸⁰⁶ Questionnaire to Customers (Q1), question 91.1, ID 1609.

⁸⁰⁷ Agreed non-confidential minutes of a call with a supplier, 14.07.2015, ID 1403.

⁸⁰⁸ Agreed non-confidential minutes of a call with a supplier, 14.07.2015, ID 1403.

⁸⁰⁹ Agreed non-confidential minutes of a call with a supplier, 13.05.2015, ID 1163.

⁸¹⁰ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 157.

0.9 billion cans and larger plants producing up to 3 billion cans per year).⁸¹¹ *'The specific nature of the European market makes self-supply even more implausible in Europe than in the US. In the US, scale of both breweries and can plants are much bigger.'*⁸¹²

- (636) Moreover, in the EEA, there is more demand for specialty cans for which self-supply is less obvious.⁸¹³ One large customer who self-supplies in the US but not in Europe explains that *'in Europe [it] has 14 different can types for a total volume of [1-2 billion] compared to the US where [it] has 6 types of cans for a total volume of [15-25 billion].'*⁸¹⁴ In addition, in the US, tolling agreements, whereby the beverage manufacturers buy the aluminium themselves and can producers are 'converters' are more common, and as such beverage manufacturers already have a commercial relations with aluminium suppliers and hence entry into can self-supply is easier: *'these companies have also so-called 'tolling' arrangements with can manufacturers and a commercial relation with aluminium suppliers.'*⁸¹⁵
- (637) In the eleventh place, even if there have been some examples of self-supply outside the EEA (and one smaller operation in the EEA, BagPak), there is a tendency for those self-supply operations for being phased out. Notably, the only company operating a small self-supply plant (BagPak) in the EEA, Van Pur, has tried to sell its facility: *'[BagPak] has tried to sell its facility in the past.'*⁸¹⁶ There is also evidence in [...].⁸¹⁷ According to a local Polish customer, Rexam was also *'intending to purchase the owner of BagPak, i.e. Van Pur brewery.'*⁸¹⁸
- (638) There also seems to be a trend towards the phasing-out of self-supply in North America: *'[v]ertical integration is a thing of the past, currently beverage manufacturers prefer to focus on and invest in their core business.'*
- (639) Examples include Heineken which sold parts of its Mexican can plant to Crown⁸¹⁹ and *'AB InBev [which] recently sold a significant part of the assets of its in-house can manufacturing operation – Metal Container Corporation – to Ball.'*⁸²⁰

'[T]he only self-supply beverage can operations in the USA are owned by AB InBev and by SABMiller indirectly via its Joint Venture with Molson Coors Brewing Company, MillerCoors. AB InBev attempted to divest these assets in the USA following InBev's acquisition of Anheuser-Busch in 2008. However, until today AB InBev has been only able to divest four of their 11 beverage can plants. MillerCoors manufactures a unique beverage can size [...] which is not available for commercial can makers in the USA.'

⁸¹¹ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

⁸¹² Agreed non-confidential minutes of a meeting with a customer, 27.08.2015, ID 2982.

⁸¹³ Questionnaire to Customers (Q2), question 8, ID 2664.

⁸¹⁴ Agreed non-confidential minutes of a meeting with a customer, 31.08.2015, ID 2961.

⁸¹⁵ Questionnaire to Customers (Q2), question 8, ID 2664.

⁸¹⁶ Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065. See also agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261: *'Moreover, [BagPak] has been trying to sell its business.'*

⁸¹⁷ Form CO, Attachment G, RFI 1, Exhibit H.30.

⁸¹⁸ Agreed non-confidential minutes of a call with a customer, 07.05.2015, ID 326.

⁸¹⁹ *'Recently Crown US acquired Heineken's Mexican can making operations. The likely rationale for selling this business is that can manufacturing is not Heineken's core business.'* Agreed non-confidential minutes of a meeting with a competitor, 13.05.2015, ID 1065. *'During an acquisition of Mexican breweries, [customer] also acquired a Mexican can-manufacturer (3 can plants). However, scale and know how are needed to operate efficiently. [...] [customer] recently divested the Mexican can-plant.'* Agreed non-confidential minutes of a call with a customer, 12.05.2015, ID 468.

⁸²⁰ Agreed non-confidential minutes of a meeting with a competitor, 05.05.2015, ID 261.

*Apart from this, SABMiller is aware of only one single other recent investment in a beverage can plant for self-supply purposes by a Coca-Cola bottler in Puerto Rico. However, this investment was required due to operating in a monopolistic supply market with a can maker who was unwilling to make up-dated investments and eventually closed its operation in Puerto Rico.*⁸²¹

- (640) In the twelfth place, the fact that some of the Parties' customers have in-house production of other types of packaging such as PET, does not mean that those same customers can start in-house production of beverage cans. The investment required for developing in-house production of PET bottles is several times lower than for cans: '*PET preform injection is a significantly less complex process and less capital intensive compared with can body manufacturing*'.⁸²²

9.2. Assessment of the Transaction in the relevant markets

9.2.1. Market shares and concentration indicators

- (641) In accordance with the relevant geographic markets as defined in section 7.1 and on the basis of the Parties' data, the Commission has calculated capacity and volume shares, and the corresponding concentration indicators, in two ways.
- (642) First, the Commission has calculated capacity and volume sales shares by beverage can manufacturer, for each of the customer-centred catchment areas.
- (643) The capacity shares in a given customer-centred catchment area have been calculated by considering all capacity located within 700 km of the respective customer filling location at the centre of the catchment area. The volume shares in a given customer-centred catchment area have been calculated by considering all sales made within 700 km of the respective customer filling location. The 700 km scenario is hereinafter referred to as the 'baseline' scenario, in line with the definition of the relevant geographic market adopted by the Commission.
- (644) The 700 km catchment area was calculated on the basis of travel distances ('driving distances'), using data provided by the Notifying Party.⁸²³ The Commission has also tested the robustness of this approach based on catchment areas around individual customer filling locations of longer (900 km) and shorter (500 km) distances.⁸²⁴
- (645) Second, the Commission has calculated aggregate measures of market shares and concentration effects for the clusters as defined in section 7.1. In particular, the Commission has calculated average capacity and volume shares, and the corresponding concentration indicators, in each regional cluster. The methodology for the computation of these average capacity and volume

⁸²¹ Questionnaire to Customers (Q2), question 8.2, ID 2664.

⁸²² Questionnaire to Customers (Q1), question 91.2, ID 1609.

⁸²³ In the SO, the capacity shares were already computed on the basis of travel distances, whilst the volume shares were computed by reference to catchment areas drawn on a straight line basis. The computation of volume shares using straight line distances was due to the lack of data required to compute them on the basis of travel distances. The length of the catchment area for the computation of volume shares was adjusted accordingly (a shorter distance was used). In its Reply to the SO, the Notifying Party provided to the Commission the necessary data to compute the volume shares also on the basis of travel distances, in line with the approach taken for the capacity shares.

⁸²⁴ The Commission tested the robustness of its approach on the basis of 500 km distances, in light of the Reply to the SO where the Notifying Party argued that catchment areas should be based on 500 km driving distances. For reasons that are set out in the section on the relevant geographic market (in particular in relation to the ability of manufactures to supply competitively over relatively long travel distances), the Commission places more weight on the 900 km robustness scenario than on the 500 km robustness scenario.

shares is explained below. The Commission has also computed conditional averages, describing the average market shares and concentration effects for those customers that are most affected by the Transaction in each regional cluster, in terms of concentration effects. The methodology used for the calculation of these average capacity and volumes share is also described below.

- (646) The average capacity share of each supplier in a given regional cluster is calculated by taking the weighted average share of that supplier in each of the catchment areas around individual customer filling locations located in that region, where the weights are given by the total sales made to the filling location at the centre of each catchment area. Average concentration indicators for each regional cluster are calculated in an analogous way, by aggregating the concentration levels in each catchment area, using as weights the volumes associated with each customer filling location. Average market shares and concentration indicators for the customers most affected by the Transaction in terms of concentration effects (see section 9.2.1.4) are based on the same methodology. The average volume shares in each regional cluster are calculated using the same method as the calculation of average capacity shares.
- (647) The Commission considers that the methodology used for the calculation of capacity/volume shares and concentration indicators in each regional cluster provides an appropriate reflection of local competitive conditions within a cluster, both for the average catchment area and for specific subsets of customers located within each regional cluster.
- (648) Regarding the methodology used for the calculation of average capacity/volume shares, the primary reason why this methodology provides a good measure of localised competitive conditions is that a beverage can manufacturer whose capacity is located closer to the main consumption centres in each regional cluster is given more weight than a beverage can manufacturer whose capacity is located further away from the main consumption centres. For example, a supplier whose production capacity is located within only one (or few) catchment area(s) in a given regional cluster will be given less weight in the market share calculation than a supplier that owns capacity that is centrally located within a regional cluster, and can therefore reach many of the catchment areas of that regional cluster. The Commission considers that this methodology captures local competition better than an alternative approach where all the capacity that is located within the regional cluster is given the same weight, despite the fact that some of this capacity may be located in a peripheral part of the regional cluster.⁸²⁵
- (649) The methodology also allows the Commission to capture any differences that may exist as regards the impact of the Transaction on customers within a regional cluster, due to the fact that: (i) the Parties may be geographically close competitors with respect to a specific sub-set of customers within a cluster; and (ii) transport costs and other advantages deriving from proximity play an important role in the competitive conditions faced by customers of the Parties within a cluster (see section 7.1). The Commission therefore considers that the capacity-based and volume-based concentration indicators constructed according to this methodology provide a valid proxy for closeness of competition between competitors within each regional cluster.

⁸²⁵ In its Reply to the SO, the Notifying Party did not contest the Commission's calculation of average market shares at the cluster level.

- (650) The capacities of the plants used in the computation of market shares and concentration indicators have been reported by the Parties and competitors.⁸²⁶ The Commission has used: (i) the capacity of all current plants located in the EEA, including Rexam's plants dedicated to [...] ⁸²⁷ and wall-to-wall plants; ⁸²⁸ (ii) the capacity of current plants located outside the EEA where those plants are located within the regional clusters; and (iii) capacities of can end plants were not included, as can bodies and ends are sold together in the EEA (see section 6.1.3); and (iv) the future capacity of the Widnau ([...] billion), [...] ([...] billion) and Saarlouis ([...] billion) plants as these plants have either recently become operational (Widnau and Saarlouis) or are expected to start production in the near future ([...]).
- (651) As regards Widnau, production started in 2015 and although it [...], its capacities will have an impact on the overall capacities in the EEA and will free up capacity for Rexam in other plants (most notably [...]). Widnau will have a capacity of [...] billion cans in 2016 and of [...] billion cans [...]. The Commission has used a figure of [...] billion cans for the capacity of Widnau in its market share computations, on the basis of information provided by Rexam, in order to calculate a forward-looking measure of capacity shares.
- (652) As regards [...], [...].⁸²⁹ The Commission used a figure of [...] billion cans for the capacity of [...] in its market share computations, on the basis of information provided by the Notifying Party, in order to calculate a forward-looking measure of capacity shares.
- (653) As regards Saarlouis, according to Helvetia's statement, '*production [...] is about to begin*'.⁸³⁰
- (654) The Commission has, therefore, not used the capacity of Rexam's [...] in its calculations of market shares and concentration indicators (see section 5.1.4.2 above). The Commission has, however, taken Rexam's capacity expansion plans into account in its competitive assessment of the Transaction in the North-East Europe cluster.
- (655) As regards planned plant closures, the Commission has taken the closure of Rexam's Berlin plant into consideration in its calculations of capacity shares. [...]. A scenario where the [...] has not been taken into consideration was also considered by the Commission, as an additional robustness scenario.

⁸²⁶ The Parties provided the Commission with capacity figures on the basis of their budgeted capacity for each plant for the year 2014 and 2015. The Parties indicated that there may be variances between the capacity of a given plant between the two years for the following reasons: (i) the plant may have introduced a new line or decommissioned some capacity resulting in a permanent change in capacity going forward; (ii) the plant may have been subject to a short term lower capacity in a given year due to one-off works on production lines resulting in a lower capacity for that year but once the temporary works are over, the true capacity going forward is different to that shown for the year the works were carried out (for example, works changing a line to a swing line; and (iii) the plant or individual line may be budgeted for a different capacity than in the previous year to reflect the planned production on that line, for example, if the yearly planned production includes a large number of short production runs necessitating many changeovers, the capacity of that line will be budgeted lower that year. The Commission has used those capacity figures which seem to best reflect the capacities going forward. The capacity of Crown and Can-Pack reflects the estimates received by the Commission from these companies for 2016.

⁸²⁷ The possible impact of excluding some [...] sales from the concentration indicators has been considered by the Commission as an additional robustness scenario in the assessment of the remedies submitted by the Notifying Party.

⁸²⁸ Capacities of can end plants were not included, as can bodies and ends are sold together in the EEA (see section 6.1.3).

⁸²⁹ Reply to RFI 10 of 21.08.2015, Exhibit A. Reply to the SO, paragraph 4.23.

⁸³⁰ A competitor's non-confidential reply to RFI of 28.07.2015, ID 1573.

- (656) The plants included in the capacity calculations are thus the following:
- For Ball: Belgrade, Bierne, La Ciotat, Hassloch, Hermsdorf, Oss, Radomsko, Rugby, Wrexham, Weissenthurm [...].
 - For Rexam: Ejpvovice, Enzesfeld, Fredericia, Gelsenkirchen, Izmir, Ludesch, Malmö, Mäntsälä, Milton Keynes, Naro-Fominsk, Nogara, Recklinghausen, Selva, San Martino, Valdemorillo, Vsevolozhsk, Wakefield and Widnau.
 - For Crown: Agoncillo, Braunstone, Carlisle, Corinth, Custines, Kechnec, Patras, Seville, Izmit and Tunis.
 - For Can-Pack: Brzesko, Bucharest, Casablanca, Bygdoszcz, Hämeenlinna, Kiev, Novocherkassk, Scunthorpe and Volokolamsk.
 - For the others: BagPak (Stalowa Wola)⁸³¹ and Helvetia (Saarlouis).
- (657) As regards volumes, the Commission has used data from the Parties regarding their actual sales in 2014 and data from the Notifying Party regarding estimated sales by third parties in 2014. The Commission has, however, compared actual data with the Notifying Party's estimates and the results of the analysis are broadly in line.
- (658) For the reasons set out in footnote 234, the volume figures include sales made to customers located within any of the catchment areas drawn around customers in the EEA (and therefore for some catchment areas include sales to non-EEA customers if they are in a country included in the [...]). Certain customers (namely those described in the data provided by the Parties as sourcing from a 'third party', 'Common Planning' or 'not assigned') have, however, been excluded from the volume figures even though they are located within the EEA. This is because the Parties have neither specified the location of the sourcing for these volumes and nor submitted driving distances for these volumes. In any case, the volume that is affected by this exclusion is immaterial, less than half a percent of the total volume sold in 2014.⁸³²
- (659) Calculating market shares and concentration indicators based on capacity data has certain advantages. First, it captures the position and competitive constraints of all the plants located within the catchment area of a specific customer. Based on the evidence on delivery distances reviewed in section 7.1.3.4 above, those plants represent the most relevant competitive alternatives for a given customer. Second, because the beverage can industry in the EEA is characterised by capacity constraints, the level of capacity controlled by each market player is an important determinant of the competitive conditions faced by customers. Third, capacity shares are forward-looking, and as such capture plant openings and closures, and the associated network reconfiguration.
- (660) At the same time, calculating market shares and concentration indicators based on capacity data also has the disadvantage of not reflecting the actual geographical distribution of sales made by each plant.
- (661) The Commission has therefore also calculated market shares and concentration indicators based on volumes, as they have the advantage of capturing volumes sold within a catchment area that

⁸³¹ The Commission's assessment in this section will however take into account the fact that this is a self-manufacturing operation.

⁸³² [...] million cans in total: [...] million sourced from 'third party'; [...] million from 'Common Planning Plant B-TP', [...] million from 'Common Planning Plant B-US' and [...] million from 'not assigned'.

may come from plants located outside that catchment area, and which may still represent a competitive alternative for a given customer.

(662) At the same time, calculating market shares and concentration indicators based on volume data has certain disadvantages. First, some of those sales may be made by plants that are relatively distant from a given customer and may as such represent a less effective competitor to plants located closer to a given customer. Moreover, this alternative approach cannot take into account the impact of plant closures and plant openings.

9.2.1.1. Description of capacity and volume shares for each catchment area around individual customer filling locations

- Capacity shares

(663) Figure 24 indicates capacity shares within a 700 km radius catchment area around each customer filling location respectively. Each customer filling location is represented by a dot on the map. The different colours of the dots indicate the level of the joint capacity share of the Parties and the market share increment due to the Transaction in the given catchment area around the customer's filling location (where the colour black reflects the situation where concentration and increment from the Transaction are highest).

(664) In a large number of catchment areas around individual customer filling locations, the combined capacity share of the Parties is above [50-60] % with an increment of at least [5-10] %. The combined capacity share of the Parties is even higher in several catchment areas, above [70-80] %, with an increment of at least [5-10] %. Significant concentration effects from the Transaction can be observed in each of the 9 regional clusters. The pattern of concentration effects for customers located in the EEA (depending on their location) is further described below.

Figure 24: Capacity shares, 700 km catchment area

[...]

Source: Commission's calculation based on the Parties' and third parties' data

(665) Moreover, based on the capacity data for each of the customer filling locations, the Transaction would lead to a reduction in the number of competitors: (i) from 3 to 2 for 87 of the 238 filling locations where the combined capacity share of the merged entity would be above [40-50] % with an increment of at least [10-20] %, and/or above [50-60] % with an increment of at least [5-10] %;⁸³³ and (ii) from 2 to 1 for an additional 30 of the 238 filling locations where the combined capacity share of the merged entity would be above [40-50] % with an increment of at least [10-20] %, and/or above [50-60] % with an increment of at least [5-10] %.

(666) The Commission has conducted a robustness test of the capacity-based concentration indicators, based on catchment areas around individual customer filling locations of 900 km. The wider, 900 km catchment area captures a higher share of average total deliveries in the market (roughly 90 %), and thus reflects the competitive constraint exercised by plants located outside the 700 km catchment area described above. The result of this robustness test is summarised in Annex B to this Decision, at a regional cluster level. As an additional sensitivity analysis, the Commission has also considered alternative catchment areas around individual

⁸³³ For the purposes of this calculation, a competitor is defined as a firm with a capacity market share of at least 5 % in a given catchment area.

customer filling locations of 500 km. The result of these robustness tests at regional cluster level are summarised in Annex B to this Decision.

- Volume shares

- (667) Figure 25 indicates the volume shares within a 700 km radius catchment area around each individual customer filling location for 2014. The different colours of the dots again indicate the level of the combined volume share of the Parties and the increment in the given catchment area around the customer's filling plant.
- (668) As in the case of the capacity shares, in a large number of catchment areas, the combined volume share of the Parties is above [50-60] % with an increment of at least [5-10] %. The combined volume share of the Parties is even higher in several catchment areas, above [70-80] %, with an increment of at least [5-10] %. As in the case of capacity-based indicators, significant concentration effects can be observed for customers located in each of the 9 regional clusters.

Figure 25: Volume shares, 700 km catchment area
[...]

Source: Commission's calculation based on the Parties' data

- (669) The Commission has conducted a robustness test of the volume-based concentration indicators, based on catchment areas of 900 km. The result of this robustness test at a regional cluster level is summarised in Annex C to this Decision. As an additional sensitivity analysis, the Commission has also considered alternative catchment areas of 500 km. The result of this robustness test at a regional cluster level is summarised in Annex C to this Decision.
- (670) Finally, given that slim and sleek cans form a sub-segment of the overall beverage cans market (see section 6.1.2), the Commission has also calculated volume shares for slim and sleek cans based on a 700 km radius. The Commission has calculated volume shares both for: (i) all slim and sleek cans; and (ii) all slim and sleek cans excluding 250 ml slim cans (given that not all customers consider the 250 ml slim cans as specialty products and because these account for approximately 14 % of the total EEA beverage can market). The volume share tables for slim and sleek cans are in Annex C to this Decision.

9.2.1.2. Average capacity and volume shares and concentration indicators at regional cluster level

- Capacity shares

- (671) Table 8 presents weighted average capacity shares in each regional cluster based on 700 km catchment areas around individual customer filling locations. As described above, these average shares have been calculated by averaging individual customer catchment area capacity shares, weighting them by the volumes sold to each customer filling location, and grouping them by the region in which each customer is located.⁸³⁴
- (672) In all regional clusters, except in the South-East and North-East Europe clusters, the combined average capacity shares of the Parties are over [60-70] %, with an average increment of at least

⁸³⁴ An alternative way to calculate aggregate market shares for the regional clusters would be to simply add up for each competitor the capacities of plants that are located within the catchment area of the regional cluster. While calculating market shares with this method would lead to the same qualitative conclusions on the impact of the transaction on concentration effects, it would nonetheless be less reflective of localised competition within each cluster, and it would lead to higher market shares for the Parties in the clusters that are not centrally located within the EEA.

[5-10] % due to the Transaction (measured as the average market share of the smaller of the Parties). In the other two regional clusters (South-East and North-East Europe), the average combined capacity shares of the Parties are at least [40-50] %, with an increment of at least [20-30] %. Moreover, as it is shown in the next sub-section, even within those two regional clusters, there are customers who would experience a more pronounced concentration effect relative to average effect at the regional cluster level.

Table 8: Weighted average capacity market shares in each regional cluster (capacity-based, 700 km catchment areas)

Catchment areas around customer filling plants located in the region	Ball	Rexam	Combined	Can-Pack	Crown	Other*
Benelux	[50-60] %	[20-30] %	[80-90] %	[0-5] %	[10-20] %	[5-10] %
Central Europe	[30-40] %	[40-50] %	[80-90] %	[0-5] %	[5-10] %	[5-10] %
France	[40-50] %	[30-40] %	[80-90] %	[0-5] %	[5-10] %	[0-5] %
Iberia	[20-30] %	[30-40] %	[60-70] %	[0-5] %	[30-40] %	[0-5] %
Italy	[10-20] %	[70-80] %	[90-100] %	[0-5] %	[5-10] %	[0-5] %
North-East Europe	[20-30] %	[20-30] %	[40-50] %	[40-50] %	[10-20] %	[0-5] %
Nordics	[5-10] %	[70-80] %	[80-90] %	[10-20] %	[0-5] %	[0-5] %
South-East Europe	[20-30] %	[20-30] %	[40-50] %	[10-20] %	[30-40] %	[0-5] %
UK and Ireland	[40-50] %	[20-30] %	[60-70] %	[5-10] %	[20-30] %	[0-5] %

Source: Commission's calculation based on current capacity data from the Notifying Party's and third parties. Capacity shares have been calculated on a forward looking basis

*BagPak or Helvetia

- (673) The Commission has also conducted a robustness test of the capacity-based concentration indicators, based on catchment areas around individual customer filling locations (see Annex B to this Decision). For 900 km catchment areas, in all regional clusters, the average combined capacity shares of the Parties are over [50-60] %, with an average increment of at least [20-30] %. This broadly confirms the results of the Commission's assessment based on 700 km catchment areas.
- (674) The Commission has also conducted an additional robustness test of the capacity-based concentration indicators, based on catchment areas of 500 km (see Annex B to this Decision). In six of the regional clusters, the average combined capacity shares of the Parties are over [50-60] %. The average market share increment is above [20-30] % in four of these clusters. In the Nordics and Italy clusters, the average market share increment is small under a 500 km radius (e.g. less than [0-5] %), but in these regional clusters Rexam would have a high market share (above [80-90] %), and Ball still exercises a competitive constraint (as shown by the alternative 700 km and 900 km analysis, and by additional evidence on closeness by plant). In the three clusters with combined market share inferior to [50-60] %, the Transaction would still result in significant concentration effects.
- Volume shares
- (675) Table 9 presents weighted average volume shares in each regional cluster based on 700 km travel distance catchment areas around individual customer filling locations. These average shares have been calculated by averaging the volume shares of the catchment areas around

individual customer filling locations, weighting them by the volumes sold to each customer filling location and grouping them by the region in which each customer is located.⁸³⁵

- (676) In all regional clusters except South-East Europe, the average combined volume shares of the Parties are over [50-60] %, with an average market share increment of at least [5-10] %. In six regional clusters (Benelux, Central Europe, Italy, France, Nordics and the UK and Ireland), the combined volume shares of the Parties are over [70-80] %, with an increment of at least [5-10] %. In the South-East Europe cluster, the combined market share is above [40-50] %, with an increment of [10-20] %. Moreover, within this regional cluster, there are many customers with significantly higher concentration effects (as shown further below).

Table 9: Weighted average volume shares in each regional cluster in 2014 (volume-based, 700 km catchment areas)

Catchment areas around customer filling plants located in the region	Ball	Rexam	Combined	Can-Pack	Crown	Other*
Benelux	[50-60] %	[20-30] %	[70-80] %	[10-20] %	[10-20] %	[0-5] %
Central Europe	[30-40] %	[50-60] %	[80-90] %	[5-10] %	[5-10] %	[0-5] %
France	[40-50] %	[30-40] %	[70-80] %	[5-10] %	[10-20] %	[0-5] %
Iberia	[10-20] %	[40-50] %	[60-70] %	[0-5] %	[30-40] %	[0-5] %
Italy	[20-30] %	[60-70] %	[80-90] %	[0-5] %	[10-20] %	[0-5] %
North-East Europe	[30-40] %	[20-30] %	[50-60] %	[30-40] %	[5-10] %	[5-10] %
Nordics	[5-10] %	[70-80] %	[70-80] %	[20-30] %	[0-5] %	[0-5] %
South-East Europe	[20-30] %	[10-20] %	[40-50] %	[20-30] %	[20-30] %	[0-5] %
UK and Ireland	[40-50] %	[20-30] %	[70-80] %	[5-10] %	[10-20] %	[0-5] %

Source: Commission's calculation based on the Parties' actual 2014 sales data and the Notifying Party's estimates of third party sales in 2014

*BagPak

- (677) The Commission has also conducted a robustness test of the capacity-based concentration indicators, based on catchment areas of 900 km (see Annex C to this Decision). For 900 km catchment areas, in all regional clusters, the average combined volume shares of the Parties are over [50-60] %, with an average increment of at least [10-20] %. This broadly confirms the results of the Commission's assessment based on 700 km catchment areas.
- (678) For the 500 km catchment areas, the combined volume shares of the Parties are above [50-60] % with at least [10-20] % increment in all clusters except for South-East Europe and the Nordics.
- (679) In the South-East Europe cluster, the combined market share is [30-40] % with an increment of [10-20] %. Moreover, there are many customers with significantly higher concentration effects.
- (680) In the Nordics cluster, the market share increment is small but Rexam holds a very high market share (close to [80-90] %). In this regional cluster, Ball exercises a significant competitive constraint given the location of its plants in neighbouring clusters (see section 9.2.2.8 for a specific assessment of the Nordics cluster).

⁸³⁵ An alternative way to calculate aggregate market shares for the regional clusters would be to simply add up for each competitor the sales volumes to all customer filling locations within the regional cluster. While calculating market shares with this method would lead to the same qualitative conclusions on the impact of the transaction on concentration effects, it would nonetheless be less reflective of localised competition within each regional cluster, and it would lead to higher market shares for the Parties in the regional clusters that are not centrally located within the EEA.

9.2.1.3. Average pre-Transaction HHIs, post-Transaction HHIs and HHI deltas, at regional cluster level

- (681) For each catchment area around individual customer filling locations, the Commission has calculated the pre- and post-Transaction HHI as well as the HHI deltas. On this basis, the Commission then calculated the volume weighted average pre- and post-Transaction HHIs as well as HHI deltas for each regional cluster. In the same way as for the average market shares reported above, the weightings used in these averages are the total volumes corresponding to each customer filling location. These calculations for the 700 km catchment areas are summarised in Table 10 and Table 11.
- (682) In terms of *capacity*, the average increase in the HHI for the 700 km catchment areas would be in the range of approximately 1 800-3 600 points for seven regional clusters (Benelux, Central Europe, Italy, France, Benelux, Iberia, UK and Ireland), and approximately 850 in the other two clusters (North-East Europe and South-East Europe).⁸³⁶

Table 10: Weighted average concentration indicators in each cluster (capacity-based, 700 km catchment areas)

Catchment areas around customer filling plants located in the region	Volume weighted average post-Transaction HHI	Maximum post-Transaction HHI	Volume weighted average Delta HHI	Maximum Delta HHI
Benelux	[7000-7500]	[8000-8500]	[3000-3100]	[4000-4100]
Central Europe	[7500-8000]	[9500-10000]	[3600-3700]	[4200-4300]
France	[7000-7500]	[9500-10000]	[3300-3400]	[4400-4500]
Iberia	[5000-5500]	[9500-10000]	[1800-1900]	[3600-3700]
Italy	[9000-9500]	[9500-10000]	[1900-2000]	[3800-3900]
North-East Europe	[4000-4500]	[6500-7000]	[800-900]	[3200-3300]
Nordics	[7500-8000]	[9500-10000]	[1200-1300]	[4500-4600]
South-East Europe	[5500-6000]	[9500-10000]	[800-900]	[2700-2800]
UK and Ireland	[5000-5500]	[5500-6000]	[2000-2100]	[2700-2800]

Source: Commission's calculation based on current capacity data from the Notifying Party's and third parties

- (683) In terms of *volumes*, the average increase in the HHI for the 700 km catchment areas would be above 1 000 for all but two of the regional clusters. The highest concentration effects would be in the Central Europe, Italy, France, Benelux and the UK and Ireland clusters. For the North-East and South-East Europe clusters, the average increase in the HHI would still be above 750 in each cluster.⁸³⁷

⁸³⁶ For the sensitivity with 900 km catchment areas, the average HHI increase would be above 1 000 for all regional clusters (these results are reported in Annex B to this Decision). For the additional robustness test with 500 km catchment areas, the average HHI increase would have above 500 for all regional clusters expect Italy and the Nordics. The post-merger average HHI however would be very high in these two regional clusters (in excess of 8 500).

⁸³⁷ In the robustness scenario with 900 km catchment areas around individual customer filling locations, the average increase in the HHI would be above [1000-1100] for all regional clusters (see Annex C to this Decision). For the additional robustness test with 500 km catchment areas around individual customer filling locations, the average HHI increase would have above [500-600] for all regional clusters expect the Nordics. The post-merger average HHI would, however, be very high in the Nordics cluster (in excess of [7000-7500]), and the average increment in the HHI would exceed [400-500] points.

Table 11: Weighted average concentration indicators in each cluster in 2014 (volume-based, 700 km catchment areas)

Catchment areas around customer filling plants located in the region	Volume weighted average post-Transaction HHI	Maximum post-Transaction HHI	Volume weighted average Delta HHI	Maximum Delta HHI
Benelux	[6000-6500]	[6500-7000]	[2500-2600]	[3200-3300]
Central Europe	[7000-7500]	[7500-8000]	[3100-3200]	[3600-3700]
France	[6000-6500]	[7500-8000]	[2700-2800]	[3600-3700]
Iberia	[5000-5500]	[5500-6000]	[1500-1600]	[2500-2600]
Italy	[7000-7500]	[8500-9000]	[2400-2500]	[3400-3500]
North-East Europe	[4000-4500]	[6000-6500]	[1200-1300]	[2700-2800]
Nordics	[6500-7000]	[9500-10000]	[700-800]	[3100-3200]
South-East Europe	[5000-5500]	[9500-10000]	[800-900]	[2600-2700]
UK and Ireland	[5500-6000]	[5500-6000]	[2300-2400]	[2500-2600]

Source: Commission's calculation based on the Parties' actual 2014 sales data and the Notifying Party's estimates of third party sales in 2014

9.2.1.4. Differential concentration effects within regional clusters

- (684) Given the localised nature of competition in each regional cluster, the Commission considers it relevant to also examine those catchment areas around individual customer filling locations that are most affected by the combination of competing plants brought about by the Transaction.
- (685) Table 12 and Table 13 present an illustration of the concentration effects of the Transaction for groups of customer filling locations located within each region. The tables report the share of total 2014 volumes in each region accounted for by customers that would face significant concentration effects. These significant concentration effects are defined, for the purposes of this analysis, as a combined market share for the merging parties in each catchment area in excess of [40-50] % with an increment of at least [10-20] %, and/or a combined market share in excess of [50-60] % with an increment of at least [5-10] %.⁸³⁸ Table 12 and Table 13 report the weighted average concentration indicators for customers filling locations that would face particularly significant concentration effects (that is to say the average combined market share of the merged entity, the average market share increment, the average post-Transaction HHI and the average increment in the HHI).⁸³⁹
- (686) Table 12 presents the analysis of customer filling locations that would face especially significant concentration effects for the capacity-based concentration indicators.
- (687) This analysis shows that customer filling locations with significant concentration effects account for [90-100] % of volumes in 5 of the 9 regions (Benelux, Central Europe, France, Iberia and the UK and Ireland). The average concentration effects for these customers are therefore the same as those reported above for the respective regional cluster.

⁸³⁸ These market share thresholds provide a proxy to identify the customers that would face the highest concentration effects of the Transaction. Alternative ways to identify these customers could also be considered (e.g. looking at the top percentiles of customers with highest combined market share or highest delta HHI). Such alternative measures would lead to similar results to those presented by the Commission, for the baseline analysis of concentration effects.

⁸³⁹ The weights are given by the volume of each customer.

- (688) In relation to two other regional clusters (Italy and North-East Europe), customers with significant concentration effects account for over [60-70] % of volumes in the corresponding regions. For those customers, the average combined share of the merged entity is over [90-100] % for customers located in Italy (with an average increment of [20-30] %, and average delta HHI above [3000-3500]), and over [50-60] % in North-East Europe (with an average increment of [20-30] %, and an average delta HHI close to [1300-1400]).
- (689) In relation to two other regional clusters (South East Europe and the Nordics), customers with significant concentration effects account for over [40-50]-[40-50] % of volumes in the corresponding region. For those customers, the average combined share of the merged entity is over [90-100] % for customers located in the Nordics cluster (with an average increment of [20-30] %, and average delta HHI close to [3000-3500]), and over [60-70] % in the South-East Europe cluster (with an average increment of 21 %, and an average delta HHI close to [1700-1800]).
- (690) Overall, across all EEA filling locations, customers with particularly significant concentration effects account for [80-90] % of volumes, and would face an average increase in concentration of close to [2600-2700] points.⁸⁴⁰

Table 12: Weighted average concentration effects for customer filling locations with particularly significant concentration effects (by region of location of customer), 700 km catchment areas, capacity-based *

Location of customer	% affected volumes in region	Average combined market share	Average increment	Average post-Transaction HHI	Average Delta HHI
Benelux	[90-100] %	[80-90] %	[20-30] %	[7000-7500]	[3000-3100]
Central Europe	[90-100] %	[80-90] %	[30-40] %	[7500-8000]	[3600-3700]
France	[90-100] %	[80-90] %	[30-40] %	[7000-7500]	[3300-3400]
Iberia	[90-100] %	[60-70] %	[20-30] %	[5000-5500]	[1800-1900]
Italy	[60-70] %	[90-100] %	[20-30] %	[8500-9000]	[3000-3100]
North-East Europe	[60-70] %	[50-60] %	[20-30] %	[4000-4500]	[1200-1300]
Nordics	[40-50] %	[90-100] %	[20-30] %	[8500-9000]	[2900-3000]
South-East Europe	[50-60] %	[60-70] %	[20-30] %	[5000-5500]	[1600-1700]
UK and Ireland	[90-100] %	[60-70] %	[20-30] %	[5000-5500]	[2000-2100]
Total (EEA)	[80-90] %	[70-80] %	[20-30] %	[6000-6500]	[2500-2600]

Source: Commission computations based on the Parties and on third party capacity data

* Customer filling locations with particularly significant concentration effects are defined, for the purposes of this analysis, as those with a combined post-Transaction market share of at least 40 % and a market share increment of at least 10 %, and/or a combined post-Transaction market share of at least 50 % and a market share increment of at least 5 %. The averages reported in this table are weighed by the volumes of each customer.

- (691) Table 13 presents the corresponding analysis for the volume-based concentration indicators.
- (692) This analysis shows that customer filling locations with particularly significant concentration effects account for [90-100]-[90-100] % of volumes in 6 of the 9 regions (Benelux, Central Europe, France, Italy, Iberia and UK and Ireland). The average concentration effects for those

⁸⁴⁰ Annex B to this Decision presents a robustness scenario for the analysis presented in Table 12 for a 900 km catchment area. This broadly confirms the results in Table 12. Annex B to this Decision also contains an additional robustness for a 500 km catchment area; under this scenario, customers with particularly significant concentration effects account for more than [10-20] % of volumes in all regional clusters except Italy and the Nordics.

customer filling locations are therefore the same as those reported above for the respective regional cluster.

- (693) With respect to the North-East Europe cluster, customers with particularly significant concentration effects account for [80-90] % of volumes in the corresponding region. For those customers, the average combined share of the merged entity is of close to [60-70] % (with an average increment of [10-20] %, and average delta HHI above [1400-1500]).
- (694) With respect to two other regional clusters, South East Europe and the Nordics, customers with particularly significant concentration effects account for [40-50] % and [30-40] % of volumes in the respective regions, respectively. For those customers, the average combined share of the merged entity is of close to [80-90] % for customers located in the Nordics (with an average an increment of [10-20] %, and an average delta HHI close to [1900-2000]), and of [60-70] % in South-East Europe (with an average increment of [20-30] %, and an average delta HHI of over [1800-1900]).
- (695) Overall, across all EEA filling locations, customers with significant concentration effects account for [80-90] % of volumes, and would face an average increase in concentration of approximately [2300-2400] points.⁸⁴¹

Table 13: Weighed average concentration effects for customer filling locations with particularly significant concentration effects (by region of location of customer), 700 km catchment areas, volume-based*

Location of customer	% affected volumes in region	Average combined market share	Average increment	Average post-Transaction HHI	Average Delta HHI
Benelux	[90-100] %	[70-80] %	[20-30] %	[6000-6500]	[2500-2600]
Central Europe	[90-100] %	[80-90] %	[30-40] %	[7000-7500]	[3100-3200]
France	[90-100] %	[70-80] %	[20-30] %	[6000-6500]	[2700-2800]
Iberia	[90-100] %	[60-70] %	[10-20] %	[5000-5500]	[1500-2600]
Italy	[90-100] %	[80-90] %	[20-30] %	[7000-7500]	[2500-2600]
North-East Europe	[80-90] %	[50-60] %	[20-30] %	[4000-4500]	[1400-1500]
Nordics	[30-40] %	[70-80] %	[10-20] %	[6500-7000]	[1800-1900]
South-East Europe	[40-50] %	[60-70] %	[20-30] %	[5000-5500]	[1800-1900]
UK and Ireland	[90-100] %	[70-80] %	[20-30] %	[5500-6000]	[2300-2400]
Total (EEA)	[80-90] %	[70-80] %	[20-30] %	[5500-6000]	[2300-2400]

Source: Commission computations based on the Parties and on third party capacity data

* Customer filling locations with particularly significant concentration effects are defined, for the purposes of this analysis, as those with a combined post-Transaction market share of at least 40 % and a market share increment of at least 10 %, and/or a combined post-Transaction market share of at least 50 % and a market share increment of at least 5 %. The averages reported in this table are weighed by the volumes of each customer.

9.2.1.5. Assessment of the Notifying Party's arguments on concentration measures in the Reply to the SO

- (696) In its Reply to the SO, the Notifying Party has contested some of the assumptions made by the Commission in the calculations of concentration measures in regional clusters.

⁸⁴¹ Annex C to this Decision presents a robustness scenario for the analysis presented in Table 13, for a 900km catchment area. This broadly confirms the results in Table 13. Annex C to this Decision also contains an additional robustness for a 500 km catchment area. Under this scenario, customers with particularly significant concentration effects account for more than [40-50] % of volumes in all regional clusters except the Nordics.

- (697) The Notifying Party argues that the Commission's Stata code only includes a restricted group of non-EEA countries (being Switzerland, Bosnia-Herzegovina, Montenegro, Albania and FYROM), and is therefore inconsistent with the SO's stated intention of including all relevant non-EEA customers in the volume shares. The Commission notes that these are the non-EEA countries included in the regions of [...] and these are the non-EEA countries where significant capacities are located close to EEA customers (Widnau and Belgrade).
- (698) The Notifying Party contests the full inclusion of sales made by Rexam to Red Bull, and of the corresponding capacity that is dedicated to Red Bull.⁸⁴² For reasons discussed in section 9.1.13 of this Decision, the Commission considers that sales made by Rexam to Red Bull should be taken into account in the competitive assessment, since Red Bull is [...]. In any event, the Commission has also considered an additional robustness scenario in its calculation of the concentration effects of the Transaction, where only [...] % of Red Bull's sales and dedicated capacity is included in the calculations. The value of [...] % is based on the fact that, under the [...].⁸⁴³
- (699) Under the robustness scenario where only [...] % of Red Bull capacity is accounted for, the concentration effects of the Transaction are materially lower than in the baseline scenario only for the France cluster. In this cluster while the partial exclusion of capacity dedicated to Red Bull causes a reduction in average delta HHI of [100-200], the average increase in the HHI remains high (the average delta HHI is [3100-3200] in France under this scenario).
- (700) On a volume measure, the concentration effects of the Transaction are materially lower than in the baseline scenario only for the Central Europe and France clusters, where the partial exclusion of capacity dedicated to Red Bull causes a reduction in average HHI increment of [100-200] and [100-200], respectively. However, the average increase in HHI in those regional clusters remains high ([3000-3100] in Central Europe and [2500-2600] in France).
- (701) In its Reply to the SO⁸⁴⁴, the Notifying Party also contests the inclusion of wall-to-wall sales in the competitive assessment. For reasons that are set out in section 9.1.12 above, the Commission considers that wall-to-wall sales need to be fully taken into account in the competitive assessment of the Transaction.
- (702) Third, the Notifying Party claims that [...].
- (703) In order to assess this criticism by the Notifying Party, the Commission has also considered an alternative robustness scenario where the capacity of [...] is not included.⁸⁴⁵ Under this robustness scenario, the concentration effects of the Transaction are lower than in the baseline scenario only for two regional clusters ([...]), where the exclusion of [...] capacity causes a decrease in average delta HHI of [300-400] and [100-200], respectively. However, the average increments in the HHI remain high (the average delta HHI is [2600-2700] in [...] and [3100-3200] in [...] under this scenario).⁸⁴⁶

⁸⁴² Reply to the SO, paragraph 4.6 – 4.18.

⁸⁴³ [...]

⁸⁴⁴ Reply to the SO, paragraphs 4.283 and 4.284.

⁸⁴⁵ The robustness scenario where [...] is excluded is based on a 700 km catchment area.

⁸⁴⁶ In an alternative robustness scenario, where only [...] % of Red Bull dedicated capacity is accounted for and the capacity of [...] is excluded, the concentration effects of the Transaction are materially lower than in the baseline scenario for the [...], where the partial exclusion of capacity dedicated to Red Bull and exclusion of [...] causes a reduction in average HHI increment of [400-500], [100-200] and [300-400], respectively. However, the average HHI increments remain very high in these regional clusters [...].

- 9.2.2. *Competitive assessment for each cluster of catchment areas around customer filling locations*
- (704) As set out in section 7.1, customer catchment areas have been grouped together where the competitive conditions are sufficiently homogeneous.
- (705) While these regional clusters go beyond the borders of the group of countries where the customer filling plants are located, the locus of the likely effects is concentrated in the countries where the customer filling plants are situated. For example, the Benelux cluster comprises all the catchment areas around customer filling plants located in the Benelux. The borders of the cluster will extend into Germany, northern France and the UK. The locus of the likely effects of the Transaction within this cluster will, however, be concentrated on the Benelux.
- (706) Market shares and concentration indicators reported in sections 9.2.2.1 to 9.2.2.9 for each regional cluster are based on the Commission's baseline scenario of catchment areas with a 700 km travel distance.
- 9.2.2.1. Cluster of catchment areas around individual customer filling locations in Central Europe: Germany and Austria
- Market structure
- (707) The Parties' combined capacity share⁸⁴⁷ is [80-90] % (Ball: [30-40] %, Rexam: [40-50] %). The Parties are followed by Crown ([5-10] %) and Can-Pack ([0-5] %). The planned operation by Helvetia would represent [5-10] % capacity share in this cluster.
- (708) The Parties' combined volume share⁸⁴⁸ is [80-90] % (Ball: [30-40] %, Rexam: [50-60] %). The Parties are followed by Crown ([5-10] %) and Can-Pack ([5-10] %).⁸⁴⁹
- (709) Furthermore, the Parties' combined capacity share at the catchment area level around individual customer filling locations ranges between [70-80] % and [90-100] % and the volume share between [60-70] % and [80-90] %. In this regional cluster, [90-100] % of customer volumes both on a capacity and volume measures, would experience a particularly significant concentration effect as shown in Table 12 and Table 13.
- The Notifying Party's views
- (710) The Notifying Party submits that Germany and Austria are not part of Central Europe region, but of North-West Europe which is defined by the Notifying Party as the region which includes Austria, Benelux, Germany and Northern France. In that region, the Notifying Party submits that the market shares of the Parties are the following: Ball [40-50] %, and Rexam [30-40] %.
- (711) The Notifying Party submits that due to an unduly broad approach to customer catchment areas, the SO is at odds with both the qualitative and quantitative evidence available to the Commission and that the appropriate catchment area should be a 500 km radius. Refining the catchment size for customer filling locations situated in Central Europe and excluding Red Bull from Rexam's market sales therefore results in a more appropriate measure of market dynamics in this region. Based on a 500 km driving distance, the combined volume market shares of the

⁸⁴⁷ See section 9.2.1.

⁸⁴⁸ See section 9.2.1..

⁸⁴⁹ With regard to the robustness test carried out by the Commission, the 900 km combined capacity share is [80-90] % (Ball: [40-50] %, Rexam: [40-50] %). The Parties are followed by Crown ([5-10] %) and Can-Pack ([0-5] %). For volume shares, the 900 km combined volume share is [80-90] % (Ball: [30-40] %, Rexam: [40-50] %). The Parties are followed by Crown ([10-20] %) and Can-Pack ([10-20] %). The 500 km robustness test results are reported in Annex B to this Decision and Annex C to this Decision.

Parties in Central Europe is [70-80] % with an increment of [20-30] % and capacity market share of [80-90] % with an increment of [10-20] %.⁸⁵⁰

- (712) It further argues that the increment in capacity shares is overestimated and not indicative of any competitive concern given that Rexam's beverage cans production in [...] plants is [...] % dedicated to Red Bull (see section 9.1.13).
- (713) The Notifying Party states that the competitive impact of the Transaction in North-West Europe is more limited than suggested by the market shares for various reasons: (i) Rexam's footprint in this region will [...], (ii) Ball is a relatively weak competitor for customers in Austria given that none of its plants are well-placed to supply Austrian customers relative to Rexam, (iii) a substantial portion of the volumes (around [...] %) supplied by Rexam in North-West Europe are sold to [...] with whom it has a contract until [...], and (iv) Crown and Can-Pack are well positioned to supply the locations where the merged entity would have plants.
- (714) Given that the Notifying Party recognises that the way it has defined regions as markets is not completely reflective of how the markets work (the Notifying Party recognises that in particular customers located closer to the borders of a region may have more options of supply from outside the region and that even within a region the competitive conditions faced by beverage can manufacturers may vary), the Notifying Party in the Form CO also set out market shares country-by-country.
- (715) With regard to Germany, the Notifying Party estimated the Parties' combined volume share to be [70-80] % (Ball: [50-60] %; Rexam [20-30] %). According to the Notifying Party, this will change upon the opening of the new Helvetia plant in Saarlouis and [...].
- (716) With regard to Austria, the Notifying Party estimates the Parties' combined volume share to be [90-100] % (Ball: [0-5] %; Rexam [90-100] %) but with an increment of only [0-5] percentage points. Rexam owns the only beverage can plants in Austria.
- (717) In its Reply to the SO, the Notifying Party also argues that the SO adopts a method of measuring closeness of competition which is inconsistent with observed market facts and overstates the extent of competition between the Parties (see recital (338)). In this case, the Notifying Party submits that for Ball customers, Rexam is the closest competitor only for [...] % of Ball's volumes and that for Rexam customers, Ball is the closest competitor for [...] % of Rexam's volumes (at an average distance of [...] km).
- (718) The Notifying Party also submits that Helvetia will provide strong competition in Central Europe, with an initial planned capacity of 1.2 billion cans, representing approximately [5-10] % of capacity in Germany and Austria. Although Helvetia is expected to produce only 50 cl and 33 cl cans, this is a reflection of the actual market conditions in Central Europe where the demand for speciality cans is a relatively minor portion of the overall demand for cans.
- The Commission's assessment
- (719) For the reasons set out in this section, the Commission has reached the conclusion that the Transaction is likely to lead to a significant impediment to effective competition in the Central Europe cluster. In particular, the Transaction will result in the creation or strengthening of a dominant position in respect of the cluster.

⁸⁵⁰ Reply to the SO. Assumes [...]. Excludes: (i) Rexam's sales to Red Bull; and (ii) Rexam's plants at [...] which supply >[...] % of their volumes to Red Bull, Table 4.3.

- (720) First, the combined volume and capacity shares of the Parties are high, with a significant increment (see recitals (707)-(708)).
- (721) Second, the Transaction would give rise to high post-Transaction HHI levels ([700-7500] for volumes and [7500-8000] for capacity) and high HHI deltas ([3100-3200] for volumes and [3600-3700] for capacity) (see Table 10 and Table 11).
- (722) Third, the Parties have a large number of plants in the Central Europe cluster. Ball sells to this cluster mainly from [...], while Rexam sells to this cluster mainly from [...]. Ball and Rexam are each other's closest competitors at plant level for all of these plants, with the exception of [...], where they are the second closest. Most deliveries of Can-Pack into this cluster come from its Polish plants and for Crown from Custines (France).
- (723) Fourth, the Transaction would, at best, represent a 4 to 3 merger in this cluster. Crown and Can-Pack each have small volume shares of [5-10] % as opposed to the merged entity's high volume share of [80-90] %.
- (724) Fifth, for certain specialty cans, that is to say sleek and slim other than 250 ml, the choice for the customers would be even further reduced. The Parties' combined volume share would be [90-100] % (Ball: [20-30]%, Rexam: [60-70] %) with Crown holding the remaining [5-10] %. Can-Pack does not sell these types of cans at all. Moreover, if 250 ml slim cans are considered as specialty cans, the merged entity would still have a similarly high volume share of [90-100] % (Ball: [10-20] %, Rexam: [80-90] %) with Can-Pack holding [0-5] % and Crown holding [0-5] %.
- (725) In respect in particular of Austria, despite the Notifying Party's argument that Ball has [...], Ball's plants are the closest alternative for the [...] ([...] % for Enzesfeld, [...] % for Ludesch) of Rexam's customers served from its Austrian plants. Similarly, Ball's plants are the closest alternative for [...] % of Rexam's Austrian customers.
- (726) Sixth, the majority of customers that responded to the market investigation and expressed an opinion stated that if the merged entity were to raise prices in this cluster, other beverage can manufacturers would have insufficient capacity to satisfy total market demand.⁸⁵¹
- (727) Moreover, the majority of customers with filling locations in Germany and Austria that responded to the market investigation also stated that if the merged entity were to raise prices in this cluster, they would be unable to switch all of their own volumes to other existing suppliers.⁸⁵² Customers with filling locations in the cluster Germany and Austria also indicated that switching would not be possible to a sufficient extent: *'[I]f we were the only one who would switch the volumes the other suppliers are able to produce - yes, there's enough capacity. BUT: we will not be the only ones!! SO not enough capacity, maybe 10% of our volume.'* *'We are unable to transfer our whole volume to one supplier. As of today we could only change to another supplier with 15 Million.'* *'Remaining capacities are insufficient to transfer 100%.'*⁸⁵³

⁸⁵¹ Questionnaire to Customers (Q2), question 51, ID 2664; Questionnaire to Customers (Q4), question 22.1, ID 2786.

⁸⁵² Questionnaire to Customers (Q2), question 53, ID 2664; Questionnaire to Customers (Q4), question 22, ID 2786.

⁸⁵³ Courtesy translation from the German original *'Wir sind nicht in der Lage, unser gesamtes Volumen auf einen anderen Lieferanten umzulegen. Stand heute könnten wir lediglich mit 15 Millionen auf einen anderen Lieferanten wechseln.'*; *'Verbleibende Kapazitäten reichen nicht aus, um 100 % zu übertragen.'* Questionnaire to Customers (Q4), question 22.1, ID 2786.

- (728) Seventh, as set out in recitals (445)-(447), Crown and Can-Pack have limited spare capacity in the EEA. Moreover, Crown and Can-Pack do not have production facilities in Germany and Austria, which aggravates even further the capacity situation in the cluster Central Europe.⁸⁵⁴ Crown and Can-Pack would, therefore, be unable to supply sufficient additional volumes to customers in the Central Europe cluster in case of a price increase by the merged entity.
- (729) Eighth, as regards the alleged new entrant Helvetia, there are a number of reasons why Helvetia will not be a credible competitor (see recital (578) to (590)).
- (730) Ninth, the majority of large customers with filling locations in Germany and Austria that responded to the market investigation indicated that the Transaction would have a negative impact on competition in Germany and Austria.⁸⁵⁵ Smaller customers also pointed towards a negative impact: *'Austria and Germany - there is [certain] risk that if there is less competition the Price Levels might be raised over time.'*⁸⁵⁶

'[T]here will be no [competition] left in central Europe' (from a German customer). 'We think we will have than in the future [higher] Prices and more limited capacities for cans.' 'If [two] major player merge into one, this can only have a negative effect in terms of pricing'; 'In the Moment we have [four] suppliers in EEA and we have [two] strong suppliers in Germany. If the Transaction will take place they will become stronger and in a [middle-long term] the Prices will increase!' '[L]ess possibility to get competitive pricing no [competition] will make them too [powerful]'.⁸⁵⁷

'Currently, only two relevant can manufacturers – Ball and Rexam, can exercise immense pressure on the drinks industry because of their dominant position. In the last 20 years, Canpack and Crown have not delivered cans to Germany to a significant extent, as in our view these two suppliers were unable to establish a market due to those two main suppliers.'⁸⁵⁸

'[Negative impact] in Germany. There are five beverage can manufacturing plants in Germany (Rexam will close Berlin), one in the Netherlands, and one in France that we would consider as potential supply sources for our filling plant at Duisburg. Of these seven plants, six will be part of the new merged entity Ball/Rexam. We expect less [competition] and therefore higher prices.'⁸⁵⁹

- (731) Tenth, in respect of the Notifying Party's argument that customers exert a high degree of buyer power including through sponsoring entry and/or expansion, and through changing their mix of demand across packaging types, what has been said in section 9.1 in respect of these points applies fully to the Central Europe cluster.

⁸⁵⁴ As set out in recitals (445)-(447), the capacity data used by the Commission is from 2014. The levels of spare capacity estimated by third parties is, however, even lower in 2015. By relying on 2014 data the Commission, therefore, adopted an approach that is favourable to the Parties.

⁸⁵⁵ Questionnaire to Customers (Q2), question 64, ID 2664.

⁸⁵⁶ Questionnaire to Customers (Q4), question 25, ID 2786.

⁸⁵⁷ Questionnaire to Customers (Q1), question 100, ID 1069.

⁸⁵⁸ Courtesy translation from the German original *'Es gibt derzeit nur 2 maßgebliche Dosenlieferanten - Ball und Rexam, die in ihrer marktbeherrschenden Funktion erheblichen Druck auf die Getränkeindustrie ausüben können. Canpack und Crown haben in den letzten 20 Jahren in Deutschland keine nennenswerten Dosenlieferungen durchgeführt, da nach unserer Auffassung diese beiden Lieferanten durch die 2 Hauptlieferanten keinen Markt aufbauen konnten.'* Questionnaire to customers (Q1), question 97, ID 1609.

⁸⁵⁹ Questionnaire to Customers (Q4), question 25.1, ID 2786.

9.2.2.2. Cluster of catchment areas around individual customer filling locations in the Benelux⁸⁶⁰

- Market structure

(732) The Parties' combined capacity share⁸⁶¹ is [80-90] % (Ball: [50-60] %, Rexam: [20-30] %). The Parties are followed by Crown ([10-20] %) and Can-Pack ([0-5] %). The planned operation by Helvetia would represent [5-10] % capacity share in the Benelux cluster.

(733) The Parties' combined volume share⁸⁶² is [70-80] % (Ball: [50-60] %, Rexam: [20-30] %). The Parties are followed by Crown ([10-20] %) and Can-Pack ([10-20] %).⁸⁶³

(734) Furthermore, the Parties' combined capacity share at the catchment area level around individual customer filling locations ranges between [70-80] % and [90-100] % and sales share between [70-80] % and [80-90] %. In this regional cluster, [90-100] % of customer volumes, both on a capacity and volume measure, would experience a particularly significant concentration effect as shown in Table 12 and Table 13.

- The Notifying Party's views

(735) The Notifying Party includes the Benelux in its region defined as North-West Europe (Austria, Benelux, Germany, Northern France). In that region, the Notifying Party submits that the market shares of the Parties are the following: Ball [40-50] %, and Rexam [30-40] %.

(736) The Notifying Party submits that due to an unduly broad approach to customer catchment areas, the SO is at odds with both the qualitative and quantitative evidence available to the Commission and that the appropriate catchment area should be a 500 km radius. Refining the catchment size for customer filling locations situated in Benelux and excluding Red Bull from Rexam's market sales therefore results in a more appropriate measure of market dynamics in this region. Based on the 500 km driving distance, the combined volume market shares of the Parties in the Benelux is [70-80] % with an increment of [10-20] % and capacity market share of [70-80] % with an increment of [20-30] %.⁸⁶⁴

(737) The Notifying Party's arguments regarding the North-West Europe are set out in recitals (710) to (718).

(738) Regarding Belgium, the Notifying Party estimates the Parties' combined volume share to be [70-80] % (Ball: [50-60] %; Rexam: [20-30] %). According to the Notifying Party, Ball's high volume share in Belgium ([50-60] %) is a result of the significant volumes that it sells to [...] and [...]. There are no beverage can plants in Belgium. Crown and Can-Pack's shares are [10-20] % and [0-5] % respectively.

⁸⁶⁰ The Commission notes that there are no filling locations in Luxemburg. Due to the common use of the term Benelux, this cluster will be nevertheless called Benelux.

⁸⁶¹ See section 9.2.1.

⁸⁶² See section 9.2.1.

⁸⁶³ With regard to the robustness test carried out by the Commission, the 900 km combined capacity share is [80-90] % (Ball: [40-50] %, Rexam: [40-50] %). The Parties are followed by Crown ([5-10] %) and Can-Pack ([0-5] %). For volume shares, the 900 km combined volume share is [70-80] % (Ball: [30-40] %, Rexam: [40-50] %). The Parties are followed by Crown ([10-20] %) and Can-Pack ([0-5] %). The 500 km robustness test results are reported in Annex B to this Decision and Annex C to this Decision.

⁸⁶⁴ Reply to the SO, Table 4.3. Assumes [...]. Excludes Rexam's sales to Red Bull and Rexam's plants at [...] which supply >[...] % of their volumes to Red Bull.

- (739) Regarding the Netherlands, the Notifying Party estimates the Parties' combined volume share to be [80-90] % (Ball: [60-70] %; Rexam: [10-20] %). Ball has the only beverage can plant in the Netherlands.
- (740) In its Reply to the SO, the Notifying Party also argues that the SO adopts a method of measuring closeness of competition which is inconsistent with observed market facts and overstates the extent of competition between the Parties (see recital (338)). In this case, the Parties are not close competitors because Rexam's Berlin plant will shortly be closed and [...] only makes up [...] % of Rexam's sales in the Benelux cluster.
- The Commission's assessment
- (741) For the reasons set out in this section, the Commission has reached the conclusion that the Transaction is likely to lead to a significant impediment to effective competition in the Benelux cluster. In particular, the Transaction will result in the creation or strengthening of a dominant position in the cluster.
- (742) First, the combined volume and capacity shares of the Parties are high, with a significant increment (see recitals (732) to (733)).
- (743) Second, the Commission observes that the Transaction would give rise to high post-Transaction HHI levels ([6000-6500] for volumes and [7000-7500] for capacity) and high HHI deltas ([2500-2600] for volumes and [3000-3100] for capacity) in the Benelux cluster (see Table 10 and Table 11).
- (744) Third, Ball has the only beverage can manufacturing plant in the Benelux, but also serves this cluster from several other plants mainly from Germany and France. For Rexam, its volumes to the Benelux cluster mainly come from [...]. Ball and Rexam are each other's closest competitors for all of these plants at plant level.
- (745) Fourth, the Transaction would, at best, represent a 4 to 3 merger in the Benelux cluster. Crown and Can-Pack each have small volume shares of [10-20] % and [10-20] % respectively as opposed to the merged entity's high volume share of [70-80] %. In relation to Helvetia see recital (729).
- (746) Fifth, for certain specialty cans, that is to say sleek and slim other than 250 ml, the choice for the customers would be further reduced. The Parties' combined volume share would be [80-90] % (Ball: [50-60] %, Rexam: [20-30] %) with Crown holding the remaining [10-20] %. Can-Pack does not sell these types of cans at all. Moreover, if 250 ml slim cans are considered as specialty cans, the merged entity would have an equally high volume share with [80-90] % (Ball: [40-50] %, Rexam: [40-50] %) with Can-Pack holding [5-10] % and Crown [10-20] %.
- (747) Sixth, the majority of large customers with filling locations in the Benelux that responded to the market investigation and expressed an opinion stated that in case the merged entity were to raise prices, other beverage can manufacturers would have insufficient capacity to satisfy total market demand.⁸⁶⁵
- (748) Moreover, the majority of large customers with filling locations in the Benelux that responded to the market investigation and expressed an opinion stated that if the merged entity were to raise prices, it would be unable to switch all its volumes to other existing suppliers.⁸⁶⁶ Moreover, as one smaller customer puts it: *'The entire market is concerned about the possible*

⁸⁶⁵ Questionnaire to Customers (Q2), question 51, ID 2664.

⁸⁶⁶ Questionnaire to Customers (Q2), question 53, ID 2664.

*merger, and I assume that everyone is looking at hedging [their] risk and not ending up with a single supply situation with the Ball/Rexam entity. In this case there is certainly not enough capacity existing outside the Ball/Rexam entity to allow for everyone to have a back up supplier/alternative main supplier.*⁸⁶⁷

- (749) Seventh, as set out in recitals (445)-(447), Crown and Can-Pack have limited spare capacity in the EEA. Moreover, Crown and Can-Pack do not have production facilities in Belgium, the Netherlands or Luxembourg, which aggravates even further the capacity situation in the Benelux cluster.⁸⁶⁸ Crown and Can-Pack would, therefore, not be able to supply sufficient additional volumes to customers in the Benelux cluster in case of a price increase by the merged entity.
- (750) Eighth, the majority of large customers that responded to the market investigation indicated that the Transaction would have a negative impact in the geographic area of the Benelux.⁸⁶⁹ *'Currently only Ball and Rexam can be seen as viable suppliers of larger can volumes in the Benelux. Therefore competition from another competitor who would create extra capacity and who would not be member of the BCME would be welcome in these countries.'*⁸⁷⁰ Smaller customers also pointed towards a negative impact: *'The Netherlands - more dominant presence, less competition, impact on prices.'*⁸⁷¹ *'[Dutch customer] anticipates that after the merger Ball-Rexam will become a powerful dominant market player which will gain a lot of bargaining power in the selling process. [Dutch customer] estimates that it will be likely that the selling prices will be increased by Ball-Rexam which will probably also result in price increases of the other can suppliers in the market.'*⁸⁷²
- (751) Ninth, in respect of the Notifying Party's argument that customers exert a high degree of buyer power including through sponsoring entry and/or expansion, and through changing their mix of demand across packaging types, what has been said in section 9.1 in respect of these points applies fully to the Benelux cluster.

9.2.2.3. Cluster of catchment areas around individual customer filling locations in France

- Market structure

- (752) The Parties' combined capacity share⁸⁷³ is [80-90] % (Ball: [40-50] %, Rexam: [30-40] %). The Parties are followed by Crown ([5-10] %) and Can-Pack ([0-5] %). The planned operation by Helvetia would represent [0-5] % capacity share in the France cluster.
- (753) The Parties' combined volume share⁸⁷⁴ is [70-80] % (Ball: [40-50] %, Rexam: [30-40] %). The Parties are followed by Crown ([10-20] %) and Can-Pack ([5-10] %).⁸⁷⁵

⁸⁶⁷ Questionnaire to Customers (Q4), question 22.1, ID 2786.

⁸⁶⁸ As set out in recitals (445)-(447), the capacity data used by the Commission is from 2014. The levels of spare capacity estimated by third parties is, however, even lower in 2015. By relying on 2014 data the Commission is, therefore, adopted an approach that is favourable to the Parties.

⁸⁶⁹ Questionnaire to Customers (Q2), question 64, ID 2664.

⁸⁷⁰ Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 331.

⁸⁷¹ Questionnaire to Customers (Q4), question 25, ID 2786.

⁸⁷² Agreed non-confidential minutes of a call with a customer, 19.05.2015, ID 1212.

⁸⁷³ See section 9.2.1.

⁸⁷⁴ See section 9.2.1.

⁸⁷⁵ With regard to the robustness tests carried out by the Commission, the 900 km combined capacity share is [80-90] % (Ball: [40-50] %, Rexam: [30-40] %). The Parties are followed by Crown ([10-20] %) and Can-Pack ([0-5] %). For volume shares, the 900 km combined volume share is [70-80] % (Ball: [40-50] %, Rexam: [30-40] %).

- (754) Furthermore, the Parties' combined capacity share at the catchment area level around individual customer filling locations ranges between [70-80] % and [90-100] % and volume shares between [70-80] % and [80-90] %. For this regional cluster [90-100] % of customer volumes, both on a capacity and volume measure, would experience particularly significant concentration effects as shown in Table 12 and Table 13.
- The Notifying Party's views
- (755) The Notifying Party includes France in its regions defined as South-West Europe (Spain, Portugal, Southern France, Italy) and North-West Europe (Austria, Benelux, Germany, Northern France). The Notifying Party argues that, in South-West Europe, Ball has a market share of [20-30] % and Rexam of [40-50] %, and in North-West Europe, Ball has a market share of [10-20] % and Rexam of [40-50] %.
- (756) The Notifying Party submits that due to an unduly broad approach to customer catchment areas, the SO is at odds with both the qualitative and quantitative evidence available to the Commission and that the appropriate catchment area should be a 500 km radius. Refining the catchment size for customer filling locations situated in France (and excluding Red Bull from Rexam's market sales) therefore results in a more appropriate measure of market dynamics in this region.⁸⁷⁶ Based on the 500 km driving distance, the combined volume market shares of the Parties in France is [70-80] % with an increment of [20-30] % and capacity market share of [70-80] % with an increment of [10-20] %.⁸⁷⁷
- (757) Regarding North-West Europe, the Notifying Party's arguments regarding this region are set out in recitals (710) to (718).
- (758) Regarding South-West Europe, the Notifying Party argues that that the combined market shares of the Parties overstate the level and importance of competition between the Parties for the following reasons: (i) the Parties face strong competition, particularly from Crown and increasingly from Can-Pack; (ii) the Parties are not close competitors and the Parties have mostly complementary footprints; and (iii) customers exert a high degree of buyer power, including through sponsoring new entry and/or expansion, and through changing their mix of demand across packaging types.
- (759) The Notifying Party also provides market shares for France as follows: Ball ([60-70] %), Rexam ([5-10] %), Crown ([20-30] %), Can-Pack ([5-10] %). In addition, the Notifying Party provides market shares for Northern France and Southern France separately. According to the Notifying Party, for Northern France the Parties' combined volume share is estimated to be [60-70] % but the increment is only [5-10] %. According to the Notifying Party, Ball's high volume share is a result of the fact that Ball sells in excess of [...] billion cans to [...] annually. For Southern France, the Parties' combined volume share in 2014 is estimated to be [80-90] % with a small increment of only [0-5] %. Ball has the only beverage can plant in Southern France while Rexam does not have a beverage can plant in France.
- (760) In its Reply to the SO, the Notifying Party also argues that the SO adopts a method of measuring closeness of competition which is inconsistent with observed market facts and

%). The Parties are followed by Crown ([10-20] %) and Can-Pack ([5-10] %). The 500 km robustness test results are reported in Annex B to this Decision and Annex C to this Decision.

⁸⁷⁶ Reply to the SO, paragraphs 4.99 and 4.100 ('France').

⁸⁷⁷ Reply to the SO, Table 4.4. Assumes [...]. Excludes: (i) Rexam's sales to Red Bull and Rexam's plants at [...] which supply >[...] % of their volumes to Red Bull.

overstates the extent of competition between the Parties (see recital (338)). In this case, looking at all of Ball's plants located near to France, only [...] satisfies more than [...] % of French demand, Rexam's plants located outside France, with the exception of Wakefield, make *de minimis* sales into France, and Ball's plant at Bierne made almost [...] of its 2014 sales to [...].

- (761) Furthermore, the Notifying Party submits that customers will have sufficient choice of suppliers in the France cluster, such as Crown, Can-Pack, Helvetia and the new Ball/Rexam entity.
- The Commission's assessment
- (762) For the reasons set out in this section, the Commission has reached the conclusion that the Transaction is likely to lead to a significant impediment to effective competition in respect of the France cluster. In particular, the Transaction will result in the creation or strengthening of a dominant position in respect of the cluster.
- (763) First, the combined volume and capacity shares of the Parties are high, with a significant increment (see recitals (752) to (754)).
- (764) Second, the Transaction would give rise to high post-Transaction HHI levels ([6000-6500] for volumes and [7000-7500] for capacity) and high HHI deltas (2700-2800] for volumes and [3300-3400] for capacity) in the France cluster (see Table 10 and Table 11).
- (765) Third, as regards plants located in France, the locus of the France cluster, Ball not only has two plants there (Bierne and La Ciotat), but also delivers to this cluster from several other plants, though to a more limited extent ([...] deliver more than [...] % of their output to the France cluster). As for Rexam, while it does not own a plant located in France, it delivers, to a varying extent into this cluster for instance from [...]. As explained in recital (348) above, for Ball's Bierne and La Ciotat plants, Rexam owns the plant that is closest to the customers of Ball for the absolute majority of the sales for above [...] % of their respective sales.
- (766) Fourth, the Transaction, at best, represents a 4 to 3 merger in the France cluster. However, Crown and Can-Pack have small volume shares of [10-20] % and [5-10] % respectively as opposed to the merged entity's high volume share of [70-80] %. In relation to Helvetia, see recital (729).
- (767) Fifth, for certain specialty cans, that is to say sleek and slim other than 250 ml, the choice for the customers would be even further reduced. The Parties' combined volume share would be [70-80] % (Ball: [40-50] %, Rexam: [20-30] %) with Crown holding the remaining [20-30] %. Can-Pack does not sell these types of cans at all. Moreover, if 250 ml slim cans are considered as specialty cans, the merged entity would have an even higher volume share with [80-90] % (Ball: [50-60] %, Rexam: [20-30] %) with Can-Pack holding [0-5] % and Crown holding [10-20] %.
- (768) Sixth, customers that responded to the market investigation expressed concerns about the likely effects of the Transaction in France. Regarding possible price increases, one smaller French customer '*considers that having such a big player on the market is obviously dangerous and could lead to a price increase.*'⁸⁷⁸ Another large customer explains that '*due to the scale of the merged entity, prices will likely increase, especially for smaller beverage manufacturers*

⁸⁷⁸ Courtesy translation from the French original: '*[Large customer] estime que le fait d'avoir un aussi gros acteur sur le marché est évidemment dangereux et pourrait entraîner une augmentation des prix.*' Agreed non-confidential minutes of a call with a customer, 12.08.2015, ID 1800.

[...].⁸⁷⁹ Regarding capacity levels, a customer active in France stated that '*[d]ue to probable capacity constraints even before the proposed transaction some can manufacturers are no option for [customer] in certain regions. This will probably worsen post-merger, reducing the number of available options, or where a reduction is not to be expected strengthening one can manufacturer significantly due to larger scale overall.*'⁸⁸⁰

- (769) Regarding the consolidation of capacity, one large customer active in France stated that '*[o]ne risk of the transaction is the potential closure of can plants by the merged entity for economic reasons. This might lead to less capacity and larger transportation distances, and therefore to a reduction of the security of supplies and flexibility. The level of service might also decrease post-merger.*'⁸⁸¹
- (770) Seventh, as set out in recitals (445)-(447), Crown and Can-Pack have limited spare capacity in the EEA. This is the case in the France cluster where the combined spare capacity of Crown and Can-Pack does not exceed [20-30] % of the sales of the merged entity.⁸⁸² Crown and Can-Pack would, therefore, not be able to supply sufficient additional volumes to customers in the French cluster in case of a price increase by the merged entity.
- (771) Eighth, in respect of the Notifying Party's argument that customers exert a high degree of buyer power including through sponsoring entry and/or expansion, and through changing their mix of demand across packaging types, what has been said in section 9.1 in respect of these points applies fully to the France cluster.

9.2.2.4. Cluster of catchment areas around individual customer filling locations in Italy

- Market structure

- (772) The Parties' combined capacity share⁸⁸³ is [90-100] % (Ball: [10-20] %, Rexam: [70-80] %). The Parties are followed by Crown ([5-10] %) and Can-Pack ([0-5] %).
- (773) The Parties' combined volume share⁸⁸⁴ is [80-90] % (Ball: [20-30] %, Rexam: [60-70] %). The Parties are followed by Crown ([10-20] %) and Can-Pack ([0-5] %).⁸⁸⁵
- (774) Furthermore, the Parties' combined capacity share at the catchment area level around individual customer filling locations ranges between [0-5] % and [90-100] % and volume shares between [60-70] % and [90-100] %. In this cluster [60-70] %, on a capacity measure, and [90-100] %, on a volume measure, of the customer volumes would experience particularly significant concentration effects as shown in Table 12 and Table 13.⁸⁸⁶

⁸⁷⁹ Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 226.

⁸⁸⁰ Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 331.

⁸⁸¹ Agreed non-confidential minutes of a call with a customer, 22.05.2015, ID 226.

⁸⁸² As explained in recitals (445)-(447), the capacity data used by the Commission is dated 2014. The levels of spare capacity estimated by third parties is even lower in 2015, implying that by relying on 2014 data the Commission is presenting a conservative picture.

⁸⁸³ See section 9.2.1.

⁸⁸⁴ See section 9.2.1.

⁸⁸⁵ With regard to the robustness test carried out by the Commission, the 900 km combined capacity share is [80-90] % (Ball: [20-30] %, Rexam: [50-60] %). The Parties are followed by Crown ([5-10] %) and Can-Pack ([0-5] %). For volume shares, the 900 km combined volume share is [80-90] % (Ball: [20-30] %, Rexam: [50-60] %). The Parties are followed by Crown ([10-20] %) and Can-Pack ([0-5] %). The 500 km robustness test results are reported in Annex B to this Decision and Annex C to this Decision.

⁸⁸⁶ See section 9.2.1.

- The Notifying Party's views
- (775) The Notifying Party puts forward arguments with regard to the region defined as South-West Europe, which is mainly composed of Iberia, Southern France and Italy. In that region, the Notifying Party submits that the market shares of the Parties are the following: Ball [20-30] %, and Rexam [40-50] %.
- (776) The Notifying Party's arguments regarding South-West Europe are set out in recitals (755) to (761).
- (777) The Notifying Party also provides national market shares for Italy as follows: Ball ([20-30] %), Rexam ([50-60] %), Crown ([20-30] %), Can-Pack ([0-5] %).
- (778) The Notifying Party submits that due to an unduly broad approach to customer catchment areas, the SO is at odds with both the qualitative and quantitative evidence available at the Commission and that the appropriate catchment area should be a 500 km radius. Refining the catchment size for customer filling locations situated in Italy and excluding Red Bull from Rexam's market sales therefore results in a more appropriate measure of market dynamics in this region.⁸⁸⁷ Based on the 500 km driving distance, the combined volume market shares of the Parties in Italy is [70-80] % with an increment of [20-30] % and capacity market share of [90-100] % with an increment of [0-5] %.⁸⁸⁸
- (779) The Notifying Party also submits that the geographic footprints of the Parties are complementary. Ball has only one plant in Southern France, whereas Rexam has two plants in Italy. According to the Notifying Party, Ball only competes to a limited extent in Italy [...]. Furthermore, The Parties also understand that Crown currently supplies Italian customers from its plants in Patras, Greece and Kechnec, Slovakia. Can-Pack is also able to supply Italy via imports from its low-cost plants outside the region (which have a manufacturing cost advantage that can help to offset any freight cost disadvantage).
- (780) In its Reply to the SO, the Notifying Party also argues that the SO adopts a method of measuring closeness of competition which is inconsistent with observed market facts and overstates the extent of competition between the Parties (see recital (338)).
- The Commission's assessment
- (781) For the reasons set out in this section, the Commission has reached the conclusion that the Transaction is likely to lead to a significant impediment to effective competition in the Italy cluster. In particular, the Transaction will result in the creation or strengthening of a dominant position in respect of the cluster.
- (782) First, the combined volume and capacity shares of the Parties are high, with a significant increment (see recitals (772) to (774)).
- (783) Second, the Transaction would give rise to high post-Transaction HHI levels ([7000-7500] for volumes and [9000-9500] for capacity) and high HHI deltas ([2400-2500] for volumes and [1900-2000] for capacity) in the Italy cluster (see Table 10 and Table 11).
- (784) Third, as regards plants located in Italy, the locus of the Italy cluster, only Rexam has plants there, Nogara and San Martino. Ball supplies the Italy cluster from [...]. As explained in recital

⁸⁸⁷ Reply to the SO, paragraphs 4.162 and 4.163 ('Italy').

⁸⁸⁸ Reply to the SO, Table 4.6. Assumes [...]. Excludes : (i) Rexam's sales to Red Bull; and (ii) and Rexam's plants [...] which supply >[...] % of their volumes to Red Bull.

(348), for Ball's La Ciotat plant, Rexam owns the plant that is closest to the customers of Ball for the absolute majority of the sales for above [...] % of their respective sales. As regards Rexam's Nogara and San Martino plants Ball owns the plant that is closest to the customers for above [...] % and above [...] % of their respective sales.

- (785) Fourth, the Transaction, at best, represents a 4 to 3 merger in the Italy cluster. Crown and Can-Pack have volume shares of [10-20] % and [0-5] % respectively as opposed to the merged entity's high volume share of [80-90] %.
- (786) Fifth, for certain specialty cans, that is to say sleek and slim other than 250 ml, the Parties' combined volume share is [70-80] % (Ball: [10-20] %, Rexam: [60-70] %) with Crown holding the remaining [20-30] %. Can-Pack does not sell these types of cans at all. Moreover, if 250 ml slim cans are considered as specialty cans, the merged entity would have an even higher volume share with [80-90] % (Ball: [5-10] %, Rexam: [70-80] %, Can-Pack: [0-5] % and Crown: [10-20] %).
- (787) Sixth, Crown is seen as a potential competitor to the merged entity, but to a limited extent.⁸⁸⁹ In particular, customers that responded to the market investigation pointed out that Crown has limited ability to supply this cluster, mainly due to capacity constraints: '*[Customer] contacted Crown but it does not have free capacity to satisfy additional orders.*'⁸⁹⁰
- (788) Seventh, the majority of large customers with filling locations in Italy that responded to the market investigation stated that if the merged entity were to raise prices, other beverage can manufacturers would have insufficient capacity to satisfy total market demand.⁸⁹¹
- (789) Moreover, the majority of large customers with filling locations in Italy that responded to the market investigation and expressed an opinion stated that if the merged entity were to raise prices, it would be unable to switch all its volumes to other existing beverage can manufacturers.⁸⁹² Smaller customers also indicated that switching would not be easy: '*[Client] considers that Ball's acquisition of Rexam (the Transaction) will reduce the number of can manufacturers in a market that is already very concentrated. Following the Transaction there will be only two can manufacturers able to serve us. This number is [insufficient] to have competition in the market and give us the [opportunity] of obtaining the supplies we need.*'⁸⁹³
- (790) Eighth, as set out in recitals (445)-(447), Crown and Can-Pack have limited spare capacity in the EEA. This is the case in the Italy cluster where the combined spare capacity of the

⁸⁸⁹ '*For our plant in Scorze (this is the only plant with a filling line) Crown would be the only alternative supplier.*' Courtesy translation from the Italian original: '*Per nostro stabilimento di Scorze (solo in questo plant abbiamo linea riempimento lattine) resterebbe solo CROWN come fornitore alternativo.*' Questionnaire to Customers (Q1), question 104.1, ID 1609. '*Can-Pack is not a valid alternative for Ball because it does not produce the can types [customer] mainly needs (Can-Pack only produces "standard" cans).*' Courtesy translation from the Italian original: '*Can-Pack non rappresenta una valida alternativa a Ball perché non produce i tipi di lattine di cui [cliente] ha principalmente bisogno (Can-Pack produce solamente lattine "standard").*' Agreed non-confidential minutes of a call with a customer, 07.08.2015, ID 2524.

⁸⁹⁰ Courtesy translation from the Italian original: '*[Cliente] ha contattato Crown ma quest'ultima non ha la capacità per soddisfare nuovi ordini.*' Agreed non-confidential minutes of a call with a customer, 07.08.2015, ID 2524.

⁸⁹¹ Questionnaire to Customers (Q2), question 51, ID 2664.

⁸⁹² Questionnaire to Customers (Q2), question 53, ID 2664.

⁸⁹³ Courtesy translation from the Italian original: '*[Cliente] ritiene che l'acquisizione di Rexam da parte di Ball (l'Operazione) riduca il numero di produttori di lattine in un mercato già altamente concentrato. A seguito dell'Operazione ci saranno solo due produttori di lattine in Europa in grado di fornire [cliente]. Tale numero è insufficiente per avere concorrenza nel mercato e per dare a [cliente] la possibilità di ottenere le forniture di cui ha bisogno.*' Agreed non-confidential minutes of a call with a customer, 07.08.2015, ID 2524.

competitors does not exceed [20-30] % of the sales of the merged entity.⁸⁹⁴ Crown and Can-Pack would, therefore, not be able to supply sufficient additional volumes to customers in the Italy cluster in case of a price increase by the merged entity.

- (791) Ninth, the majority of large customers that responded to the market investigation indicated that the Transaction would have a negative impact of the Transaction in Italy.⁸⁹⁵ Smaller customers also pointed towards a negative impact:⁸⁹⁶ *'After the proposed transaction is concluded, a very strong player with a market share of around 70% would be created. The Italian market could be heavily affected by the proposed transaction. Can beverage manufacturers would have one competitor less to supply from. The price of cans could be less competitive than before.'*⁸⁹⁷
- (792) As one Italian customer puts it: *'We are concerned for an increase in prices and the risk of having to source from one supplier because it would be in a monopoly position'*.⁸⁹⁸
- (793) Tenth, in respect of the Notifying Party's argument that customers exert a high degree of buyer power including through sponsoring entry and/or expansion, and through changing their mix of demand across packaging types, what has been said in section 9.1.16 in respect of these points applies fully to the Italy cluster.

9.2.2.5. Cluster of catchment areas around individual customer filling locations in Iberia

- Market structure

- (794) The Parties' combined capacity share⁸⁹⁹ is [60-70] % (Ball: [20-30] %, Rexam: [30-40] %). Other players include Crown ([30-40] %) and Can-Pack ([0-5] %).
- (795) The Parties' combined volume share⁹⁰⁰ is [60-70] % (Ball: [10-20] %, Rexam: [40-50] %). The Parties are followed by Crown ([40-50] %) and Can-Pack ([0-5] %).⁹⁰¹
- (796) Furthermore, the Parties' combined capacity share at the catchment area level around individual customer filling locations ranges between [50-60] % and [90-100] % and volume shares between [30-40] % and [70-80] %. In this cluster, [90-100] % of the customers, on a capacity measure, and [90-100] % of the customers, on a volume measure would experience particularly significant concentration effects as shown in Table 12 and Table 13.⁹⁰²

⁸⁹⁴ As set out in recitals (445)-(447), the capacity data used by the Commission is from 2014. The levels of spare capacity estimated by third parties is, however, even lower in 2015. By relying on 2014 data the Commission is, therefore, adopted an approach that is favourable to the Parties.

⁸⁹⁵ Questionnaire to Customers (Q2), question 64, ID 2664.

⁸⁹⁶ Questionnaire to Customers (Q1), questions 100 and 101, ID 1609. *'[Customer] is significantly concerned about a possible increase in the price of cans'*; courtesy translation from the Italian original *'[Customer] è anche preoccupata di un possibile aumento dei prezzi delle lattine.'* Agreed non-confidential minutes of a call with a customer, 07.08.2015, ID 2524.

⁸⁹⁷ Questionnaire to Customers (Q1), question 100.1, ID 1609.

⁸⁹⁸ Courtesy translation from the Italian original: *'Temiamo un rilevante aumento delle quotazioni e il rischio di doverci rifornire da un solo fornitore perchè in condizioni di monopolio.'* Questionnaire to Customers (Q1), question 101, ID 1609.

⁸⁹⁹ See section 9.2.1.

⁹⁰⁰ See section 9.2.1.

⁹⁰¹ With regard to the robustness test carried out by the Commission, the 900 km combined capacity share is [50-60] % (Ball: [20-30] %, Rexam: [30-40] %). The Parties are followed by Crown ([30-40] %) and Can-Pack ([0-5] %). For volume shares, the robustness test shows the same results as the 700 km catchment area: the 900 km combined volume share is [60-70] % (Ball: [20-30] %, Rexam: [40-50] %). The Parties are followed by Crown ([30-40] %) and Can-Pack ([0-5] %). The 500 km robustness test results are reported in Annex B to this Decision and Annex C.

⁹⁰² See section 9.2.1.

- The Notifying Party's views
- (797) The Notifying Party puts forward arguments with regard to the region defined as South-West Europe, which is mainly composed of Iberia, Southern France and Italy. In that region, the Notifying Party submits that the market shares of the Parties are the following: Ball [20-30] %, and Rexam [40-50] %.
- (798) The Notifying Party's arguments regarding the South-West Europe are set out in recitals (755) to (761).
- (799) The Notifying Party submits that due to an unduly broad approach to customer catchment areas, the SO is at odds with both the qualitative and quantitative evidence available at the Commission and that the appropriate catchment area should be a 500 km radius. Refining the catchment size for customer filling locations situated in Iberia and [...] therefore results in a more appropriate measure of market dynamics in this region.⁹⁰³ Based on a 500 km driving distance and [...], the combined volume market shares of the Parties in Iberia is [60-70] % with an increment of [10-20] % and a combined capacity share of [40-50] % with an increment of [0-5] %.
- (800) As regards the [...], the Notifying Party argues that [...].
- (801) In its Reply to the SO, the Notifying Party also argues that Crown poses a significant competitive constraint in Iberia since it has a volume market share of [30-40] %, suggesting that numerous customers consider Crown a viable competitor and that there is strong demand for steel cans in this region. Similarly, Can-Pack's potential entry into the Iberia cluster through the construction of a new plant forced down pricing, and it is already supplying some customers in the Iberia cluster, such as MSM and DAMM.
- (802) The Notifying Party further submits that customers are willing to switch between aluminium and steel cans and some of them, such as MSM and Heineken, have done so in the past.
- The Commission's assessment
- (803) For the reasons set out in this section, the Commission has reached the conclusion that the Transaction is likely to lead to a significant impediment to effective competition in the Iberia cluster. In particular, the Transaction will result in the creation or strengthening of a dominant position in respect of the cluster.
- (804) First, the combined sales and capacity shares of the Parties in the Iberian cluster are high, with a significant increment (see recitals (794) to (796)).
- (805) Second, the volume shares [...] ⁹⁰⁴ [...].⁹⁰⁵
- (806) In the first place, in a number of internal documents (shown in Figure 26), Ball anticipates that, because of [...].⁹⁰⁶

Figure 26: Expected market share developments in Spain by Ball

[...]

Source: Ball's internal document, '[...] v60 from v58 – Waterfall', sheet 'Graphs' and Ball's internal document, 'Project [...]14 July 2014'

⁹⁰³ Reply to the SO, paragraph 4.133 ('Iberia').

⁹⁰⁴ Update reply to question 28 of RFI 2 of 30.06.2015, [...].

⁹⁰⁵ See section 5.1.4.1. See also Ball's internal document, 'BPE Strategic Plan 2015 – 2017', slide 5.

⁹⁰⁶ Ball's internal document, '[...] v60 from v58 – Waterfall'.

- (807) In the second place, [...].⁹⁰⁷
- (808) In the third place, [...].⁹⁰⁸ [...],⁹⁰⁹ [...].⁹¹⁰
- (809) In the fourth place, it is apparent from Ball internal documents that [...], as illustrated by Figure 27 and Figure 28.

Figure 27: Ball's internal assessment of [...]

Source: Ball's internal document, 'Project [...] 14 July 2014'

Figure 28: Ball's internal assessment of [...]

[...]

Ball's internal document 'BPE Deep Dive Meeting, September 22 2014'

- (810) Third, the Transaction would give rise to high post-Transaction HHI levels ([5000-5500] for volumes and [5000-5500] for capacity) and high HHI deltas ([1500-1600] for volumes and [1800-1900] for capacity) in the Iberia cluster (see Table 10 and Table 11).
- (811) Fourth, the Transaction represents overall a 3 to 2 merger in the Iberia cluster. While Crown is relatively strong in the Iberia cluster with a volume share of [30-40] %, Can-Pack has a volume share of [0-5] %.
- (812) Fifth, as set out in detail in section 9.1.15, given that barriers to entry and expansion are high, there will be an insufficient number of other potential competitors which could maintain sufficient competitive pressure post-Transaction. [...].
- (813) Sixth, certain customers that responded to the market investigation described Ball and Rexam as aggressive competitors in the Iberia cluster:⁹¹¹ *'[i]n the past only Rexam and Ball were fighting for volume in my company.'*⁹¹²
- (814) Seventh, as regards plants located in Spain and Portugal, the locus of the Iberia cluster, Rexam has one plant in central Spain (Valdemorillo) and one plant in North- Eastern Spain (La Selva). Ball has one plant located in Southern France (La Ciotat) from which it serves, inter alia, customers located in Iberia. Crown has one plant in Northern Spain (Agoncillo) and one plant in Southern Spain (Seville). Can-Pack does not have a plant in Iberia or the immediate surroundings in the EEA, but has some supplies to Iberia from its plants located outside this region.
- (815) With regard to La Ciotat, as described in recital (348), Rexam owns the plant that is closest to the customers of Ball for the absolute majority of the sales (above [...] %). For Rexam's plants located in Spain, mainly due to their geographical location, Crown is the closest competitor for two plants in terms of sales: at La Selva ([...] %) and Valdemorillo ([...] %). For La Selva, Ball owns the second closest competing plant in the majority of the sales ([...] %).

⁹⁰⁷ Reply to RFI 5 of 13.07.2015, Exhibit R.

⁹⁰⁸ Ball's internal document, '[...] v60 from v58 – Waterfall'.

⁹⁰⁹ [...]

⁹¹⁰ [...]

⁹¹¹ Questionnaire to Customers (Q4), questions 19 and 20, ID 2786.

⁹¹² Questionnaire to Customers (Q4), question 21.1, ID 2786.

- (816) However, Crown only produces steel cans at its Spanish plants. This, for many customers, makes the choice even more limited. Several respondents highlighted this fact in the market investigation: *'While Crown is present in Iberia, its plants are only steel plants [...]. Crown has no short term plans to convert these lines to aluminium (to the best of [customer]'s knowledge). This place them at a competitive disadvantage compared to other suppliers that are ready to manufacture or import aluminium cans. Rexam is progressively changing both its steel plants/lines to aluminium in Spain.'*⁹¹³ *'Ball and Rexam as they're the only suppliers able to deliver aluminium sleek cans in Spain';*⁹¹⁴ *'Crown Cork can supply just steel cans in Spain.'*⁹¹⁵ *'Crown is a limited competitor in Spain.'*⁹¹⁶ As the Notifying Party itself states in an internal document, Crown's [...].⁹¹⁷
- (817) There is currently no indication that Crown has concrete plans to convert its steel lines to aluminium: *'[w]hile 30% of [customer]'s cans in Spain are still steel cans, this is mostly due to the fact that Crown have been delaying the change from steel to aluminium in the last 2-3 years.'*⁹¹⁸
- (818) Moreover, Crown seems to be also capacity-constrained in Iberia: *'Crown has refused to quote sleek 0,33 arguing they have no available capacity in Spain.'*⁹¹⁹
- (819) Eighth, Can-Pack is also not seen as a real alternative for customers in Iberia. As the Notifying Party itself states in an internal document, Can-Pack is [...].⁹²⁰ Figure 26 also indicates that Can-Pack's share is [...]. Customers further explained that they mainly invite Ball, Rexam and Crown for their tenders, but not Can-Pack.⁹²¹
- (820) While Can-Pack has tried to win volumes in the Iberia cluster from its Moroccan, UK and Polish plants, due to supply distances, it is not considered by customers as a competitive supplier for large volumes. Any deliveries from Can-Pack relate to smaller volumes or certain types of cans: *'[Can-Pack] asks us for payment conditions that are not satisfactory to us for large volumes.'*⁹²² *'[Can-Pack] try to introduce some volumes to be present in Spain, but with a limited volume';*⁹²³ *'more competitive difficulties due to transport costs'*⁹²⁴, *'due to the distance, Can-Pack is competitive only for the types of cans for which volumes are small such as 25cl cans'* and *'Can-Pack can enter the Iberian market in the can sizes that do not interest Rexam or*

⁹¹³ Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2938.

⁹¹⁴ Questionnaire to Customers (Q4), question 12.1, ID 2786.

⁹¹⁵ Questionnaire to Customers (Q4), question 13.1, ID 2786.

⁹¹⁶ Questionnaire to Customers (Q1), question 100, ID 1609.

⁹¹⁷ Ball's internal document, 'Project [...] 14 July 2014', slide 18. According to the Notifying Party, this is not a statement about Crown's general ability to compete in Iberia but specifically related to its potential to serve [...]. Reply to Letter of Facts of 6 November, Annex.

⁹¹⁸ Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2691.

⁹¹⁹ Questionnaire to Customers (Q1), question 65.1, ID 1609.

⁹²⁰ Ball's internal document, 'Project [...] 14 July 2014', slide 19.

⁹²¹ Questionnaire to Customers (Q4), questions 12 and 12.1, ID 2786.

⁹²² Courtesy translation from the Spanish original *'Can Pack nos solicita condiciones de pago que no nos son positivas para grandes volúmenes'*, Questionnaire to Customers (Q1), question 104.1, ID 1609.

⁹²³ Questionnaire to Customers (Q4), question 19.1, ID 2786.

⁹²⁴ Questionnaire to Customers (Q4), question 19.1, ID 2786.

Crown⁹²⁵ Supplying from Morocco also implies logistical challenges, related to the low reliability of the Moroccan ports.⁹²⁶

- (821) Although the Notifying Party argues that Can-Pack is in fact delivering from Morocco to Spain, Can-Pack explains that it is unable to supply into the Iberia cluster from its Moroccan plant.⁹²⁷
- (822) Ninth, the majority of large customers located in the Iberian cluster that responded to the market investigation stated that if the merged entity were to raise prices, other beverage can manufacturers would have insufficient capacity to satisfy total market demand:⁹²⁸ *'Can manufacturing capacity is extremely tight in Iberia (plants are almost at full capacity).'*⁹²⁹
- (823) The majority of customers located in Iberia that responded to the market investigation also stated that if the merged entity were to raise prices, they would be unable to switch all its volumes to other existing suppliers.⁹³⁰

*'Like I said previously, in my case with the can formats I use the most, I only have three actors as suppliers, all three have problems of capacity and service at certain times.'*⁹³¹

*'Impossible in Spain and Portugal [to switch to other supplier] due to the factories only from 2 supplier and their capacity.'*⁹³²

*'Given the tight capacity situation in Iberia, it would be very hard for [customer] to switch important volumes of cans from one supplier to another. Currently, [customer] estimates that it would not be able to move more than 10% (aprox.) of its yearly consumption needs.'*⁹³³

- (824) Tenth, as set out in recitals (445)-(447), Crown and Can-Pack have limited spare capacity in the EEA. This is the case in the Iberia cluster where the combined spare capacity of the competitors does not exceed [20-30] % of the sales of the merged entity.⁹³⁴ Crown and Can-Pack would, therefore, not be able to supply sufficient additional volumes to customers in the Iberia cluster in case of a price increase by the merged entity.

⁹²⁵ Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2691.

⁹²⁶ *'[Customer] has considered (and tested) sourcing from Can Pack's plant in Casablanca, however the price and the level of service was not satisfactory. In particular, due to technical issues at the plant and logistical issues in the Moroccan ports, reliability of supply cannot be assured.'* Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2691. See also Can-Pack's comment on the SO: *'the Moroccan ports still operate in a way that does not give European customers a feeling that their supplies are secured. In addition, transport costs from Morocco to EEA ports are relatively high due to undeveloped trade between those markets and customs clearance procedures.'* ID 3451.

⁹²⁷ See also Can-Pack's comment on the SO: *'The Commission suggests that CP can supply into Southern Europe out of its plant in Morocco. CP would respectfully submit that today, this is not the case.'* ID 3451.

⁹²⁸ Questionnaire to Customers (Q2), question 51, ID 2664.

⁹²⁹ Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2691.

⁹³⁰ Questionnaire to Customers (Q2), question 53, ID 2664 and Questionnaire to Customers (Q4), question 22.1, ID 2786.

⁹³¹ Courtesy translation from the Spanish original: *'Como ya dije , en mi caso con los formatos que envaso mayoritariamente, solo tengo tres actores como proveedores, y los tres, tienen en determinados momentos problemas de capacidad y de servicio'*. Questionnaire to Customers (Q4), question 22.1, ID 2786.

⁹³² Questionnaire to Customers (Q4), question 22.1, ID 2786.

⁹³³ Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2691.

⁹³⁴ As set out in recitals (445)-(447), the capacity data used by the Commission is from 2014. The levels of spare capacity estimated by third parties is, however, even lower in 2015. By relying on 2014 data the Commission is, therefore, adopted an approach that is favourable to the Parties.

- (825) Eleventh, the majority of large customers with filling locations in Iberia that responded to the market investigation indicated the Transaction was expected to have a negative impact.⁹³⁵ Smaller customers also pointed towards a negative impact:⁹³⁶ *'we only buy cans in Spain. Merge would mean monopoly.'*⁹³⁷

*'[T]he can we use is only offered by REXAM and BALL, if they merge and raise prices, we'll have to suffer it.'*⁹³⁸

*'Rexam and Ball are both current suppliers and the only available to deliver 33cl aluminium sleek cans in Spain, helping negotiate better prices and minimize risks of supply. Additionally, work with both allow us to compare service quality and ask for improvements to that party with weaknesses.'*⁹³⁹ *'[D]angerous in future , South France, Spain and Portugal with only 2 suppliers with can manufacturing plants. [...] Today at least Ball is competing in the distance, from France[.] They will harm one of our relevant business, the Private label due to the expected price increases.'*⁹⁴⁰

*'Ball does not currently compete for [customer]'s volumes in Iberia, but does supply other customers in Iberia from La Ciotat. This transaction will lead to a market with virtually only two actors which would worsen an already uncompetitive market situation. In addition, the risk that the merged entity decides to close plants or lines, to optimise even further its network, and therefore to reduce even further the overall capacity in the Iberian market is an important concern for [customer].'*⁹⁴¹

*'Spain: only 2 suppliers with limited volumes. La Ciotat factory will not be the "third" supplier' 'Portugal: same situation.'*⁹⁴²

*'In this regard, [customer] does not anticipate that the transaction will have an adverse impact on its operations, as the number of plants close to it will not change. However, [customer] will have one supplier less for its tenders. [Customer] sees this reduction in the number of supplier as problematic in terms of competition.'*⁹⁴³

- (826) Twelfth, in respect of the Notifying Party's argument that customers exert a high degree of buyer power including through sponsoring entry and/or expansion, and through changing their mix of demand across packaging types, what has been said in section 9.1.16 in respect of these points applies fully to the Iberian cluster.
- (827) Specifically for the Iberia cluster, the majority of customers with filling locations in Spain that responded to the market investigation indicated that although they would be willing to sponsor entry, they do not have sufficient volumes to commit to such a sponsorship: *'if that allows ensure a better service and better pricing that would be a good option, however, our volume is not enough for that, 'The volumes that my company buys are to small and it would mean*

⁹³⁵ Questionnaire to Customers (Q2), question 64, ID 2664.

⁹³⁶ Questionnaire to Customers (Q4), question 25, ID 2786.

⁹³⁷ Questionnaire to Customers (Q4), question 25.1, ID 2786.

⁹³⁸ Courtesy translation from the Spanish original: *'la lata que nosotros envasamos sólo la ofertan REXAM y BALL, si se fusionan e incrementan precios, habrá que sumirlos'*. Questionnaire to Customers (Q4), question 22.1, ID 2786.

⁹³⁹ Questionnaire to Customers (Q1), question 100, ID 1609.

⁹⁴⁰ Questionnaire to Customers (Q1), question 100, ID 1609.

⁹⁴¹ Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2691.

⁹⁴² Questionnaire to Customers (Q4), question 25.1, ID 2786.

⁹⁴³ Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2938.

*nothing for this kind of sponsoring*⁹⁴⁴, *'Always is better to have more than one supplier and currently with our volumes we only have 1 supplier'*⁹⁴⁵ and *'Sponsoring of a new entrant is not a viable alternative for [customer] at present: ([customer]has studied that possibility some time ago)'*⁹⁴⁶

(828) One large customer with filling locations in Iberia explained that *'we would be conservative when making any volume commitments to a new supplier and our contracted volume alone would not be sufficient to make the new supplier economically viable. To be economically viable, the new supplier would be dependent on other bottlers and fillers sponsoring its entry'* and that *'our assessment is based on the belief that no new entry in the EEA, including one sponsored by TCCC, is likely in the foreseeable future. Furthermore, we do not envision making our own cans [at this time]. We have never sponsored a new entry in the EEA.'*⁹⁴⁷

9.2.2.6. Cluster of catchment areas around individual customer filling locations in North-East Europe: Poland, Czech Republic, Slovakia, Lithuania, Estonia and Latvia

- Market structure

(829) The Parties' combined capacity share⁹⁴⁸ is [40-50] % (Ball: [20-30] %, Rexam: [20-30] %). The Parties are followed by Can-Pack ([40-50] %) and Crown ([10-20] %).

(830) The Parties' combined volume share⁹⁴⁹ is [50-60] % (Ball: [30-40] %, Rexam: [20-30] %). The Parties are followed by Can-Pack ([30-40] %), Crown ([5-10]%) and BagPak ([5-10] %).⁹⁵⁰

(831) Furthermore, the Parties' combined capacity share at the catchment area level around individual customer filling locations ranges between [10-20] % and [80-90] % and volume shares between [40-50] % and [70-80] %. In this cluster, [60-70] % of the customers, on a capacity measure, and [80-90] % of the customers, on a volume measure, would experience particularly significant concentration effects as shown in Tables 12 and 13.⁹⁵¹

- The Notifying Party's views

(832) The Notifying Party puts forward the following arguments as regards the region North-East Europe, comprising the following countries: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia.

(833) First, the Notifying Party estimates the Parties' combined volume share in its North-East Europe region at [40-50] % (Ball: [30-40] %; Rexam: [10-20] %) with Can-Pack having [30-40] % and Crown having [10-20] %. BagPak accounts for [5-10] % of volumes.

⁹⁴⁴ Courtesy translation from the original in Spanish: *'El volumen de compras de mi compañía es pequeño y no significaría nada a la hora de esa sponsorización'*. Questionnaire to Customers (Q1), question 89.1, ID 1609.

⁹⁴⁵ Courtesy translation from the original in Spanish: *'Siempre es bueno tener más de un proveedor y actualmente con nuestros volúmenes sólo tenemos 1 proveedor'*. Questionnaire to Customers (Q1), question 89.1, ID 1609.

⁹⁴⁶ Agreed non-confidential minutes of a call with a customer, 25.08.2015, ID 2691.

⁹⁴⁷ Revised reply to Questionnaire to Customers (Q1), questions 89 and 100.1, ID 3453.

⁹⁴⁸ See section 9.2.1.

⁹⁴⁹ See section 9.2.1.

⁹⁵⁰ With regard to the robustness test carried out by the Commission, the 900 km combined capacity share is [50-60] % (Ball: [30-40] %, Rexam: [20-30] %). The Parties are followed by Can-Pack ([30-40] %) and Crown ([5-10] %). For volume shares, the 900 km combined volume share is [50-60] % (Ball: [30-40] %, Rexam: [20-30] %). The Parties are followed by Crown ([5-10] %) and Can-Pack [20-30] %).The 500 km robustness test results are reported in Annex B to this Decision and Annex C to this Decision.

⁹⁵¹ See section 9.2.1.

- (834) The Notifying Party is of the view that these market shares overstate the level and importance of competition between the Parties in its North-East Europe region, because: (i) they face strong competition from Crown and Can-Pack, both of which have significant capacity; (ii) the Parties are not close competitors; and (iii) Rexam has only a limited presence in most of the region and that presence is expected to diminish following the closure of its Berlin plant. Its plant in [...] is [...] % dedicated to Red Bull and its limited presence in Poland is outweighed by Can-Pack's footprint and capacity in the area.
- (835) Second, the Notifying Party submits that due to an unduly broad approach to customer catchment areas, the SO is at odds with both the qualitative and quantitative evidence available at the Commission and that the appropriate catchment area should be a 500 km radius.⁹⁵² Refining the catchment size for customer filling locations situated in North-East Europe (and excluding Red Bull sales/volumes) therefore results in a more appropriate measure of market dynamics in this region.⁹⁵³ Based on a 500 km driving distance, the combined volume market shares of the Parties in North-East Europe is [40-50] % with an increment of [10-20] % and capacity market share of [40-50] % with an increment of [5-10] %.
- (836) Third, the Notifying Party notes that Ball and Rexam are not close competitors in North-East Europe.⁹⁵⁴ Many customers of the Parties already purchase from Crown or Can-Pack. This is also supported by Ball's internal documents, which show Crown and Can-Pack as the leading competitive threats in the region.⁹⁵⁵
- (837) Fourth, the Notifying Party argues that it is more likely than not that [...].⁹⁵⁶
- (838) In its Reply to Letter of Facts of 12 November, Rexam submitted that [...]
- (839) Rexam annexed to the Reply to Letter of Facts of 12 November 2015, [...]
- (840) In its reply to a subsequent request for information,⁹⁵⁷ Rexam clarified that [...].
- (841) In its Reply to Letter of Facts of 27 November, Rexam further noted that [...]
- The Commission's assessment
- (842) For the reasons set out in this section, the Commission has reached the conclusion that the Transaction is likely to lead to a significant impediment to effective competition in the North-East Europe cluster. In particular, the Transaction will result in the creation or strengthening of a dominant position in respect of the cluster.
- (843) First, the combined volume and capacity shares of the Parties are high, with a significant increment (see recitals (829) to (831)). Moreover, while BagPak appears in the share data, it is a self-supply operation and does not offer beverage cans to customers in the merchant market. Customers and competitors that responded to the market investigation do not perceive BagPak as an actual or potential supplier.⁹⁵⁸

⁹⁵² Reply to the SO, paragraphs 4.220-4.222 ('North-East Europe').

⁹⁵³ Reply to the SO, Table 4.8.

⁹⁵⁴ Reply to the SO, paragraphs 4.226 and 4.227 ('North-East Europe').

⁹⁵⁵ [...], Ball's email of 28 July 2017 from [...] to [...] (and others) 'Re: SG update on [...]'].

⁹⁵⁶ Reply to the SO, paragraph 4.217.

⁹⁵⁷ See Reply to RFI 18 of 17.11.2015.

⁹⁵⁸ This was confirmed by both customers and competitors that responded to the market investigation. See for example, agreed non-confidential minutes of a call with a customer, 07.05.2015, ID 326: '*BagPak is not an important player on the can market. Furthermore it only supplies 500 ml cans. [...] For this reason [customer] does not consider BagPak as a potential supplier.*' And agreed non-confidential minutes of a meeting with a competitor, 05.05.2015,

- (844) Second, the Transaction would give rise to high post-Transaction HHI levels ([4000-4500] for volumes and [4000-4500] for capacity) and high HHI deltas ([1200-1300] for volumes and [800-900] for capacity) in the North-East Europe cluster (see Table 10 and Table 11).
- (845) Third, the Transaction, at best, represents a 4 to 3 merger in the North-East Europe cluster as BagPak is a self-supply operation and does not offer cans to customers in the merchant market. Crown has a volume share of [5-10] %.
- (846) Fourth, for certain specialty cans, that is to say sleek and slim other than 250 ml, the Parties' combined volume share is [90-100] % (Ball: [70-80] %, Rexam: [10-20] %) with Can-Pack holding the remaining [5-10] %, ⁹⁵⁹ and as such the choice for the customers will be even further reduced. In this segment the Transaction represents effectively, a 3 to 2 merger. Moreover, if 250 ml slim cans are considered as specialty cans, the merged entity would have a volume share of [60-70] % (Ball: [30-40] %, Rexam: [20-30] %) with Can-Pack holding [30-40] % and Crown [0-5] %.
- (847) Fifth, the Parties have several plants delivering to the North-East Europe cluster. Ball has one plant located in Poland, Radomsko, while Rexam has one located in Ejpvovice. Ball sells to this cluster mainly from [...]. As explained in recital (350), for Ejpvovice Ball is the closest competitor. For the other plants, the Parties are each other's second closest competitors.
- (848) Furthermore, Crown has no sales to customers located in Estonia, Latvia, and Lithuania and its production plant closest to these customers is located further away than those of Ball and Rexam. Customers located in Estonia, Latvia, and Lithuania would, therefore, see their choice of potential alternative suppliers further reduced by the Transaction.
- (849) Sixth, the volume shares underestimate the loss of competition between the Parties in this region. [...] (see section 5.1.4.2).
- (850) In the first place, [...].⁹⁶⁰
- (851) In the second place, [...].⁹⁶¹ [...].⁹⁶²
- (852) In the third place, [...].⁹⁶³
- (853) In the fourth place, [...].⁹⁶⁴
- (854) In the fifth place, [...].⁹⁶⁵
- (855) In the sixth place, [...].
 [...].⁹⁶⁶
 [...].⁹⁶⁷

ID 261: '*[BagPak] (which operates a single plant in Poland) does not influence the European can market. [BagPak]'s presence is hardly noticeable.*'

⁹⁵⁹ According to the Notifying Party's data, Can-Pack sold a minimal amount of slim 150 ml and slim 200ml cans.
⁹⁶⁰ See, among others, Rexam's internal document, 'BCE Strategic Plan 2015-2017'.
⁹⁶¹ See, among others, Rexam's internal email, '[...]- Board response paper' and Rexam's internal email, 'Board feedback'.
⁹⁶² Rexam's internal document, '2014 12 09 – Minutes – Board'.
⁹⁶³ Rexam's internal email of 9 December 2014 from [...], subject 'Board meeting output'; Rexam's internal email, '[...]- Board response paper'; Rexam's internal email, 'Board feedback'.
⁹⁶⁴ Rexam's internal email, 'RE: SteerCom meeting [...] 2nd Mar.pptx'; Rexam's internal email, 'Some bullet points'.
⁹⁶⁵ See recitals (100) and (101).
⁹⁶⁶ Agreed non-confidential minutes of a meeting with a customer, 25.08.2015, ID 2724.

- (856) In the seventh place, Rexam has [...].
- (857) In particular, [...]:
- [...].⁹⁶⁸
 - [...].⁹⁶⁹
 - [...].⁹⁷⁰ [...].
- (858) Seventh, the majority of customers with filling locations in North-East Europe⁹⁷¹ that responded to the market investigation stated that if the merged entity were to raise prices, other beverage can manufacturers would have insufficient capacity to satisfy total market demand.⁹⁷² As one smaller customer puts it: *'If they increase the prices (as leading company on the market) it will influence also the prices of the cans from the other suppliers most probably.'*⁹⁷³
- (859) Moreover, the majority of large customers that responded to the market investigation also stated that if the merged entity were to raise prices in the North-East Europe cluster, they would be unable to switch all its volumes to other existing suppliers.⁹⁷⁴ Smaller customers located in the North-East Europe region also indicated that switching would not be possible to a sufficient extent: switching would be *'of course not [possible]. Ball and [R]exam have 75% of the market. If they r[a]ise prices none of the su[p]pliers will not be able to work with customers who want to swi[t]ch to them.'*⁹⁷⁵
- (860) Eighth, as set out in recitals (444) to (446), Crown and Can-Pack have limited spare capacity in the EEA. This is the case in the North-East Europe cluster where the combined spare capacity of Crown and Can-Pack is in the range of 30 to 40 % of the combined sales of the merged entity in 2014.⁹⁷⁶ Crown and Can-Pack would, therefore, not be able to supply sufficient additional volumes to customers in the North-East Europe cluster in case of a price increase by the merged entity. Regarding in particular Can-Pack, it has confirmed that, as set out in recital (443), it *'does not have spare capacity in its Polish [...] plants that would allow it to increase its output in a way that would effectively restrain the merged entity in an appreciable way.'* Can-Pack also confirmed that the capacity utilisation at all of its EEA plants is above 90 %.⁹⁷⁷
- (861) Moreover, as explained in recitals (445)-(447), even this level of spare capacity would not be likely to allow rivals to defeat a price increase post-merger, since some of the spare capacity located in the North-East Europe region would be likely to be directed to customers in other clusters in the event of a price increase. This is confirmed by the fact that Crown and Can-Pack combined sales to customers located in the North-East Europe region are well below their

⁹⁶⁷ Agreed non-confidential minutes of a meeting with a customer, 27.08.2015, ID 2979.

⁹⁶⁸ See Rexam's internal document, '[...] CER 01/2014/098 – December 2014' and Rexam's internal document, 'Rexam PLC, Budget 2015'.

⁹⁶⁹ Rexam's internal document, '2014 12 09 – Minutes – Board'.

⁹⁷⁰ Rexam's internal email, 'Re: BCE Restructure CER – [...]'].

⁹⁷¹ In the Commission's Questionnaire to Customers (Q2), the specific question included Hungary as well. However, the Commission is of the view that this does not materially change the conclusions drawn from the replies.

⁹⁷² Questionnaire to Customers (Q2), question 51, ID 2664. Questionnaire to Customers (Q4), question 22.1, ID 2786.

⁹⁷³ Questionnaire to Customers (Q4), question 22.1, ID 2786.

⁹⁷⁴ Questionnaire to Customers (Q2), question 53, ID 2664.

⁹⁷⁵ Questionnaire to Customers (Q4), question 22.1, ID 2786.

⁹⁷⁶ As set out in recitals (445)-(447), the capacity data used by the Commission is from 2014. The levels of spare capacity estimated by third parties is, however, even lower in 2015. By relying on 2014 data the Commission is, therefore, adopted an approach that is favourable to the Parties.

⁹⁷⁷ Third party comments to the SO, revised confidentiality, ID 3495.

production levels. Finally, in the presence of binding capacity constraints, even the presence of relatively large spare capacity levels in the hands of competitors is typically not sufficient to prevent significant non-coordinated effects in response to a large increase in concentration.⁹⁷⁸

(862) Ninth, the majority of large customers that responded to the market investigation indicated that the Transaction will have a negative impact in the North-East Europe cluster.⁹⁷⁹ Smaller customers also pointed towards a negative impact:⁹⁸⁰ *'[Small customer] is concerned about the Transaction, it is worried it might have negative effect on can prices.'*⁹⁸¹

(863) Tenth, in respect of the Notifying Party's argument that customers exert a high degree of buyer power including through sponsoring entry and/or expansion, and through changing their mix of demand across packaging types, what has been said in section 9.1.16 in respect of these points applies fully to the North-East Europe cluster.

9.2.2.7. Cluster of catchment areas around individual customer filling locations in South-East Europe: Hungary, Slovenia, Croatia, Romania, Bulgaria, Greece and Cyprus.

- Market structure

(864) The Parties' combined capacity share⁹⁸² is [40-50] % (Ball: [20-30] %, Rexam: [20-30] %). The Parties are followed by Crown ([30-40] %) and Can-Pack ([10-20] %).

(865) The Parties' combined volume share⁹⁸³ is [40-50] % (Ball: [20-30] %, Rexam: [10-20] %). The Parties are followed by Crown ([20-30] %), Can-Pack ([20-30] %) and BagPak ([0-5] %).⁹⁸⁴

(866) Furthermore, the Parties' combined capacity share at the catchment area level around individual customer filling locations ranges between [0-5] % and [90-100] % and volume shares between [10-20] % and [90-100] %. In this cluster, [50-60] % of the customers, on a capacity measure, and [40-50] % of the customers, on a volume measure, would experience particularly significant concentration effects as shown in Table 12 and Table 13.⁹⁸⁵

- The Notifying Party's views

(867) The Notifying Party puts forward arguments as regards the region South-East Europe, comprising the following countries: Bulgaria, Croatia, Cyprus, Greece, Malta, Romania and Slovenia.

⁹⁷⁸ As set out in recitals (445)-(447), the capacity data used by the Commission is from 2014. The levels of spare capacity estimated by third parties is, however, even lower in 2015. By relying on 2014 data the Commission is, therefore, adopted an approach that is favourable to the Parties.

⁹⁷⁹ Questionnaire to Customers (Q2), question 64, ID 2664.

⁹⁸⁰ Questionnaire to Customers (Q4), question 25, ID 2786.

⁹⁸¹ Courtesy translation from the Polish Original: *'[Customer] jest zaniepokojony proponowaną transakcją i obawia się jej negatywnego wpływu na ceny puszek.'* Agreed non-confidential minutes of a call with a customer, 07.05.2015, ID 326.

⁹⁸² See section 9.2.1.

⁹⁸³ With regard to the robustness test carried out by the Commission, the 900 km combined capacity share is [50-60] % (Ball: [20-30] %, Rexam: [20-30] %). The Parties are followed by Crown ([30-40] %) and Can-Pack ([10-20] %). For volume shares, the 900 km combined volume share is [50-60] % (Ball: [20-30] %, Rexam: [20-30] %). The Parties are followed by Crown ([20-30] %) and Can-Pack ([20-30] %). The 500 km robustness test results are reported in Annex B to this Decision and Annex C to this Decision.

⁹⁸⁴ See section 9.2.1.

⁹⁸⁵ See section 9.2.1.

- (868) The Notifying Party estimates the Parties' combined volume share in South-East Europe at [20-30] % (Ball: [20-30] %; Rexam [5-10] %) with Can-Pack having [30-40] % and Crown [30-40] %.
- (869) For Hungary, which the Notifying Party includes in its North-East region, the Notifying Party puts forward the following volume shares: combined [50-60] % (Ball: [30-40] %. Rexam: [20-30] %), Crown: [30-40] %, Can-Pack [10-20] %.
- (870) The Notifying Party also submits that neither of the Parties has a plant located in the South-East Europe region according to its market definition, while both Crown and Can-Pack have. Moreover, post-Transaction, there would continue to be substantial competition in its South-East Europe region because (i) the Parties face strong competition from other competitors; (ii) the Parties are not close competitors and (iii) Rexam has only a limited presence in the region. In particular, due to Rexam's small presence ([5-10] % volume share) and the location of its plants, it is unable to effectively compete with Crown, Can-Pack or Ball for customers in most of the region. Finally, the Notifying Party argues that customers exert a high degree of buyer power, including through sponsoring entry and/or expansion, and through changing their mix of demand across packaging types.
- (871) As regards closeness of competition, Rexam's closest plants in South-east Europe are Enzesfeld and Izmir. The Notifying Party notes that Izmir [...] and pre-Transaction competitors have significantly closer plants to filling locations in Bulgaria and Italy.⁹⁸⁶
- (872) Ball's closest competitor in this region is Can-Pack who has one plant in Bucharest and Crown who has two plants in Greece. Crown and Can-Pack will continue to constrain the merged entity post-merger.⁹⁸⁷
- (873) First, in respect of the four filling locations in Bulgaria, Izmir would be only the fifth closest plant to three of the filling locations and the eighth closest plant to the fourth filling location with Crown, Can-Pack and Ball each having plants at least 300 km closer to the customer. Izmir is therefore not a competitive constraint in Bulgaria.⁹⁸⁸
- (874) Second, in respect of the 11 filling locations in Greece, Crown has a plant that is at least 300 km closer to the customer filling location than Izmir is for all filling locations and Can-Pack has a plant that is at least 300 km closer to the customer filling location than Izmir is for eight of the filling locations. Izmir is therefore not a competitive constraint for most filling locations in Greece and even where it may be the closest competing plant, Ball does not act as a constraint.⁹⁸⁹
- (875) The Notifying Party submits that due to an unduly broad approach to customer catchment areas, the SO is at odds with both the qualitative and quantitative evidence available at the Commission and that the appropriate catchment area should be a 500 km radius.⁹⁹⁰ Based on a 500 km driving distance, the combined volume market shares of the Parties in South-East Europe is [30-40] % with an increment of [10-20] % and capacity market share of [30-40] % with an increment of [5-10] %.⁹⁹¹

⁹⁸⁶ Reply to the SO, paragraph 4.258 and Annex 1.

⁹⁸⁷ Reply to the SO, paragraph 4.259 ('South-East Europe').

⁹⁸⁸ Reply to the SO, paragraph 4.271 ('South-East Europe').

⁹⁸⁹ Reply to the SO, paragraph 4.271.

⁹⁹⁰ Reply to the SO, paragraph 4.252.

⁹⁹¹ Reply to the SO, Table 4.9.

- The Commission's assessment
- (876) For the reasons set out in this section, the Commission has reached the conclusion that the Transaction is likely to lead to a significant impediment to effective competition in the South-East Europe cluster. In particular, the Transaction will result in the creation or strengthening of a dominant position in respect of the cluster.
- (877) First, the combined volume and capacity shares of the Parties are high, with a significant increment (see recitals (864) to (865)). Moreover, while BagPak appears in the share data, it is a self-supply operation and does not offer beverage cans to customers in the merchant market.
- (878) Moreover, catchment areas around individual customer filling locations that are significantly affected by the Transaction in the South-East European cluster face similar changes in competitive conditions to catchment areas around individual customer filling locations in clusters with higher overall concentration measures.
- (879) Second, the Transaction would give rise to high post-Transaction HHI levels ([5000-5500] for volumes and [5500-6000] for capacity) and high HHI deltas ([800-900] for volumes and [800-900] for capacity) in the South-East Europe cluster (see Table 10 and Table 11).
- (880) Third, the Transaction, at best, represents a 4 to 3 merger in the South-East European cluster. BagPak is a self-supply operation and does not offer cans to beverage can customers on the merchant market. Crown and Can-Pack have smaller volume shares of [20-30] % and [20-30] % respectively as opposed to the merged entity's volume share of [40-50] %. Furthermore, Rexam is the closest alternative supplier to customer filling locations in Croatia and Slovenia, where Crown has no sales. Therefore, for customers located in these two countries, the likely effects of the Transaction would be severe as it would materially reduce their choice of potential suppliers.
- (881) Fourth, for certain specialty cans, that is to say sleek and slim other than 250 ml, the choice for the customers will be even further reduced. The Parties' combined volume share is [90-100] % (Ball: [70-80] %, Rexam: [10-20] %) with Crown holding [5-10] % and Can-Pack the remaining [0-5] %. Moreover, if 250 ml slim cans are considered as specialty cans, the merged entity would have a volume share [60-70] % (Ball: [30-40] %, Rexam: [20-30] %, Can-Pack: [30-40] % and Crown: [0-5] %).
- (882) Fifth, several plants of the Parties deliver to the South-East European cluster. Ball's Belgrade plant, (which is outside the EEA) serves this region to a large extent. Rexam's main sales in the cluster come, inter alia, from Enzesfeld.
- (883) Rexam also owns a plant in Izmir, Turkey, which, [...],⁹⁹² could serve customers in several countries in South-East Europe, although rather at the South-East end of the cluster, such as Greece or Bulgaria.
- (884) Sixth, as explained in recital (350), as regards Rexam's Enzesfeld plant, Ball is the closest competitor at plant level, while for Belgrade, Rexam is the second closest after Crown.
- (885) Seventh, respondents to the market investigation expressed concerns about the likely effects of the Transaction in the South-East Europe cluster:⁹⁹³ *'Availability, Risk, Purchase Prices'*;⁹⁹⁴ *'[...], HU, Slovenia, [...] - worse prices/conditions, no competition, and at least losing*

⁹⁹² Reply to RFI 16 of 16.10.2015.

⁹⁹³ Questionnaire to Customers (Q2), question 64, ID 2664.

⁹⁹⁴ Questionnaire to Customers (Q4), question 25.1, ID 2786.

quantity';⁹⁹⁵ 'Negative - as there will be only one supplier close to our region [...] Regarding the price negotiation - one supplier will be stronger.'⁹⁹⁶

- (886) Eighth, as set out in recitals (445)-(447), Crown and Can-Pack have limited spare capacity in the EEA. This is the case in the South-East Europe cluster where the combined spare capacity of the competitors does not exceed 25 % of the sales of the merged entity.⁹⁹⁷ Crown and Can-Pack would, therefore, not be able to supply sufficient additional volumes to customers in the South-East Europe cluster in case of a price increase by the merged entity.
- (887) Ninth, in respect of the Notifying Party's argument that customers exert a high degree of buyer power including through sponsoring entry and/or expansion, and through changing their mix of demand across packaging types, what has been said in section 9.1.16 in respect of these points applies fully to the South-East Europe cluster.
- 9.2.2.8. Cluster of catchment areas around individual customer filling locations in the Nordics: Denmark, Norway, Sweden, Finland, and Iceland
- Market structure
- (888) The Parties' combined capacity share⁹⁹⁸ is [80-90] % (Ball: [5-10] %, Rexam: [70-80] %). The Parties are followed by Can-Pack ([10-20] %) and Crown ([0-5] %).
- (889) The Parties' combined volume share⁹⁹⁹ is [70-80] % (Ball: [5-10] %, Rexam: [10-80] %). The Parties are followed by Can-Pack ([20-30] %).¹⁰⁰⁰
- (890) Furthermore, the Parties' combined capacity share at the catchment area level around individual customer filling locations ranges between [70-80] % and [90-100] % and volume shares between [60-70] % and [90-100] %. In this cluster, [40-50] % of the customer volumes, on a capacity measure, and [30-40] % of the customers, on a volume measure, would experience particularly significant concentration effects as shown in Table 12 and Table 13.¹⁰⁰¹
- The Notifying Party's views
- (891) The Notifying Party puts forward arguments with regard to the region it defines as the Nordics, which consists of the following countries: Denmark, Finland, Iceland, Norway, and Sweden.
- (892) The Notifying Party argues that the Transaction does not raise competition concerns in its Nordics region because: (i) it has no plant in the region and makes minimal sales there; (ii) Ball holds a share of less than [0-5] % in volume whereas Rexam and Can-Pack hold shares of [80-90] % and [10-20] % respectively; (iii) Ball and Rexam are not close competitors; (iv) they face

⁹⁹⁵ Questionnaire to Customers (Q4), question 25.1, ID 2786.

⁹⁹⁶ Questionnaire to Customers (Q1), question 100.1, ID 1609.

⁹⁹⁷ As set out in recitals (445)-(447), the capacity data used by the Commission is from 2014. The levels of spare capacity estimated by third parties is, however, even lower in 2015. By relying on 2014 data the Commission is, therefore, adopted an approach that is favourable to the Parties.

⁹⁹⁸ See section 9.2.1.

⁹⁹⁹ With regard to the robustness test carried out by the Commission, the 900 km combined capacity share is [80-90] % (Ball: [20-30] %, Rexam: [60-70] %). The Parties are followed by Can-Pack ([10-20] %), while Crown has a [0-5] % capacity share. For volume shares, the 900 km combined volume share is [70-80] % (Ball: [10-20] %, Rexam: [60-70] %). The Parties are followed by Can-Pack ([10-20] %), while Crown has a [0-5] % volume share. The results of the 500 km robustness test are reported in Annex B to this Decision and Annex C to this Decision.

¹⁰⁰⁰ See section 9.2.1.

¹⁰⁰¹ See section 9.2.1.

strong competition from Can-Pack which is the key competitor in the region; and (v) Crown could expand its presence in the region.

- (893) The Notifying Party submits that due to an unduly broad approach to customer catchment areas, the SO is at odds with both the qualitative and quantitative evidence available at the Commission and that the appropriate catchment area should be a 500 km radius. Based on a 500 km driving distance, the combined volume market shares of the Parties in the Nordics is [70-80] % with an increment of [0-5] % and capacity market share of [30-40] % with an increment of [0-5] %.¹⁰⁰²
- (894) The Notifying Party further submits that Can-Pack, as the only other can manufacturer with a plant in the Nordics, is Rexam's closest competitor. Ball currently supplies customers in the Nordic countries from its plants in [...]. To the extent that Ball makes sales from the UK, Crown and Can-Pack are equally well-placed to supply customers in the Nordic region from their respective UK plants in Braunstone, Carlisle and Scunthorpe.¹⁰⁰³
- (895) The Notifying Party also states that Ball is not likely to be a [...] in the Nordics and that customers, consistent with the trade flow evidence, do not view Ball as a [...] to Rexam in the Nordic region. Furthermore, specialty cans account for only 0.5 % of beverage can requirements in the Nordic region. There is no increment between the Parties with respect to capacity for specialty cans (irrespective of whether 25cl slim cans are counted as specialty cans).¹⁰⁰⁴
- The Commission's assessment
- (896) For the reasons set out in this section, the Commission has reached the conclusion that the Transaction is likely to lead to a significant impediment to effective competition in the Nordics cluster. In particular, the Transaction would result in the creation or strengthening of a dominant position in respect of the cluster.
- (897) First, the combined volume and capacity shares of the Parties in the cluster are high, even if one takes into account the fact that the inclusion of high-demand customers from outside of Denmark, Norway, Sweden, Finland, and Iceland leads to an overestimation of Ball's and Crown's market position relative to their actual sales to customers located in the Nordics cluster.¹⁰⁰⁵
- (898) Second, the Transaction would give rise to high post-Transaction HHI levels (6 821 for volumes and 7 816 for capacity) and high HHI deltas (781 for volumes and 1 273 for capacity) in the Nordics cluster (see Table 10 and Table 11).
- (899) Third, the Transaction consists in a 3 to 2 merger for customers located in Denmark, Finland, and Norway as Ball is the only beverage can manufacturer, in addition to Rexam and Can-Pack, to make sales in those countries.

¹⁰⁰² Reply to the SO, Table 4.7.

¹⁰⁰³ Reply to the SO, paragraph 4.199 ('Nordics').

¹⁰⁰⁴ Reply to the SO, paragraphs 4.204, 4.205 and 4.207 ('Nordics').

¹⁰⁰⁵ The Nordics cluster includes some customers located outside the borders of Denmark, Norway, Sweden, Finland, and Iceland, including in particular in Germany and the Netherlands. Because beverage can demand in the Nordics cluster is relatively low, the inclusion of high-demand customers from outside the national borders of Denmark, Norway, Sweden, Finland, and Iceland leads to an overestimation of Ball's and Crown's market position relative to their actual sales to customers located in the Nordics. This is less the case under the 500 km robustness check.

- (900) Fourth, for certain specialty cans, that is to say sleek and slim other than 250 ml, the Parties' combined volume share is [90-100] % (Ball: [70-80] %; Rexam [20-30] %). Crown and Can-Pack do not sell these types of cans. Thus, the merged entity would be in a near sole-supplier situation. Moreover, if 250 ml slim cans are considered as specialty cans, the merged entity would still have a volume share of [90-100] % (Ball: [70-80] %, Rexam: [10-20] %, Can-Pack: [5-10] % and Crown: [0-5] %).
- (901) Fifth, Rexam has one plant in Fredericia (Denmark), one in Malmö (Sweden) and one in Mäntsälä (Finland). Can-Pack has one plant in Hämeenlinna (Finland). Although Ball does not have plants in the Nordics, its plants in Hassloch (Germany), Hermsdorf (Germany), Oss (the Netherlands) and Wrexham (the UK) are well positioned to make sales there and, indeed, [...] located in the Nordics. Ball currently makes sales to customers located in (i) Denmark from [...]; (ii) Finland from [...]; and (iii) Norway from [...].
- (902) Sixth, Ball's internal documents indicate that [...].¹⁰⁰⁶ [...]. Indeed, if Rexam were to increase prices in the Nordics cluster, this could encourage Ball to establish a plant there or, in any event, increase the attractiveness of imports from Ball's plants in Germany, the Netherlands, and the UK.
- (903) Seventh, the Commission's analysis of the location of the Parties' plants and of their capacity shows that post-Transaction, the Parties would hold over [50-60] % of the capacity (with an increment of more than [5-10] %) within a 700 km radius from customers located in Denmark and in the South of Norway and Sweden. Indeed, as discussed above, Ball's existing plants in Germany, the Netherlands, and the UK are well located to serve in particular customers located in Denmark, south of Norway and Sweden and represent a significant constraint on Rexam's plants also serving customers there.
- (904) Eighth, the Parties are the only suppliers of slim cans to customers located in the Nordics cluster. Therefore, the Transaction would lead to a monopoly for this can format.
- (905) Ninth, the majority of customers that responded to the market investigation stated that if the merged entity were to raise prices in the Nordics cluster, they would not be able to switch all their volumes to other existing beverage can manufacturers¹⁰⁰⁷ and other beverage can manufacturers would have insufficient capacity to satisfy total market demand.¹⁰⁰⁸ Smaller customers located in the Nordics region also indicated that switching would not be possible to a sufficient extent: *'To my knowledge, there are no other suppliers capable of providing retortable cans'*.¹⁰⁰⁹
- (906) Tenth, as set out in recitals (445)-(447), Crown and Can-Pack have limited spare capacity in the EEA. This is the case in the Nordics cluster where the combined spare capacity of the competitors does not exceed 25 % of the sales of the merged entity.¹⁰¹⁰ Crown and Can-Pack would, therefore, not be able to supply sufficient additional volumes to customers in the Nordics cluster in case of a price increase by the merged entity.

¹⁰⁰⁶ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 334.

¹⁰⁰⁷ Questionnaire to Customers (Q2), question 53, ID 2664.

¹⁰⁰⁸ Questionnaire to Customers (Q2), question 51, ID 2664. Questionnaire to Customers (Q4), question 22.1, ID 2786.

¹⁰⁰⁹ Questionnaire to Customers (Q4), question 22.1, ID 2786.

¹⁰¹⁰ As set out in recitals (445)-(447), the capacity data used by the Commission is from 2014. The levels of spare capacity estimated by third parties is, however, even lower in 2015. By relying on 2014 data the Commission is, therefore, adopted an approach that is favourable to the Parties.

(907) Eleventh, large customers foresee a negative impact of the Transaction for beverage cans in the Nordics cluster.¹⁰¹¹ Smaller customers also pointed towards a negative impact:¹⁰¹² *'I believe that my prices will increase'; 'Less competition in the market.'*¹⁰¹³

(908) Twelfth, in respect of the Notifying Party's argument that customers exert a high degree of buyer power, including through sponsoring entry and/or expansion, and through changing their mix of demand across packaging types, what has been said in section 9.1.16 in respect of these points applies fully to the Nordics cluster.

9.2.2.9. Cluster of catchment areas around individual customer filling locations in the UK and Ireland

- Market structure

(909) The Parties' combined capacity share¹⁰¹⁴ is [60-70] % (Ball: [40-50] %, Rexam: [20-30] %). The Parties are followed by Crown ([20-30] %) and Can-Pack ([5-10] %).

(910) The Parties' combined volume share¹⁰¹⁵ is [70-80] % (Ball: [40-50] %, Rexam: [20-30] %). The Parties are followed by Crown ([10-20] %) and Can-Pack ([5-10] %).¹⁰¹⁶

(911) Furthermore, the Parties' combined capacity share at the catchment area level around individual customer filling locations ranges between [50-60] % and [70-80] % and volume shares between [60-70] % and [70-80] %. In this cluster, [90-100] % of the customer volumes both on a capacity and volume measure would experience particularly significant concentration effects as shown in Table 12 and Table 13.¹⁰¹⁷

- The Notifying Party's views

(912) The Notifying Party puts forward arguments with regard to the region it defines as UK and Ireland, which is the locus of the UK and Ireland cluster.

(913) In particular, it argues that that the market shares as submitted on the basis of the Notifying Party's geographic market definition (volumes: Ball: [30-40] %, Rexam: [30-40] %, combined: [60-70] %; capacity: Ball: [20-30] %, Rexam: [20-30] %, combined: [50-60] %), overstate the level and importance of competition between the Parties in the region it defines as the UK and Ireland for the following reasons: (i) the Parties face strong competition from Crown and Can-Pack, who both have the capability to increase supply within the UK and Ireland further; (ii) the Parties are not close competitors; (iii) there is overcapacity in the UK and Ireland; and (iv) customers exert a high degree of buyer power including through sponsoring entry and/or expansion, and through changing their mix of demand across packaging types.

(914) Notably, the Notifying Party submits that Ball and Rexam are not strong competitors for each other's main customers as those key customers are situated close to one or the other Party's site. For example, Ball's Rugby plant is wall-to-wall with a Britvic filling location and both of

¹⁰¹¹ Questionnaire to Customers (Q2), question 64, ID 2664.

¹⁰¹² Questionnaire to Customers (Q1), question 100, ID 1609.

¹⁰¹³ Questionnaire to Customers (Q1), question 100.1, ID 1609.

¹⁰¹⁴ See section 9.2.1.

¹⁰¹⁵ With regard to the robustness test carried out by the Commission, the 900 km combined capacity share is [70-80] % (Ball: [40-50] %, Rexam: [20-30] %). The Parties are followed by Crown ([10-20] %) and Can-Pack ([5-10] %). For volume shares, the 900 km combined volume share is [70-80] % (Ball: [40-50] %, Rexam: [20-50] %). The Parties are followed by Crown ([10-20] %) and Can-Pack ([5-10] %). The 500 km robustness test results are reported in Annex B to this Decision and Annex C to this Decision.

¹⁰¹⁶ See section 9.2.1.

¹⁰¹⁷ See section 9.2.1.

Rexam's UK plants are wall-to-wall with Coca-Cola Enterprises filling locations. Even where the Parties do compete, each Party faces strong competition from Crown and/or Can-Pack in respect of each customer.

- (915) According to the Notifying Party, wall-to-wall plants will not only have some cost advantages over other plants but also huge service, flexibility and convenience advantages. This makes it difficult for existing competitor plants to win significant volumes from these customer locations or to exert any material constraint on the wall-to-wall plant.¹⁰¹⁸ Furthermore, a large proportion of wall-to-wall volumes are not fully contestable by existing competitor plants and the capacity that serves these volumes is not potentially available to other customers, therefore these volumes should not be included in the merchant market.¹⁰¹⁹
- (916) The Notifying Party submits that due to an unduly broad approach to customer catchment areas, the SO is at odds with both the qualitative and quantitative evidence available to the Commission and that the appropriate catchment area should be a 500 km radius.¹⁰²⁰ Refining the catchment size for customer filling locations situated in UK and Ireland, and excluding wall-to-wall sales and associated dedicated capacity and continental capacity (and sales), therefore results in a more appropriate measure of market dynamics in the UK and Ireland.¹⁰²¹ Based on a 500 km driving distance, the combined volume market shares of the Parties in the UK and Ireland is [40-50] % with an increment of [10-20] % and capacity market share of [40-50] % with an increment of [10-20] %.¹⁰²²
- The Commission's assessment
- (917) For the reasons set out in this section, the Commission has reached the conclusion that the Transaction is likely to lead to a significant impediment to effective competition in the UK and Ireland cluster. In particular, the Transaction would result in the creation or strengthening of a dominant position in respect of the cluster.
- (918) First, the combined volume and capacity shares of the Parties in the UK and Ireland cluster are high, with significant increments (see recitals (909) to (911)).
- (919) Second, the Transaction would give rise to high post-Transaction HHI levels ([5500-6000] for volumes and [5000-6000] for capacity) and high HHI deltas ([2300-2400] for volumes and [2000-2100] for capacity) in the UK and Ireland cluster (see Table 10 and Table 11).
- (920) Third, the Transaction represents a 4 to 3 merger in the UK and Ireland cluster.
- (921) Fourth, for certain specialty cans, that is to say sleek and slim other than 250 ml, the Parties' combined volume share is [60-70] % (Ball: [40-50] %, Rexam: [10-20] %) followed by Crown with [30-40] %. Can-Pack does not sell these types of cans. For these types of cans the choice for the customers will be reduced even further. Moreover, if 250 ml slim cans are considered as specialty cans, the merged entity would have a strong market position with [40-50] % (Ball: [20-30] %, Rexam: [20-30] %) followed by Can-Pack with [0-5] % and Crown with [50-60] %. In this segment the Transaction represents effectively, a 3 to 2 merger.
- (922) Fifth, as regards plants located in the UK and Ireland, the locus of the UK and Ireland cluster, Ball has two beverage can plants in the UK (one plant in Rugby and one plant in Wrexham).

¹⁰¹⁸ Reply to the SO, paragraph 4.283.

¹⁰¹⁹ Reply to the SO, paragraph 4.284.

¹⁰²⁰ Reply to the SO, paragraph 4.281 ('UK and Ireland').

¹⁰²¹ Reply to the SO, paragraph 4.285 ('UK and Ireland').

¹⁰²² Reply to the SO, Table 4.10.

Rexam has two plants in the UK located in Milton Keynes and Wakefield. Crown has two plants, located in Braunstone and Carlisle/Botcherby, and Can-Pack has one plant, located in Scunthorpe.

- (923) As described in section 9.1.4, the Parties are close competitors at plant level. In particular, Rexam owns the plant that is closest to the customers of Ball for the majority of the sales for Wrexham ([...] %). Crown is the closest competitor at Rugby ([...] %). However, for Rugby, Rexam owns the second closest competing plant in a vast majority of cases [...] %). Ball owns the plant that is closest to the customers of Rexam for the absolute majority of the sales for Milton Keynes. Can-Pack is the closest competitor for Wakefield ([...] %), but Ball is the second closest.
- (924) Sixth, as set out in recitals (445)-(447), Crown and Can-Pack have limited spare capacity in the EEA. This is also the case in the UK and Ireland cluster where the combined spare capacity of Crown and Can-Pack does not exceed [20-30] % of the sales of the merged entity.¹⁰²³ Crown and Can-Pack would, therefore, not be able to supply sufficient additional volumes to customers in the UK and Ireland cluster in case of a price increase by the merged entity.
- (925) As one of the competitors also explains: *'In theory there exists considerable installed overcapacity in the UK. However, two factors in particular render this notion meaningless: Demand in the UK is for many different sizes – thus production lines need to be stopped regularly for a retooling. In addition, many of the UK plants are rather old, giving rise to reliability issues and heavy maintenance requirements. The downtime due to these two factors alone is likely to make what appeared to be considerable excess in capacity vanish rapidly. To state that there exists considerable overcapacity and implying that this could be used to manufacture greater number of cans on installed equipment therefore would be misleading.'*¹⁰²⁴ Regarding in particular Can-Pack, it has confirmed that it *'does not have spare capacity in its [...] UK [plant] that would allow it to increase its output in a way that would effectively restrain the merged entity in an appreciable way.'* Can-Pack also confirmed that the capacity utilisation at all of its EEA plants is above 90 %.¹⁰²⁵
- (926) Seventh, the majority of large customers with filling locations in the UK and Ireland that responded to the market investigation stated that if the merged entity were to raise prices, other beverage can manufacturers would have insufficient capacity to satisfy total market demand.¹⁰²⁶ Moreover, as one smaller customer puts it: *'We would not expect the remaining competitors to sufficiently increase capacity to defeat a price increase.'*¹⁰²⁷
- (927) In addition, the majority of large customers with filling locations in the UK and Ireland that responded to the market investigation also stated that if the merged entity were to raise prices, they would be unable to switch all their volumes to other existing beverage can manufacturers.¹⁰²⁸ Smaller customers with filling locations in the UK and Ireland also indicated that switching would not be possible to a sufficient extent: *'It would be a very significant issue for our business if the merged entity decided to raise prices by 5-10%. This would represent a*

¹⁰²³ As set out in recitals (445)-(447), the capacity data used by the Commission is from 2014. The levels of spare capacity estimated by third parties is, however, even lower in 2015. By relying on 2014 data the Commission is, therefore, adopted an approach that is favourable to the Parties.

¹⁰²⁴ A competitor's non-confidential reply to RFI of 15.06.2015, ID 2572.

¹⁰²⁵ Third party comments to the SO, revised confidentiality, ID 3495.

¹⁰²⁶ Questionnaire to Customers (Q2), question 51, ID 2664.

¹⁰²⁷ Questionnaire to Customers (Q4), question 23.1, ID 2786.

¹⁰²⁸ Questionnaire to Customers (Q2), question 53, ID 2664.

*very serious price increase for our business, as can supply represents over 30% of our total material spend each year. We may be able to switch around 15-20% of our volume, however, this would be at an increased cost from one or other of the limited alternative options in this market place. If the merged entity applied a price increase of 5-10%, it is highly likely that the remaining limited competitors would also increase pricing.*¹⁰²⁹

- (928) Eighth, a number of respondents voiced concerns that, already prior to the Transaction, players do not compete fiercely enough: *'[S]uppliers that are ideally located may decide not to quote, or not to quote competitively, for [customer]'s volumes. It might be related to each player's customer portfolio, or that they already have their whole or close to their whole capacity contracted'*.¹⁰³⁰ And *'[i]n the case of the indicated suppliers, we have never received solicited proposals that reflect our overall volume requirements. Each supplier has offered proposals for a limited part of our business, or have declined to make an offer. At our most recent competitive tender in 2014, we received offers from these suppliers that represented around 15-20% of our business.*¹⁰³¹
- (929) Ninth, the majority of large customers with filling locations in the UK and Ireland anticipate a negative impact of the Transaction for beverage cans.¹⁰³² Smaller customers also pointed towards a negative impact:¹⁰³³ *'From our perspective, the proposed transaction between Ball and Rexam will have a serious and negative effect on the level of available competition in the beverage can supply marketplace. We regard these organisations as primary competitors in a market with already limited supply choices. Consequently, we would have major concerns regarding the extent to which competitive pricing would be available going forward, as well as potential reduction in available capacity in the UK and EEA.*¹⁰³⁴

*'UK and Ireland: Higher prices due to less competition, Ball and Rexam competed most aggressively for UK market during tender.*¹⁰³⁵ *'We have very major concerns that this proposed merger will lead to increased pricing and a significant lessening in service levels. Our experience between the merging businesses is that our existing supplier, Rexam, offers a flexible and competitive service. Ball have not offered a competitive or flexible service to our business for many years. We have a very great concern that the merged organisation will seriously and negatively impact upon our business in an area which represents one of the most important cost bases for our overall finished product pricing.*¹⁰³⁶

*'The proposal that 2 of the main competitors form a new single organisation cannot possibly be a driver for competitive pricing or flexible supply. We would not support this proposal in any way at all.*¹⁰³⁷

*'[Large customer] is concerned that the proposed merger might have negative effect on price, innovation and level of services, due to eliminating one competitor from the market. The focus of those effects is in Germany, Poland and the UK.*¹⁰³⁸

¹⁰²⁹ Questionnaire to Customers (Q4), question 22.1, ID 2786.
¹⁰³⁰ Agreed non-confidential minutes of a meeting with a customer, 31.08.2015, ID 2961.
¹⁰³¹ Questionnaire to Customers (Q4), question 21.1, ID 2786.
¹⁰³² Questionnaire to Customers (Q2), question 64, ID 2664.
¹⁰³³ Questionnaire to Customers (Q4), question 25, ID 2786.
¹⁰³⁴ Questionnaire to Customers (Q1), question 100.1, ID 1609.
¹⁰³⁵ Questionnaire to Customers (Q2), question 64.1, ID 2664.
¹⁰³⁶ Questionnaire to Customers (Q4), question 25.1, ID 2786.
¹⁰³⁷ Questionnaire to Customers (Q4), question 26, ID 2786.

- (930) Tenth, in respect of the Notifying Party's argument that customers exert a high degree of buyer power including through sponsoring entry and/or expansion, and through changing their mix of demand across packaging types, what has been said in section 9.1.16 in respect of these points applies fully to the UK and Ireland cluster.

10. COMPETITIVE ASSESSMENT BEVERAGE CANS: COORDINATED EFFECTS

10.1. The Notifying Party's arguments¹⁰³⁹

- (931) The Notifying Party argues that the Transaction would neither make pre-existing coordination easier, more stable or more effective, nor make coordination significantly more likely post-Transaction.
- (932) The Notifying Party argues that there is lack of evidence of coordination pre-Transaction. There are many examples of the suppliers (including BCME members) competing aggressively and winning volumes from each other in all regions. In addition, regional volume shares show material fluctuation over the past few years. The Parties' internal documents and price-setting also demonstrate a lack of coordination.
- (933) The Notifying Party also argues that there are several important features which indicate that coordination is inherently implausible. First, each supplier's cost base is likely to be asymmetric for any given customer supply opportunity in a specific region. Second, there is insufficient market transparency for coordination to be possible. Third, large lumpy opportunities further reduce the incentive to coordinate and reduce the scope for punishment. Fourth, Can-Pack has different incentives that would de-stabilise any coordination and, in addition, other players are emerging.

10.2. SABMiller's submission

- (934) On 11 September 2015, SABMiller submitted a paper¹⁰⁴⁰ arguing that the Transaction would give rise to coordinated effects.
- (935) In SABMiller's view, the European beverage can industry is highly conducive to tacit coordination, due in particular to the presence of only four suppliers, frequent interaction between suppliers, stable demand and supply conditions, low demand elasticity, high barriers to entry and expansion, product homogeneity, market transparency and multi-market contacts between suppliers. In SABMiller's view, there are also a number of indicators of co-ordination in the beverage can industry.
- (936) Moreover, according to SABMiller, the Transaction would significantly increase the coordination risk, insofar as it would reduce the number of suppliers and it would eliminate one player (Rexam) as a destabilising factor.

10.3. The Commission's assessment

- (937) In light of the Final Commitments, the Commission has reached the conclusion that the Transaction would neither make pre-existing coordination easier, more stable or more effective, nor make coordination significantly more likely.

¹⁰³⁸ Agreed non-confidential minutes of a call with a customer, 04.05.2015, ID 334.

¹⁰³⁹ Reply to the Article 6(1)(c) Decision, Section 5.

¹⁰⁴⁰ SABMiller submission on coordinated effects, ID 2825.

10.3.1. Assessment of a potential strengthening of coordination

- (938) The Commission has reached the conclusion that, in light of the Final Commitments, it is unlikely that the Transaction would lead to a potential strengthening of coordination in the beverage can markets under investigation.
- (939) First, in light of the Final Commitments, the Transaction would not facilitate reaching a common understanding on the terms of coordination. The same number of players will remain active in the EEA. Moreover, the current market structure in terms of capacity will not be significantly altered as the Divestment Business will dispose of a production capacity of [30-40] % in the EEA.¹⁰⁴¹
- (940) Second, given that in light of the Final Commitments, the number of competitors will not be reduced, the Transaction would be unlikely to have a significant effect on market transparency and, therefore, on the possibility to monitor deviations from coordination.
- (941) The Commission does not, therefore, need to conclude whether there is current coordination in the markets under investigation due to the lack of merger-specific effects as described in recitals (939)-(940).

10.3.2. Assessment of a potential creation of coordination

- (942) For the reasons set out in recitals (939)-(940), the Commission has also reached the conclusion that, in light of the Final Commitments, the Transaction would not make coordination significantly more likely.

11. COMPETITIVE ASSESSMENT: ALUMINIUM BOTTLES

11.1. Structure of the market

- (943) In 2014, the value of aluminium bottles sales was EUR [...] million at EEA level and approximately EUR [...] million at worldwide level.
- (944) The Parties' sales amounted to approximately EUR [...] million at the EEA level (Rexam: EUR [...] million, Ball: EUR [...] million) for both types of aluminium bottles (DWI and IE).
- (945) The merged entity had a 2014 market share of [20-30] % at EEA level (Rexam: [20-30] %, Ball: [0-5] %).
- (946) There is no overlap between the activities of the Parties in either IE or DWI bottles at EEA level. With respect to DWI bottles, the activities of the Parties overlap only at worldwide level with a combined market share of 20 % (Ball: 19 %, Rexam: 1 %).

¹⁰⁴¹ Based on current capacity. If one includes Widnau, Saarlouis and [...], the Divestment Business will dispose of a production capacity of [20-30] % in the EEA.

Table 14: Aluminium bottles: market shares at EEA and worldwide level (2014)

	IE+DWI		DWI	DWI	IE	IE
	Value (worldwide)	Value (EEA)	Value (worldwide)	Value (EEA)	Value (worldwide)	Value (EEA)
Ball	[10-20] %	[0-5] %	[10-20] %	NA	[0-5] %	[0-5] %
Rexam	[0-5] %	[20-30] %	[0-5] %	[90-100] %	NA	NA
Combined	[10-20] %	[20-30] %	[20-30] %	[90-100] %	[0-5] %	[0-5] %
Ardagh	[30-40] %	[40-50] %	NA	NA	NA	[50-60] %
Alucan	[20-30] %	[30-40] %	NA	NA	NA	[40-50] %
Others	[0-5] %	[0-5] %	[80-90] %	NA	[90-100] %	NA

Source: Form CO, Reply to RFI 2

11.2. The Notifying Party's views

- (947) According to the Notifying Party, although both Ball and Rexam produce aluminium bottles, their respective products and technologies in the EEA are different. More specifically, in the EEA, Ball supplies IE bottles, while Rexam supplies DWI bottles.
- (948) The Notifying Party submits that a number of other players will remain post-Transaction, such as Ardagh and Alucan in the EEA, and third-party suppliers of DWI bottles such as Exal and Universal Can Corporation at a worldwide level.

11.3. The Commission's assessment

- (949) For the reasons set out in this section, the Commission has reached the conclusion that the Transaction is unlikely to lead to a significant impediment to effective competition in relation to aluminium bottles.
- (950) First, post-Transaction, the merged entity would compete in the EEA against two strong competitors, namely Ardagh ([40-50] %) and Alucan ([30-40] %). Both competitors are also globally active in aluminium bottles. Other competitors active at worldwide level are Exal (DWI and IE), CCL Container (IE), Toyo Seikan (DWI), Daiwa Can (DWI), and Universal Can Corporation (UCC) which manufactures DWI bottles in China and licenses its DWI bottle technology to other manufacturers worldwide.
- (951) Second, even if the Transaction were to eliminate Ball as a potential entrant in a hypothetical market for DWI bottles in the EEA, a sufficient number of other existing suppliers of DWI bottles are active and could decide to start supplying DWI bottles in the EEA. These competitors are Exal, Toyo Seikan, Daiwa Can and UCC. Moreover, beverage can manufacturers could also enter the market since DWI bottles are manufactured on similar technology to the manufacture of beverage cans with some adjustments to the production lines and bottle-necking technology licensed from UCC, Mall & Harlan and Belvac.¹⁰⁴² In fact, Can-Pack publicly stated in 2013 that '*Can-Pack watches aluminium bottle technology & is*

¹⁰⁴² See Ball's internal document 'Alumi-Tel Bottles PSC: Design Phase-Technology', Bonn, 31 January 2013.

*prepared to start production of such packages in the very near future. It is still, however a niche market product and most probably its reach will be limited in the future.*¹⁰⁴³

- (952) Third, a large majority of customers that responded to the market investigation expect no effect on their business or on the market for aluminium bottles in the EEA as a result of the transaction between Ball and Rexam.

12. COMMITMENTS

12.1. Legal framework for the assessment of commitments

- (953) Where the undertakings concerned modify a notified concentration, in particular by offering commitments with a view to rendering the concentration compatible with the internal market, the Commission should be able to declare the concentration, as modified, compatible with the internal market. Such commitments should be proportionate to the competition problem and eliminate it entirely.¹⁰⁴⁴
- (954) Under the Merger Regulation the Commission has the power to only accept such commitments that are capable of rendering a notified concentration compatible with the internal market.¹⁰⁴⁵
- (955) Structural commitments proposed by the parties to a notified concentration will meet that condition only in so far as the Commission is able to conclude, with certainty, that it will be possible to implement them and that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that the significant impediment to effective competition which the commitments are intended to prevent, will not be likely to materialise in the relatively near future.¹⁰⁴⁶
- (956) Under the Merger Regulation it is not the task of the Commission to determine whether the commitments limit the impact of a notified concentration on competition. Rather, the Commission's task is to determine whether those commitments enable it to conclude that the notified concentration does not significantly impede effective competition in the internal market or in a substantial part of it.¹⁰⁴⁷
- (957) In assessing whether proposed commitments are likely to eliminate the significant impediment to effective competition to which the notified concentration would otherwise give rise, the Commission will consider all relevant factors relating to the proposed remedy itself, including, inter alia, the type, scale and scope of the remedy proposed, judged by reference to the structure and particular characteristics of the market in which the competition concerns arise, including the position of the parties and other players on the market.¹⁰⁴⁸
- (958) A divestiture consisting of a combination of certain assets which did not form a uniform and viable business in the past creates risks as to the viability and competitiveness of the resulting business. This is, in particular, the case if assets from more than one party are involved. Such an approach may be accepted by the Commission only if the viability of the business is

¹⁰⁴³ The Canmaker, June 2013.

¹⁰⁴⁴ Merger Regulation, Recital 30.

¹⁰⁴⁵ Judgment of 25 March 1999, *Gencor v Commission*, T-102/96, EU:T:1999:65, paragraph 318.

¹⁰⁴⁶ Judgment of 14 December 2005, *General Electric v Commission*, T-210/01, EU:T:2005:456, paragraph 555; Judgment of 6 July 2010, *Ryanair v Commission*, T-342/07, EU:T:2010:280, paragraph 453.

¹⁰⁴⁷ Judgment of 19 June 2009, *Qualcomm v Commission*, T-48/04, EU:T:2009:212, paragraphs 89 and 112. See also judgment of 21 September 2005, *EDP v Commission*, T-87/05, EU:T:2005:333, paragraph 63.

¹⁰⁴⁸ Commission Notice on Remedies, paragraph 12.

ensured, notwithstanding the fact that the assets did not form a uniform business in the past. This may be the case if the individual assets can already be considered a viable and competitive business.¹⁰⁴⁹

12.2. Commitments of 18 November 2015

12.2.1. Description

(959) On 18 November 2015, the Notifying Party formally submitted the Commitments of 18 November 2015, which consisted of the divestiture of Ball's Metal Beverage Packaging, Europe segment, save for certain excluded entities, assets and personnel but including certain entities, assets and personnel currently owned or employed by Rexam (the 'Divestment Business as proposed in the Commitments of 18 November 2015'), to an independent purchaser approved by the Commission. More specifically, the Divestment Business as proposed in the Commitments of 18 November 2015 included:

- (1) the following legal entities:
 - (a) [...];
 - (b) [...];
 - (c) [...]; and
 - (d) [...].
- (2) the following plants, sites and other assets:
 - (a) the can body plant operated by Ball at Rugby, UK;
 - (b) the can body plant operated by Ball at Wrexham, UK;
 - (c) the can body plant operated by Ball at Hermsdorf, Germany;
 - (d) the can body plant operated by Ball at Weissenthurm, Germany;
 - (e) the can body plant operated by Ball at Hassloch, Germany;
 - (f) the can body plant operated by Ball at Oss, the Netherlands;
 - (g) the can body plant operated by Rexam at Enzesfeld, Austria;
 - (h) the can body plant operated by Rexam at Valdemorillo, Spain;
 - (i) the can body plant operated by Ball at La Ciotat, France;
 - (j) the can end plant operated by Ball at Braunschweig, Germany;
 - (k) the can end plant operated by Ball at Deeside (with the exclusion of one production module), UK;
 - (l) the shared services site operated by Ball at Bonn, Germany;
 - (m) the shared services site operated by Ball at Chester, UK; and
 - (n) at the option of the purchaser, the European head office site operated by Ball at Zurich, Switzerland.

¹⁰⁴⁹ Commission Notice on Remedies, paragraph 37.

- (960) The Commitments of 18 November 2015 therefore included nine can body plants and two can end plants. The Notifying Party also committed to assume [...]. In addition, the Commitments of 18 November 2015 provided that certain entities, assets and personnel as listed in the commitments be excluded from the Divestment Business. Those exclusions mainly related to certain holding companies, three EEA Ball plants (Bierne, Radomsko and the can end plant in Lublin), some key personnel and IP in pipeline products. Ball's Belgrade plant, which [...] serves the EEA, was also not included in the package.
- (961) Moreover, the Commitments of 18 November 2015 provided that only after the Notifying Party has concluded a binding sale agreement for the sale of the Divestment Business as proposed in the Commitments of 18 November 2015 to a purchaser approved by the Commission would the Parties be allowed to close the Transaction ('upfront buyer clause').
- (962) Finally, the Commitments of 18 November 2015 provided for a single purchaser.

12.2.2. *The Notifying Party's views*

- (963) According to the Notifying Party, the Divestment Business as proposed in the Commitments of 18 November 2015 would be a self-sufficient, effective and viable competitor to the Parties.
- (964) First, it would have a total EEA capacity of around [...] million cans and the potential to increase further its capacity by up to approximately [...] million cans. It would also include the Ball ends plants at Braunschweig and Deeside (with the exclusion of one production module), the aggregate capacity of which would be sufficient to meet the requirements of the Divestment Business as proposed in the Commitments of 18 November 2015.
- (965) Second, according to the Notifying Party, the Divestment Business as proposed in the Commitments of 18 November 2015 would include the transfer of all employees necessary for its operation, including the necessary support functions.
- (966) Third, in the Notifying Party's view, the plants included in the Divestment Business as proposed in the Commitments of 18 November 2015 constituted financially strong and stable assets.
- (967) Fourth, taken as a whole, the Divestment Business as proposed in the Commitments of 18 November 2015 would be financially sound and it could be expected that several high quality bidders would compete to acquire that business. Furthermore, the Divestment Business as proposed in the Commitments of 18 November 2015 was expected to form part of a larger global business, including activities in the USA and Brazil.
- (968) As regards the suitability of the Commitments of 18 November 2015 to remove the significant impediment to effective competition to which the Transaction would otherwise give rise, the Notifying Party claims that it would address the concerns identified by the Commission in each of the regional clusters.

12.2.3. *Responses to the market investigation*

- (969) On 20 November 2015, the Commission launched a market test of the Commitments of 18 November 2015.¹⁰⁵⁰
- (970) A number of respondents to the market test indicated that the Commitments of 18 November 2015 were incapable of rendering the Transaction compatible with the internal market.

¹⁰⁵⁰ Questionnaire to Customers (Q5), ID 4594. Questionnaire to Customers (Q6), ID 4595. Q5 was sent to can competitors. Q6 was sent to can customers.

12.2.3.1. Scope of the Divestment Business as included in the Commitments of 18 November 2015

- (971) Certain customers highlighted that the Divestment Business proposed in the Commitments of 18 November 2015 would be unable to replicate the competitive constraint that Ball and Rexam exercise on each other pre-Transaction in certain regional clusters. For example, as regards North-East Europe, respondents noted that the Divestment Business as included in the Commitments of 18 November *'lacks capability to cover Eastern Europe'*¹⁰⁵¹ and *'[t]he divestment business will not have any plant in [the Baltics]'*.¹⁰⁵²
- (972) Several respondents to the market investigation also formulated criticism with regards to the fact the Divestment Business as proposed in the Commitments of 18 November 2015 contained two steel plants (Rugby and Weissenthurm), which they regarded as an outdated technology: *'The viability of the package and the future Divestment Business' competitiveness will suffer from an over-representation of out-dated steel plants.'*¹⁰⁵³
- (973) Many customers expressing a view also stated that a viable and competitive beverage can manufacturing business in the EEA required production plants in (Central) Eastern Europe, where costs – in particular labour costs – are lower than in Western Europe.¹⁰⁵⁴ This was partly due to the fact that having a 'low cost plant' increases the competitiveness of a beverage can manufacturer¹⁰⁵⁵ and partly to having the best geographic footprint possible.¹⁰⁵⁶
- (974) Overall, customer views were divided as to whether the Divestment Business as included in the Commitments of 18 November 2015 would be able to replicate the competitive constraint that Ball and Rexam exercise on each other pre-Transaction and thus remove the competition concerns identified.¹⁰⁵⁷

12.2.3.2. Viability of the Divestment Business as included in the Commitments of 18 November 2015 and suitable purchaser

- (975) Customers expressing a view in response to the market test raised concerns as regards the viability of the Divestment Business as proposed in the Commitments of 18 November 2015.¹⁰⁵⁸
- (976) First, certain respondents underlined the importance of a single purchaser for the Divestment Business as proposed in the Commitments of 18 November 2015: *'The new 'divested' business in the highlighted markets is only a viable business if sold as a single entity as only then would it have sufficient scale to challenge the new merged Ball/Rexam entity on a lasting basis.'* *'It will be important that there is one buyer who takes over all plants, so that sufficient contingency can be offered and pan-European agreements can be closed with the large can fillers.'*¹⁰⁵⁹ *'We consider that is necessary to sell whole business, n[o]t to split company.'*¹⁰⁶⁰ *'It should be ensured that the Divestment Business is divested to one and the same Purchaser in*

¹⁰⁵¹ Questionnaire to Customers (Q6), question 1.1, ID 4595 *'the purchaser won't have plants in east europe'*.

¹⁰⁵² Agreed non-confidential minutes of a call with a customer, 25.11.2015, ID 4599.

¹⁰⁵³ Questionnaire to Customers (Q6), question 1.1, ID 4595.

¹⁰⁵⁴ Questionnaire to Customers (Q6), question 8, ID 4595.

¹⁰⁵⁵ *'there are some advantages in costs, especially labour costs, regarding activities in CEE. This should lead to more competitiveness.'* Questionnaire to Customers (Q6), question 8.1, ID 4595.

¹⁰⁵⁶ Questionnaire to Customers (Q6), question 8, ID 4595.

¹⁰⁵⁷ Questionnaire to Customers (Q6), question 1, ID 4595.

¹⁰⁵⁸ Questionnaire to Customers (Q6), question 5, ID 4595.

¹⁰⁵⁹ Questionnaire to Customers (Q6), question 5.1, ID 4595.

¹⁰⁶⁰ Questionnaire to Customers (Q6), question 7.1, ID 4595.

*order to create a player with a pan-European network of plants, that could then compete effectively with the new Ball post-merger.*¹⁰⁶¹ *[large customer] points out the importance of having a single purchaser to ensure the viability of the divestment business. As a whole, the divestment business appears viable given two can end plant are also part of the package but this is only the case if the whole divestment business is purchased by a single buyer. Competition concerns would arise if several players cherry-picked parts of the divestment business.*¹⁰⁶² *It is very important for [large customer] that the divestment business is sold as one coherent business to a single purchaser.*¹⁰⁶³

- (977) Second, many respondents noted that the identity of the purchaser would be a crucial factor for the viability of the Divestment Business proposed in the Commitments of 18 November 2015. This is for several reasons.
- (978) In the first place, respondents underlined that it would be crucial that the purchaser of the Divestment Business as proposed in the Commitments of 18 November 2015 was not one of the Parties' current competitors in the EEA (that is to say neither Crown nor Can-Pack). Rather, there should be a fourth player *'in order to maintain the competitive landscape in Europe'*; *'the divestment proposal would need to involve a major new entrant to the beverage can marketplace'*; *'the amount of large competitors needs to remain at its current number (4)'*¹⁰⁶⁴
- (979) In the second place, respondents stated that the financial strength of the purchaser to invest was also important for the viability of the Divestment Business as proposed in the Commitments of 18 November 2015. For instance a major customer considered that *'the viability of the Divestment Business and its competitiveness will strongly be influenced by the willingness and ability of the Purchaser to invest in the refurbishment and development of those plants that are older, and therefore less efficient, but also of his willingness to invest in the conversion of steel lines into aluminium lines.'*¹⁰⁶⁵
- (980) In the third place, the majority of respondents raised doubts as to whether a financial investor (for instance a private equity fund) would be a suitable purchaser and have the ability to replicate the competitive constraint that Ball and Rexam exercised on each other pre-Transaction.¹⁰⁶⁶
- (981) In the fourth place, respondents regarded experience in the beverage can business as an important criterion for the purchaser of the Divestment Business proposed in the Commitments of 18 November 2015. To this end, the importance of the key personnel was also regarded as essential to *'run the plants effectively in terms of production, logistics, sourcing, quality and innovation.'* *The transfer of expertise (employees, intellectual property) is a key enabler to ensure viability and competitiveness of the new business.*¹⁰⁶⁷
- (982) On 14 December 2015, Can-Pack submitted further arguments regarding the viability of the Divestment Business proposed in the Commitments of 18 November 2015.¹⁰⁶⁸ In that submission, Can-Pack argued that the Commitments of 18 November 2015 *'suffer from serious*

¹⁰⁶¹ Questionnaire to Customers (Q6), question 19, ID 4595.

¹⁰⁶² Agreed non-confidential minutes of a call with a customer, 24.11.2015, ID 4439.

¹⁰⁶³ Agreed non-confidential minutes of a call with a customer, 24.11.2015, ID 4468.

¹⁰⁶⁴ Questionnaire to Customers (Q6), questions 4 and 5.1, ID 4595.

¹⁰⁶⁵ Questionnaire to Customers (Q6), question 5.1, ID 4595.

¹⁰⁶⁶ Questionnaire to Customers (Q6), question 20, ID 4595.

¹⁰⁶⁷ Questionnaire to Customers (Q6), questions 5.1 and 7.1, ID 4595.

¹⁰⁶⁸ Can-Pack submission of 14.10.2015, ID 4661.

structural deficiencies that will make it impossible for a new entrant to take over the competitive position currently held by Ball'. According to Can-Pack, such deficiencies are four-fold. First, all the facilities are near the end of their useful lives and will need significant upgrades or closure. Second, the timing of the divestiture would take place during the summer which is the most critical time of the year for customers. Third, post-Transaction, Ball would be in pole position to take advantage of these vulnerabilities and take back the business currently associated with these assets. Fourth, Ball's position will strengthen *'shortly after the merger'* because of *'its intent to expand the capacities by installing after the merger new lines and new operations in some locations'*, [...].

- (983) Can-Pack also argued that even if it did manage to effectively *'step into Ball's shoes, a new entrant would not have any incentive nor be in a position to compete more vigorously than Ball did before the transaction'*.
- (984) As a result, Can-Pack claimed that the Commission should consider *'creating an additional supplementary package of assets to be divested to Can-Pack.'* Moreover, for a period of five years, Ball should be restricted from either installing new capacities in Europe or increasing its market share in Europe.
- (985) On 22 December 2015, Can-Pack made a further submission in which, in essence, it reiterated the arguments it made in its submission of 14 December 2015.¹⁰⁶⁹

12.2.4. The Commission's assessment

- (986) Based on its own assessment of the Transaction and the responses received in the course of the market test, the Commission concluded that the Commitments of 18 November 2015 were incapable of rendering the Transaction compatible with the internal market, in particular since (i) they would not fully remove the significant impediment to effective competition identified by the Commission in the North-East Europe cluster (see section 9.2.2.6); and (ii) did not sufficiently ensure the viability of the Divestment Business as proposed in the Commitments of 18 November 2015.

12.2.4.1. Suitability to remove the significant impediment to effective competition to which the Transaction would give rise

- (987) The Commitments of 18 November 2015 were insufficient to fully remove the significant impediment to effective competition to which the Transaction would give rise in the North-East Europe cluster.
- (988) This is because [...] would have resulted in a significant increase in overall capacity available in the North-East Europe cluster [...]. The Commitments of 18 November 2015 did not, however, address this elimination of the capacity expansion in the North-East Europe cluster. This, in itself, led the Commission to conclude that the Commitments of 18 November 2015 were insufficient to fully remove the significant impediment to effective competition to which the Transaction would give rise in the North-East Europe cluster.
- (989) Moreover, [...] would have reduced market concentration in the North-East Europe cluster. On the basis of catchment areas of 700 km around individual customer filling locations, the Commission computed that [...] would have had a significant de-concentrative effect for the average individual catchment area in the North-East Europe cluster, even if one takes into

¹⁰⁶⁹ Can-Pack submission of 22.12.2015, ID 4686.

account the effects of the Commitments of 18 November 2015.¹⁰⁷⁰ The reduction of concentration would mainly have stemmed from the fact that [...] would have made the market shares of both Ball and Can-Pack lower relative to the alternative scenario where [...].

- (990) In addition, for each regional cluster, the Commission calculated on the basis of the Commitments of 18 November 2015 and of the baseline assumptions considered in the competitive assessment average combined market shares, average market share increments and the corresponding average increase in the HHI.¹⁰⁷¹ The Commission also analysed whether there would remain sizable groups of comparable customers that would still face particularly significant concentration effects in any regional cluster. These concentration measures are presented in Annex D to this Decision.¹⁰⁷²
- (991) The concentration measures indicate that the Commitments of 18 November 2015 were largely neutral or de-concentrative in most regional clusters, except for the Central Europe cluster, where customers representing [20-30] % of the volumes would have still experienced an increase in the HHI of around [400-500] points.
- (992) Finally, as regards Can-Pack's submissions of 14 and 22 December 2015, the Commission will address these in its assessment of the Final Commitments as the Commission received Can-Pack's submissions after the Notifying Party submitted the Final Commitments.

12.2.4.2. Viability, competitiveness and suitable purchaser

- (993) The Commitments of 18 November 2015 did not sufficiently ensure the viability of the Divestment Business as proposed in the Commitments of 18 November 2015. This is for two main reasons.
- (994) First, the Commitments of 18 November 2015 excluded a large number of personnel (notably management, R&D, sales and other key personnel) from the scope of Divestment Business as proposed in the Commitments of 18 November 2015. Consequently, given that the Divestment Business as proposed in the Commitments of 18 November 2015 consisted in a large network of plants across the EEA, resulting partially in a combination of assets of both Parties, and operating in a concentrated and capacity-constrained industry, a high degree of continuity of key staff would be crucial for the ability of the Divestment Business as proposed in the Commitments of 18 November 2015 to serve its customers and compete effectively in the market immediately after the divestiture.
- (995) Second, there were concerns regarding the degree of competition post-Transaction between the merged entity and the Divestment Business as proposed in the Commitments of 18 November 2015 if all of the excluded personnel had stayed with the merged entity.

¹⁰⁷⁰ The weighted average HHI in the North-East Europe cluster would have fallen by [200-300] points if [...]. Moreover, for some customer catchment areas within the North-East Europe cluster, the de-concentrative effect of [...] would have been even more significant (e.g. for [20-30] % of volumes in North-East Europe [...] would have reduced the weighted average HHI by just over [1000-1500] points).

¹⁰⁷¹ In case the market share accounted by the Divested Business is larger than the combined market share of the Parties post-divestment then the market share of the Divested Business is taken into account, because in this case the size of the Divested Business is increasing concentration in the market.

¹⁰⁷² Robustness tests for this concentration assessment are also presented in Annex D to this Decision. The 900 km radius robustness test for the capacities indicates generally higher concentration effects after the divestment, while the 500 km robustness test indicates lower concentration effects. Moreover, the Commission has also considered the robustness of the calculation of concentration effects to the partial exclusion of Red Bull volumes, and to the [...]. These robustness scenarios show qualitatively the same concentration effects as those with the baseline assumptions.

(996) Third, as regards Can-Pack's submissions of 14 and 22 December 2015, the Commission will address these in its assessment of the Final Commitments as the Commission received Can-Pack's submissions after the Notifying Party submitted the Final Commitments.

12.2.5. *Conclusion*

(997) For the reasons outlined in particular in recitals (988)-(989) and (993)-(994), the Commitments of 18 November 2015 were not sufficient to remove the significant impediment to effective competition to which the Transaction would give rise.

12.3. Final Commitments

12.3.1. *Description*

(998) On 3 December 2015, the Notifying Party submitted revised commitments (the 'Final Commitments'). The full text of the Final Commitments is attached as Annex E to this Decision.

(999) The Final Commitments consist of the divestiture of all the assets of the Divestment Business as described in the Commitments of 18 November 2015 as listed in recital (959), and also including (the 'Divestment Business'):

- (1) the can body plant operated by Ball in Radomsko, Poland (the 'can body plant in Radomsko');
- (2) the following legal entities:
 - (a) [...];
 - (b) [...];
 - (c) [...];
 - (d) [...].

(1000) As a consequence, the Divestment Business is composed of ten can body plants: eight out of Ball's nine can body plants located within the EEA, complemented by the inclusion of Rexam's plants in Austria (Enzesfeld) and Spain (Valdemorillo). In addition, the Divestment Business includes two can end plants, the existing Ball Business and Technical Centre in Bonn and, at the purchaser's option, Ball's European headquarters in Zurich.

(1001) As already foreseen in the Commitments of 18 November 2015, the Final Commitments provide for an upfront buyer requirement and that the Divestment Business shall be sold to a single purchaser.

(1002) Further changes in the Final Commitments as compared to the Commitments of 18 November 2015 include:

- (1) an extension of the list of key personnel that will be part of the Divestment Business;
- (2) the removal of the exclusion of a module at the can end plant at Deeside in order to match the increased can body volume due to the inclusion of Balls' can body plant in Radomsko; and
- (3) [...].

12.3.2. *The Commission's assessment*

12.3.2.1. Suitability to remove the significant impediment to effective competition to which the Transaction would give rise

- (1003) Having assessed the Final Commitments, the Commission has reached the conclusion that, due to the inclusion of the can body plant in Radomsko, the Transaction would no longer give rise to a significant impediment of effective competition in the North-East Europe cluster.
- (1004) First, by divesting the can body plant in Radomsko in Poland in the Final Commitments, the merged entity would retain a portfolio of plants which replicates the competitive conditions faced by Rexam pre-Transaction, including Rexam's pre-Transaction incentive to add new capacity in the North-East Europe cluster. As a result, the adverse concentration effects would also be removed.¹⁰⁷³ This conclusion is robust to the alternative assumptions of 900 km catchment areas and 500 km catchment areas.
- (1005) Second, the Final Commitments result in neutral or reduced concentration in terms of average weighted capacity shares based on 700 km catchment areas in each regional cluster.¹⁰⁷⁴
- (1006) Third, the Final Commitments address any localised concentration effects in the Central Europe cluster by significantly reducing both the share of customers with significant concentration effects, and the extent of these concentration effects.

12.3.2.2. Viability, competitiveness and suitable purchaser

- (1007) Having assessed the Final Commitments, the Commission has reached the conclusion that the Divestment Business would be able to compete effectively and immediately following its acquisition by a suitable purchaser so as to replicate the competitive pressure exercised by the Parties on each other pre-Transaction.
- (1008) First, with ten can body plants and the matching can end capacity, the Divestment Business would be in a position to compete effectively across the EEA.
- (1009) The Divestment Business would have a total EEA capacity of around over [...] billion cans, which equates to roughly [...] % of Ball's total EEA-wide capacity.¹⁰⁷⁵ The Final Commitments essentially foresee the divestiture of Ball's Metal Beverage Packaging, Europe segment as a going concern with limited reverse carve-outs (Ball will keep only one plant, the steel can body plant in Bierne, France, out of its nine plants located in the EEA).
- (1010) Second, the scope of entities, assets and personnel retained by the Notifying Party has been considerably reduced compared to the Commitments of 18 November 2015. Contrary to what was proposed in the Commitments of 18 November 2015, the Divestment Business would have a sufficient number of key personnel, including management, R&D and sales staff, relative to its size. Thus, essentially the Divestment Business would include the essence of the existing Ball Metal Packaging, Europe segment as a going concern (including the Rexam assets included in the Divestment Business).
- (1011) Third, the Commission considers that the single purchaser requirement¹⁰⁷⁶ ensures that that the Divestment Business will have both the necessary pan-European network and scale to compete

¹⁰⁷³ See Figure 3 and Table 3 of Annex D to this Decision which include concentration measures assuming [...].

¹⁰⁷⁴ See in particular Figures 2 and 3 and Table 2 and 3 of Annex D to this Decision.

¹⁰⁷⁵ [...] % is based on Balls' capacity including [...]. If one takes out [...], the Divestment Business would amount for [...] % of Ball's current capacity.

¹⁰⁷⁶ The Commission notes that this provision was also included in the Commitments of 18 November 2015.

effectively. As described above, network (section 9.1.7) and scale (sections 9.1.5, 9.1.6 and 9.1.8) are important features enabling beverage can manufacturers to compete effectively. Moreover, the Commission considers that the single purchaser requirement ensures that the Divestment Business will be able to replicate effectively the competitive pressure exercised by the Parties on each other pre-Transaction.

- (1012) Fourth, the 'upfront buyer' clause included in the Final Commitments will safeguard against any risk that the business will not be divested to a suitable purchaser.¹⁰⁷⁷
- (1013) Fifth, as regards the key personnel, the Final Commitments include several further individuals, in particular key management, R&D and sales staff.
- (1014) Sixth, as regards the two steel plants in the Divestment Business, one of those steel plants is the can body plant operated by Ball at Rugby, UK, which is a wall-to-wall plant serving Britvic, a customer currently purchasing steel cans from this plant and with whom Ball [...].
- (1015) Seventh, can production plants located in Central Eastern Europe (especially Poland) can compensate for the transport costs as regards deliveries to customers located in other areas by a comparative advantage in labour costs and as such, albeit not absolutely necessary, may therefore increase the competitiveness and viability of a beverage can manufacturer.
- (1016) Eighth, this conclusion is not affected by any of the arguments put forward by Can-Pack in its submissions of 14 and 22 December 2015.
- (1017) In the first place, given that the plants contained in the Divestment Business are essentially the same as those operated by Ball today, any new purchaser may in the future have to upgrade certain facilities in the same way that Ball would have had to do absent the Transaction.
- (1018) In the second place, the timing of the sale of the Divestment Business, assuming that it will take place in the summer, will not affect the viability of the Divestment Business: the purchaser should have the ability with all current plants and other key personnel to continue the execution of existing contracts and will have the incentive to ensure that the Divestment Business does not lose customers.
- (1019) In the third place, there is no evidence that post-Transaction, Ball would have sufficient spare capacity to take back the business associated with the Divestment Business. As explained in the section 9.1.9, there is currently limited spare capacity in relation to the supply of beverage cans in the EEA, with capacity utilisation above 90 %. Moreover, pursuant to the Final Commitments, Ball is divesting roughly [...] % of its total EEA-wide capacity, see recital (1009).
- (1020) In the fourth place, the Commission has taken into account [...]
- (1021) In the fifth place, as the Final Commitments eliminate the significant impediment to effective competition to which the Transaction would give rise, the Commission is not required to consider either '*creating an additional supplementary package of assets to be divested to Can-Pack*' or, for a period of five years, restricting Ball either from installing new capacities in Europe or increasing its market share in Europe.¹⁰⁷⁸

¹⁰⁷⁷ The Commission notes that provision was also included in the Commitments of 18 November 2015.
¹⁰⁷⁸ Judgment of 30 September 2003, *ARD v Commission*, T-158/00, EU:T:2003:246, paragraph 329 ; Judgment of 4 July 2006, *easyJet v Commission*, T-177/04, EU:T:2006:187, paragraph 134-137.

(1022) If anything, restricting Ball from installing new capacities in Europe may be less favourable to competition because there is currently limited spare capacity in relation to the supply of beverage cans in the EEA, with capacity utilisation above 90 % see section 9.1.9.

12.3.3. Conclusion

(1023) For those reasons, the Commission considers that the Final Commitments are suitable and sufficient to eliminate the significant impediment to effective competition to which the Transaction would give rise and the Final Commitments therefore render it compatible with the internal market and the EEA agreement.

13. CONDITIONS AND OBLIGATIONS

(1024) Pursuant to the second subparagraph of Article 8(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 internal market.

(1025) The fulfilment of a measure that gives rise to a structural change of the market is a condition, whereas the implementing steps which are necessary to achieve that result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market will not or no longer be applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6) 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.

(1026) This Decision should be made conditional on the full compliance by the Notifying Party with Section B (including Schedules A to O) of the Final Commitments. All other sections of the Final Commitments should be made obligations within the meaning of Article 8(2) of the Merger Regulation. The full text of the Final Commitments is attached as Annex E to this Decision and forms an integral part thereof.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Ball Corporation acquires sole control of Rexam PLC within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004 is compatible with the internal market and the EEA Agreement.

Article 2

Article 1 is subject to compliance with the conditions set out in Section B (including Schedules A to O) of Annex E to this Decision.

Article 3

Ball Corporation shall comply with the obligations set out in the sections of Annex E to this Decision not referred to in Article 2.

Article 4

This Decision is addressed to:

Ball Corporation

10 Longs Peak Drive

Broomfield, Colorado 80021

United States of America

Done at Brussels, 15.1.2016

For the Commission

signed

Margrethe VESTAGER

Member of the Commission

Annex A: Data on Closest Competing Plants and Distances

The following tables summarise the information about the closest and second closest competing plants discussed in the Statement of Objections.

The source of the information is the transaction data of the Parties and the estimates of the Parties about sales of their competitors. The Commission has also replicated this analysis using the actual sales data from 3rd parties.

Tables 1a, 1b, 2a, 2b, 5 and 6 show the shares of customers for whom a competitor owns the closest (and second closest) competing plant. The shares are calculated based on volumes sold in 2014 in the EEA and Switzerland.

Tables 3a, 3b, 4a and 4b show the averages distances in kilometres to the closest competing plants pre-merger as well as the post-merger distances for customers whose closest competing plant was Rexam or Ball. Averages distances are calculated for 2014 sales in the EEA and are weighted by sales volumes.

Table 1a: Closest competitors to Ball's plants: owner of the closest competing plant (share of volumes sold in 2014)

Owner of the closest competing plant to Ball			
Plant	Can-Pack	Crown	Rexam
Belgrade	[...]	[...]	[...]
Bierne	[...]	[...]	[...]
Ciotat	[...]	[...]	[...]
Hassloch	[...]	[...]	[...]
Hermsdorf	[...]	[...]	[...]
Oss	[...]	[...]	[...]
Radomsko	[...]	[...]	[...]
Rugby	[...]	[...]	[...]
Weissenthurm	[...]	[...]	[...]
Wrexham	[...]	[...]	[...]
Average	[...]	[...]	[...]

Table 1b: Second closest competitors to Ball's plants: owner of the second closest competing plant (share of volumes sold in 2014)

Owner of the second closest competing plant to Ball			
Plant	Can-Pack	Crown	Rexam
Belgrade	[...]	[...]	[...]
Bierne	[...]	[...]	[...]
Ciotat	[...]	[...]	[...]
Hassloch	[...]	[...]	[...]
Hermsdorf	[...]	[...]	[...]
Oss	[...]	[...]	[...]
Radomsko	[...]	[...]	[...]
Rugby	[...]	[...]	[...]
Weissenthurm	[...]	[...]	[...]
Wrexham	[...]	[...]	[...]
Average	[...]	[...]	[...]

Table 2a: Closest competitors to Rexam's plants: owner of the closest competing plant (share of volumes sold in 2014)

Owner of closest competing plant to Rexam			
Plant	Can-Pack	Crown	Ball
Berlin	[...]	[...]	[...]
Ejpovice	[...]	[...]	[...]
Enzesfeld	[...]	[...]	[...]
Fredericia	[...]	[...]	[...]
Gelsenkirchen	[...]	[...]	[...]
Ludesch	[...]	[...]	[...]
Malmo	[...]	[...]	[...]
Mantsala	[...]	[...]	[...]
Martino	[...]	[...]	[...]
Milton	[...]	[...]	[...]
Naro	[...]	[...]	[...]

Nogara	[...]	[...]	[...]
Recklinghausen	[...]	[...]	[...]
Selva	[...]	[...]	[...]
Valdemorillo	[...]	[...]	[...]
Vsevolozhsk	[...]	[...]	[...]
Wakefield	[...]	[...]	[...]
Average	[...]	[...]	[...]

Table 2b: Second closest competitors to Rexam’s plants: owner of the second closest competing plant (share of volumes sold in 2014)

Owner of the second closest competing plant to Rexam			
Plant	Can-Pack	Crown	Ball
Berlin	[...]	[...]	[...]
Ejpovice	[...]	[...]	[...]
Enzesfeld	[...]	[...]	[...]
Fredericia	[...]	[...]	[...]
Gelsenkirchen	[...]	[...]	[...]
Ludesch	[...]	[...]	[...]
Malmo	[...]	[...]	[...]
Mantsala	[...]	[...]	[...]
Martino	[...]	[...]	[...]
Milton	[...]	[...]	[...]
Naro	[...]	[...]	[...]
Nogara	[...]	[...]	[...]
Recklinghausen	[...]	[...]	[...]
Selva	[...]	[...]	[...]
Valdemorillo	[...]	[...]	[...]
Vsevolozhsk	[...]	[...]	[...]
Wakefield	[...]	[...]	[...]
Average	[...]	[...]	[...]

Table 3a: Average distance to the closest competing plant, customers of Ball's plants (km, volume weighted averages, 2014)

Plant	Pre-merger			Post-merger	
	Owner of closest competing plant to Ball			Previously owned by Rexam	Change in distance
	Can-Pack	Crown	Rexam		
Belgrade	[...]	[...]	[...]	[...]	[...]
Bierne		[...]	[...]	[...]	[...]
Ciotat		[...]	[...]	[...]	[...]
Hassloch	[...]	[...]	[...]	[...]	[...]
Hermsdorf	[...]	[...]	[...]	[...]	[...]
Oss	[...]	[...]	[...]	[...]	[...]
Radomsko	[...]	[...]	[...]	[...]	[...]
Rugby		[...]	[...]	[...]	[...]
Weissenthurm	[...]	[...]	[...]	[...]	[...]
Wrexham	[...]	[...]	[...]	[...]	[...]
Average	[...]	[...]	[...]	[...]	[...]

Table 3b: Average distance to the second closest competing plant, customers of Ball's plants (km, volume-weighted averages)

Plant	Pre-merger			Post-merger	
	Owner of second closest competing plant to Ball			Previously owned by Rexam	Change in distance
	Can-Pack	Crown	Rexam		
Belgrade	[...]	[...]	[...]	[...]	[...]
Bierne		[...]	[...]	[...]	[...]
Ciotat	[...]	[...]	[...]	[...]	[...]
Hassloch	[...]	[...]	[...]	[...]	[...]
Hermsdorf	[...]	[...]	[...]	[...]	[...]
Oss	[...]	[...]	[...]	[...]	[...]
Radomsko	[...]	[...]	[...]	[...]	[...]
Rugby		[...]	[...]	[...]	[...]
Weissenthurm	[...]	[...]	[...]	[...]	[...]
Wrexham	[...]	[...]	[...]	[...]	[...]
Average	[...]	[...]	[...]	[...]	[...]

Table 4a: Average distance to the closest competing plant, customers of Rexam's plants (km, volume weighted averages)

Plant	Pre-merger			Post-merger	
	Owner of closest competing plant to Rexam			Previously owned by Ball	Change in distance
	Can-Pack	Crown	Ball		
Berlin	[...]	[...]	[...]	[...]	[...]
Ejpvovice		[...]	[...]	[...]	[...]
Enzesfeld	[...]	[...]	[...]	[...]	[...]
Fredericia	[...]		[...]	[...]	[...]
Gelsenkirchen		[...]	[...]	[...]	[...]
Ludesch		[...]	[...]	[...]	[...]
Malmo	[...]	[...]	[...]	[...]	[...]
Mantsala	[...]		[...]	[...]	[...]
Martino		[...]	[...]	[...]	[...]
Milton	[...]	[...]	[...]	[...]	[...]
Naro	[...]		[...]	[...]	[...]
Nogara		[...]	[...]	[...]	[...]
Recklinghausen	[...]	[...]	[...]	[...]	[...]
Selva		[...]	[...]	[...]	[...]
Valdemorillo		[...]		[...]	[...]
Vsevolozhsk	[...]			[...]	[...]
Wakefield	[...]	[...]	[...]	[...]	[...]
Average	[...]	[...]	[...]	[...]	[...]

Table 4b: Average distance to the closest and second closest competing plant, customers of Rexam's plants (km, volume weighted averages)

Plant	Pre-merger			Post-merger	
	Owner of second closest competing plant to Rexam			Previously owned by Ball	Change in distance
	Can-Pack	Crown	Ball		
Berlin	[...]	[...]	[...]	[...]	[...]
Ejpvovice	[...]	[...]	[...]	[...]	[...]
Enzesfeld	[...]	[...]	[...]	[...]	[...]
Fredericia	[...]	[...]	[...]	[...]	[...]
Gelsenkirchen	[...]	[...]	[...]	[...]	[...]
Ludesch		[...]	[...]	[...]	[...]
Malmo	[...]	[...]	[...]	[...]	[...]
Mantsala	[...]	[...]	[...]	[...]	[...]
Martino		[...]	[...]	[...]	[...]
Milton	[...]	[...]	[...]	[...]	[...]
Naro	[...]		[...]	[...]	[...]
Nogara	[...]	[...]	[...]	[...]	[...]
Recklinghausen	[...]	[...]	[...]	[...]	[...]
Selva	[...]	[...]	[...]	[...]	[...]
Valdemorillo	[...]	[...]	[...]	[...]	[...]
Vsevolozhsk	[...]		[...]	[...]	[...]
Wakefield	[...]	[...]	[...]	[...]	[...]
Average	[...]	[...]	[...]	[...]	[...]

Table 5: Closest competitors to Crown: owner of the closest competing plant (share of volumes sold in 2014)

Owner of the closest competing plant to Crown			
Plant	Ball	Can-Pack	Rexam
Agoncillo	[...]	[...]	[...]
Braunstone	[...]	[...]	[...]
Carlisle	[...]	[...]	[...]
Corinth	[...]	[...]	[...]
Custines	[...]	[...]	[...]
Kechnec	[...]	[...]	[...]
Patras	[...]	[...]	[...]
Seville	[...]	[...]	[...]
Average	[...]	[...]	[...]

Table 6: Closest competitors to Can-Pack: owner of the closest competing plant (share of volumes sold in 2014)

Owner of the closest competing plant to Can-Pack			
Plant	Ball	Can-Pack	Rexam
Brzesko	[...]	[...]	[...]
Bucharest	[...]	[...]	[...]
Bydgoszcz	[...]	[...]	[...]
Hameenlinna	[...]	[...]	[...]
Scunthorpe	[...]	[...]	[...]
Average	[...]	[...]	[...]

Annex B - Concentration analysis for customer-centred catchment areas (Capacity-based)

Figure 1: 700 km catchment areas

[...]

- 0-40% or less than 5% increment
- 40-50% and at least 5% increment
- 50-60% and at least 5% increment
- 60-70% and at least 5% increment
- 70% and at least 5% increment

Figure 2: 900 km catchment areas

[...]

- 0-40% or less than 5% increment
- 40-50% and at least 5% increment
- 50-60% and at least 5% increment
- 60-70% and at least 5% increment
- 70% and at least 5% increment

Figure 3: 500 km catchment areas

[...]

- 0-40% or less than 5% increment
- 40-50% and at least 5% increment
- 50-60% and at least 5% increment
- 60-70% and at least 5% increment
- 70% and at least 5% increment

Table 1: Weighted-average market shares by cluster, 700 km catchment areas¹

Catchment areas around customer filling plants located in region	Ball	Rexam	Combined	Can Pack	Crown	Other
Benelux	[50-60]%	[20-30]%	[80-90]%	[0-5%]	[10-20%]	[5-10%]
Central Europe	[30-40]%	[40-50]%	[80-90]%	[0-5%]	[5-10%]	[5-10%]
France	[40-50]%	[30-40]%	[80-90]%	[0-5%]	[5-10%]	[0-5%]
Iberia	[20-30]%	[30-40]%	[60-70]%	[0-5%]	[30-40%]	[0-5%]
Italy	[10-20]%	[70-80]%	[90-100]%	[0-5%]	[5-10%]	[0-5%]
North-East Europe	[20-30]%	[20-30]%	[40-50]%	[40-50%]	[10-20%]	[0-5%]
Nordics	[5-10]%	[70-80]%	[80-90]%	[10-20%]	[0-5%]	[0-5%]
South-East Europe	[20-30]%	[20-30]%	[40-50]%	[10-20%]	[30-40%]	[0-5%]
UK and Ireland	[40-50]%	[20-30]%	[60-70]%	[5-10%]	[20-30%]	[0-5%]

Table 2: Weighted-average concentration indicators by cluster, 700 km catchment areas²

Catchment areas around customer filling plants located in region	Post-merger HHI	Max. HHI	Delta HHI	Max. Delta HHI
Benelux	[4,000-4,500]	[8,000-8,500]	[3,000-3,100]	[4,000-4,100]
Central Europe	[7,500-8,000]	[9,500-10,000]	[3,600-3,700]	[4,200-4,300]
France	[7,000-7,5000]	[9,500-10,000]	[3,300-3,400]	[4,400-4,500]
Iberia	[5,000-5,500]	[9,500-10,000]	[1,800-1,900]	[3,600-3,700]
Italy	[9,000-9,500]	[9,500-10,000]	[1,900-2,000]	[3,800-3,900]
North-East Europe	[4,000-4,500]	[6,500-7,000]	[800-900]	[3,200-3,300]
Nordics	[7,500-8,000]	[9,500-10,000]	[1,200-1,300]	[4,500-4,600]
South-East Europe	[5,500-6,000]	[9,500-10,000]	[800-900]	[2,700-2,800]
UK and Ireland	[5,000-5,500]	[5,500-6,000]	[2,000-2,100]	[2,700-2,800]

¹ Tables 1, 3 and 5 show the weighted-average market share by firm in each catchment area, for all customers located in the corresponding region. The weights correspond to the overall volumes of each customer.

² Tables 2, 4 and 6 show the weighted-average HHI and Delta in each catchment area, for all customers located in the corresponding region. The weights correspond to the overall volumes of each customer. The maximum HHI and maximum Delta refer to the maximum level by catchment area observed in each region.

Table 3: Weighted-average market shares by cluster, 900 km catchment areas

Catchment areas around customer filling plants located in region	Ball	Rexam	Combined	Can Pack	Crown	Other
Benelux	[40-50]%	[40-50]%	[80-90]%	[0-5%]	[5-10%]	[0-5%]
Central Europe	[40-50]%	[40-50]%	[80-90]%	[0-5%]	[5-10%]	[0-5%]
France	[40-50]%	[30-40]%	[80-90]%	[0-5%]	[10-20%]	[0-5%]
Iberia	[20-30]%	[30-40]%	[50-60]%	[0-5%]	[30-40%]	[0-5%]
Italy	[20-30]%	[50-60]%	[80-90]%	[0-5%]	[5-10%]	[0-5%]
North-East Europe	[30-40]%	[20-30]%	[50-60]%	[30-40%]	[5-10%]	[0-5%]
Nordics	[20-30]%	[60-70]%	[80-90]%	[10-20%]	[0-5%]	[0-5%]
South-East Europe	[20-30]%	[20-30]%	[50-60]%	[10-20%]	[30-40%]	[0-5%]
UK and Ireland	[40-50]%	[20-30]%	[70-80]%	[5-10%]	[10-20%]	[0-5%]

Table 4: Weighted-average concentration indicators by cluster, 900 km catchment areas

Catchment areas around customer filling plants located in region	Post-merger HHI	Max. HHI	Delta HHI	Max. Delta HHI
Benelux	[7,000-7,5000]	[7,500-8,000]	[3,500-3,600]	[3,700-3,800]
Central Europe	[7,500-8,000]	[8,500-9,000]	[3,600-3,700]	[4,200-4,300]
France	[6,500-7,000]	[8,500-9,000]	[2,900-3,000]	[4,200-4,300]
Iberia	[5,000-5,500]	[6,500-7,000]	[1,700-1,800]	[3,100-3,200]
Italy	[7,500-8,000]	[9,500-10,000]	[2,800-2,900]	[4,300-4,400]
North-East Europe	[4,500-5,000]	[7,000-7,500]	[1,400-1,500]	[3,300-3,400]
Nordics	[8,000-8,500]	[9,500-10,000]	[2,200-2,300]	[4,900-5,000]
South-East Europe	[5,000-5,500]	[9,500-10,000]	[1,000-1,100]	[2,900-3,000]
UK and Ireland	[5,500-6,000]	[6,000-6,500]	[2,400-2,500]	[2,800-2,900]

Table 5: Weighted-average market shares by cluster, 500 km catchment areas

Catchment areas around customer filling plants located in region	Ball	Rexam	Combined	Can Pack	Crown	Other
Benelux	[60-70]%	[20-30]%	[80-90]%	[0-5%]	[5-10%]	[5-10%]
Central Europe	[30-40]%	[50-60]%	[80-90]%	[0-5%]	[5-10%]	[5-10%]
France	[50-60]%	[20-30]%	[80-90]%	[0-5%]	[10-20%]	[0-5%]
Iberia	[10-20]%	[30-40]%	[40-50]%	[0-5%]	[50-60%]	[0-5%]
Italy	[0-5%]	[90-100]%	[90-100]%	[0-5%]	[0-5%]	[0-5%]
North-East Europe	[20-30]%	[10-20]%	[40-50]%	[40-50%]	[10-20%]	[0-5%]
Nordics	[0-5%]	[80-90]%	[80-90]%	[10-20%]	[0-5%]	[0-5%]
South-East Europe	[10-20]%	[20-30]%	[30-40]%	[20-30%]	[40-50%]	[0-5%]
UK and Ireland	[30-40]%	[20-30]%	[60-70]%	[10-20%]	[20-30%]	[0-5%]

Table 6: Weighted-average concentration indicators by cluster, 500 km catchment areas

Catchment areas around customer filling plants located in region	Post-merger HHI	Max. HHI	Delta HHI	Max. Delta HHI
Benelux	[7,000-7,500]	[9,500-10,000]	[2,900-3,000]	[4,100-4,200]
Central Europe	[7,500-8,000]	[9,500-10,000]	[2,600-2,700]	[4,900-5,000]
France	[6,500-7,000]	[9,500-10,000]	[2,100-2,200]	[4,800-4,900]
Iberia	[7,000-7,500]	[9,500-10,000]	[900-1000]	[4,800-4,900]
Italy	[9,500-10,000]	[9,500-10,000]	[300-400]	[4,500-4,600]
North-East Europe	[4,500-5,000]	[9,500-10,000]	[500-600]	[4,900-5,000]
Nordics	[8,500-9,000]	[9,500-10,000]	[0-100]	[4,500-4,600]
South-East Europe	[7,000-7,500]	[9,500-10,000]	[600-700]	[4,900-5,000]
UK and Ireland	[4,500-5,000]	[9,500-10,000]	[1,700-1,800]	[2,700-2,800]

Table 7: Weighed average concentration effects for customers with significant concentration effects (by region of location of customer), 700 km catchment areas, capacity-based*

Location of customer	% affected volumes in Region	Average combined market share	Average increment	Average post-merger HHI	Average Delta HHI
Benelux	[90-100]%	[80-90]%	[20-30]%	[7,000-7,500]	[3,000-3,100]
Central Europe	[90-100]%	[80-90]%	[30-40]%	[7,500-8,000]	[3,600-3,700]
France	[90-100]%	[80-90]%	[30-40]%	[7,000-7,500]	[3,300-3,400]
Iberia	[90-100]%	[60-70]%	[20-30]%	[5,000-5,500]	[1,800-1,900]
Italy	[60-70]%	[90-100]%	[20-30]%	[8,500-9,000]	[3,000-3,100]
North-East Europe	[60-70]%	[50-60]%	[20-30]%	[4,000-4,500]	[1,200-1,300]
Nordics	[40-50]%	[90-100]%	[20-30]%	[8,500-9,000]	[2,900-3,000]
South-East Europe	[50-60]%	[60-70]%	[20-30]%	[5,000-5,500]	[1,600-1,700]
UK and Ireland	[90-100]%	[60-70]%	[20-30]%	[5,000-5,500]	[2,000-2,100]
Total (EEA)	[80-90]%	[70-80]%	[20-30]%	[5,500-6,000]	[2,300-2,400]

* Customers with significant concentration effects are defined, for illustrative purposes, as those with a combined post-merger market share of at least 40% and a market share increment of at least 10%, and/or a combined post-merger market share of at least 50% and a market share increment of at least 5%. The averages reported in this table are weighed by the volumes of each customer.

Table 8: Weighed average concentration effects for customers with significant concentration effects (by region of location of customer), 900 km catchment areas, capacity-based*

Location of customer	% affected volumes in Region	Average combined market share	Average increment	Average post-merger HHI	Average Delta HHI
Benelux	[90-100]%	[80-90]%	[40-50]%	[7,000-7,500]	[3,500-3,600]
Central Europe	[90-100]%	[80-90]%	[40-50]%	[7,500-8,000]	[3,600-3,700]
France	[90-100]%	[80-90]%	[30-40]%	[6,500-7,000]	[2,900-3,000]
Iberia	[70-80]%	[60-70]%	[20-30]%	[5,500-6,000]	[1,900-2,000]
Italy	[70-80]%	[80-90]%	[30-40]%	[7,500-8,000]	[3,700-3,800]
North-East Europe	[90-100]%	[50-60]%	[20-30]%	[4,000-4,500]	[1,500-1,600]
Nordics	[40-50]%	[90-100]%	[40-50]%	[9,000-9,500]	[4,300-4,400]
South-East Europe	[50-60]%	[60-70]%	[20-30]%	[5,000-5,500]	[2,000-2,100]
UK and Ireland	[90-100]%	[70-80]%	[20-30]%	[5,500-6,000]	[2,400-2,500]
Total (EEA)	[80-90]%	[70-80]%	[20-30]%	[5,500-6,000]	[2,400-2,500]

* Customers with significant concentration effects are defined, for illustrative purposes, as those with a combined post-merger market share of at least 40% and a market share increment of at least 10%, and/or a combined post-merger market share of at least 50% and a market share increment of at least 5%. The averages reported in this table are weighed by the volumes of each customer.

Table 9: Weighed average concentration effects for customers significant concentration effects (by region of location of customer), 500 km catchment areas, capacity-based*

Location of customer	% affected volumes in Region	Average combined market share	Average increment	Average post-merger HHI	Average Delta HHI
Benelux	[90-100]%	[80-90]%	[20-30]%	[7,000-7,500]	[2,900-3,000]
Central Europe	[80-90]%	[80-90]%	[20-30]%	[7,000-7,500]	[3,000-3,100]
France	[60-70]%	[80-90]%	[30-40]%	[6,500-7,000]	[3,000-3,100]
Iberia	[40-50]%	[70-80]%	[20-30]%	[6,500-7,000]	[2,100-2,200]
Italy	[5-10]%	[90-100]%	[20-30]%	[9,500-10,000]	[3,500-3,600]
North-East Europe	[10-20]%	[60-70]%	[30-40]%	[6,000-6,500]	[2,700-2,800]
Nordics	[0-5]%	[90-100]%	[30-40]%	[9,500-10,000]	[4,500-4,600]
South-East Europe	[30-40]%	[50-60]%	[20-30]%	[4,500-5,000]	[1,800-1,900]
UK and Ireland	[90-100]%	[60-70]%	[20-30]%	[4,500-5,000]	[1,800-1,900]
Total (EEA)	[70-80]%	[70-80]%	[20-30]%	[6,000-6,500]	[2,200-2,300]

* Customers with significant concentration effects are defined, for illustrative purposes, as those with a combined post-merger market share of at least 40% and a market share increment of at least 10%, and/or a combined post-merger market share of 50% and a market share increment of at least 5%. The averages reported in this table are weighed by the volumes of each customer.

Annex C - Concentration analysis for customer-centred catchment areas (Volume-based)

Figure 1: 700 km catchment areas

Volume shares around customers in a 700 km radius driving area

[...]

- 0-40% or less than 5% increment
- 40-50% and at least 5% increment
- 50-60% and at least 5% increment
- 60-70% and at least 5% increment
- over 70% and at least 5% increme

Figure 2: 900 km catchment areas

Volume shares around customers in a 900 km radius driving area

[...]

- 0-40% or less than 5% increment
- 40-50% and at least 5% increment
- 50-60% and at least 5% increment
- 60-70% and at least 5% increment
- over 70% and at least 5% increme

Figure 3: 500 km catchment areas

Volume shares around customers in a 500 km radius driving area

[...]

- 0-40% or less than 5% increment
- 40-50% and at least 5% increment
- 50-60% and at least 5% increment
- 60-70% and at least 5% increment
- over 70% and at least 5% increme

Table 1: Weighted-average market shares by cluster, 700km¹

Catchment areas around customer filling plants located in region	Ball	Rexam	Combined	Can Pack	Crown	Other
Benelux	[50-60]%	[5-10]%	[70-80]%	[10-20]%	[10-20]%	[0-5]%
Central Europe	[30-40]%	[50-60]%	[80-90]%	[5-10]%	[5-10]%	[0-5]%
France	[40-50]%	[30-40]%	[70-80]%	[5-10]%	[10-20]%	[0-5]%
Iberia	[10-20]%	[40-50]%	[60-70]%	[0-5]%	[30-40]%	[0-5]%
Italy	[5-10]%	[60-70]%	[80-90]%	[0-5]%	[10-20]%	[0-5]%
North-East Europe	[30-40]%	[5-10]%	[50-60]%	[30-40]%	[5-10]%	[5-10]%
Nordics	[5-10]%	[70-80]%	[70-80]%	[5-10]%	[0-5]%	[0-5]%
South-East Europe	[20-30]%	[10-20]%	[40-50]%	[20-30]%	[20-30]%	[0-5]%
UK and Ireland	[40-50]%	[20-30]%	[70-80]%	[5-10]%	[10-20]%	[0-5]%

Table 2: Weighted-average concentration indicators by cluster, 700km²

Catchment areas around customer filling plants located in region	Post-merger HHI	Max. HHI	Delta HHI	Max. Delta HHI
Benelux	[6,000-6,500]	[6,500-7,000]	[2,500-2,600]	[3,200-3,300]
Central Europe	[7,000-7,500]	[7,500-8,000]	[3,100-3,200]	[3,600-3,700]
France	[6,000-6,500]	[7,500-8,000]	[2,700-2,800]	[3,600-3,700]
Iberia	[5,000-5,500]	[5,500-6,000]	[1,500-1,600]	[2,500-2,600]
Italy	[7,000-7,500]	[8,500-9,000]	[2,400-2,500]	[3,400-3,500]
North-East Europe	[4,000-4,500]	[6,000-6,500]	[1,200-1,300]	[2,700-2,800]
Nordics	[6,500-7,000]	[9,500-10,000]	[700-800]	[3,100-3,200]
South-East Europe	[5,000-5,500]	[9,500-10,000]	[800-900]	[2,600-2,700]
UK and Ireland	[5,500-6,000]	[5,500-6,000]	[2,300-2,400]	[2,500-2,600]

¹ Tables 1, 3, 5, 7 and 9 show the weighted-average market share by firm in each catchment area, for all customers located in the corresponding region. The weights correspond to the overall volumes of each customer.

² Tables 2, 4, 6, 8 and 10 show the weighted-average HHI and Delta in each catchment area, for all customers located in the corresponding region. The weights correspond to the overall volumes of each customer. The maximum HHI and maximum Delta refer to the maximum level by catchment area observed in each region.

Table 3: Weighted-average market shares by cluster, 900km

Catchment areas around customer filling plants located in region	Ball	Rexam	Combined	Can Pack	Crown	Other
Benelux	[30-40]%	[40-50]%	[70-80]%	[10-20]%	[10-20]%	[0-5]%
Central Europe	[30-40]%	[40-50]%	[80-90]%	[10-20]%	[10-20]%	[0-5]%
France	[40-50]%	[30-40]%	[70-80]%	[5-10]%	[10-20]%	[0-5]%
Iberia	[20-30]%	[40-50]%	[60-70]%	[0-5]%	[30-40]%	[0-5]%
Italy	[20-30]%	[50-60]%	[80-90]%	[0-5]%	[10-20]%	[0-5]%
North-East Europe	[30-40]%	[20-30]%	[50-60]%	[20-30]%	[5-10]%	[0-5]%
Nordics	[10-20]%	[60-70]%	[70-80]%	[10-20]%	[0-5]%	[0-5]%
South-East Europe	[20-30]%	[20-30]%	[50-60]%	[20-30]%	[20-30]%	[0-5]%
UK and Ireland	[40-50]%	[20-30]%	[70-80]%	[5-10]%	[10-20]%	[0-5]%

Table 4: Weighted-average concentration indicators by cluster, 900km

Catchment areas around customer filling plants located in region	Post-merger HHI	Max. HHI	Delta HHI	Max. Delta HHI
Benelux	[6,000-6,500]	[6,500-7,000]	[2,900-3,000]	[3,200-3,300]
Central Europe	[6,500-7,000]	[7,000-7,500]	[3,100-3,200]	[3,500-3,600]
France	[6,000-6,500]	[6,500-7,000]	[2,700-2,800]	[3,300-3,400]
Iberia	[5,000-5,500]	[5,500-6,000]	[1,600-1,700]	[2,400-2,500]
Italy	[6,500-7,000]	[8,500-9,000]	[2,900-3,000]	[3,400-3,500]
North-East Europe	[4,500-5,000]	[6,000-6,500]	[1,600-1,700]	[2,800-2,900]
Nordics	[6,500-7,000]	[9,500-10,000]	[1,400-1,500]	[3,300-3,400]
South-East Europe	[4,500-5,000]	[9,500-10,000]	[1,100-1,200]	[3,000-3,100]
UK and Ireland	[5,500-6,000]	[5,500-6,000]	[2,200-2,300]	[2,400-2,500]

Table 5: Weighted-average market shares by cluster, 500km,

Catchment areas around customer filling plants located in region	Ball	Rexam	Combined	Can Pack	Crown	Other
Benelux	[50-60]%	[10-20]%	[70-80]%	[5-10]%	[10-20]%	[0-5]%
Central Europe	[30-40]%	[50-60]%	[80-90]%	[5-10]%	[5-10]%	[0-5]%
France	[40-50]%	[20-30]%	[70-80]%	[5-10]%	[10-20]%	[0-5]%
Iberia	[10-20]%	[40-50]%	[60-70]%	[0-5]%	[30-40]%	[0-5]%
Italy	[10-20]%	[70-80]%	[80-90]%	[0-5]%	[10-20]%	[0-5]%
North-East Europe	[30-40]%	[10-20]%	[50-60]%	[30-40]%	[5-10]%	[5-10]%
Nordics	[0-5]%	[70-80]%	[70-80]%	[20-30]%	[0-5]%	[0-5]%
South-East Europe	[20-30]%	[10-20]%	[30-40]%	[30-40]%	[30-40]%	[0-5]%
UK and Ireland	[30-40]%	[20-30]%	[60-70]%	[10-20]%	[20-30]%	[0-5]%

Table 6: Weighted-average concentration indicators by cluster, 500km

Catchment areas around customer filling plants located in region	Post-merger HHI	Max. HHI	Delta HHI	Max. Delta HHI
Benelux	[6,000-6,500]	[6,500-7,000]	[1,900-2,000]	[2,900-3,000]
Central Europe	[7,000-7,500]	[8,000-8,500]	[2,800-3,000]	[3,600-3,700]
France	[6,000-6,500]	[8,000-8,500]	[2,500-2,600]	[4,000-4,100]
Iberia	[5,500-6,000]	[9,000-9,500]	[1,500-1,600]	[2,600-2,700]
Italy	[7,000-7,500]	[8,500-9,000]	[1,700-1,800]	[3,400-3,500]
North-East Europe	[3,500-4,000]	[7,000-7,500]	[800-900]	[1,800-1,900]
Nordics	[7,000-7,500]	[9,500-10,000]	[400-500]	[2,400-2,500]
South-East Europe	[5,000-5,500]	[9,500-10,000]	[700-800]	[3,100-3,200]
UK and Ireland	[5,000-5,500]	[7,000-7,500]	[2,000-2,100]	[2,400-2,500]

Table 7: Weighted-average market shares by cluster, 700km, Speciality Cans (Sleek and Slim, without 250ml slim)

Catchment areas around customer filling plants located in region	Ball	Rexam	Combined	Can Pack	Crown
Benelux	[50-60]%	[20-30]%	[80-90]%	[0-5]%	[10-20]%
Central Europe	[20-30]%	[60-70]%	[90-100]%	[0-5]%	[5-10]%
France	[40-50]%	[20-30]%	[70-80]%	[0-5]%	[20-30]%
Iberia	[20-30]%	[0-5]%	[20-30]%	[0-5]%	[80-90]%
Italy	[10-20]%	[60-70]%	[70-80]%	[0-5]%	[20-30]%
North-East Europe	[70-80]%	[10-20]%	[90-100]%	[5-10]%	[0-5]%
Nordics	[70-80]%	[20-30]%	[90-100]%	[0-5]%	[0-5]%
South-East Europe	[70-80]%	[10-20]%	[90-100]%	[0-5]%	[5-10]%
UK and Ireland	[40-50]%	[10-20]%	[60-70]%	[0-5]%	[30-40]%

Table 8: Weighted-average concentration indicators by cluster, 700km, Speciality Cans (Sleek and Slim, without 250ml slim)

Catchment areas around customer filling plants located in region	Post-merger HHI	Max. HHI	Delta HHI	Max. Delta HHI
Benelux	[7,000-7,500]	[8,000-8,500]	[2,600-2,700]	[3,700-3,800]
Central Europe	[8,500-9,000]	[9,500-10,000]	[3,300-3,400]	[3,800-3,900]
France	[6,500-7,000]	[8,500-9,000]	[1,100-1,200]	[3,700-3,800]
Iberia	[6,500-7,000]	[7,000-7,500]	[0-100]	[0-100]
Italy	[6,500-7,000]	[8,000-8,500]	[1,500-1,600]	[2,300-2,400]
North-East Europe	[8,500-9,000]	[9,500-10,000]	[1,600-1,700]	[4,100-4,200]
Nordics	[9,500-10,000]	[9,500-10,000]	[600-700]	[800-900]
South-East Europe	[9,000-9,500]	[9,500-10,000]	[2,500-2,600]	[2,900-3,000]
UK and Ireland	[7,000-7,500]	[9,500-10,000]	[2,000-2,100]	[2,400-2,500]

Table 9: Weighted-average market shares by cluster, 700km, Speciality Cans (Sleek and Slim, with 250ml slim)

Catchment areas around customer filling plants located in region	Ball	Rexam	Combined	Can Pack	Crown
Benelux	[40-50]%	[40-50]%	[80-90]%	[5-10]%	[10-20]%
Central Europe	[10-20]%	[80-90]%	[90-100]%	[0-5]%	[0-5]%
France	[50-60]%	[20-30]%	[80-90]%	[0-5]%	[10-20]%
Iberia	[30-40]%	[0-5]%	[30-40]%	[0-5]%	[60-70]%
Italy	[5-10]%	[70-80]%	[80-90]%	[0-5]%	[10-20]%
North-East Europe	[30-40]%	[20-30]%	[60-70]%	[30-40]%	[0-5]%
Nordics	[70-80]%	[10-20]%	[90-100]%	[5-10]%	[0-5]%
South-East Europe	[30-40]%	[20-30]%	[60-70]%	[30-40]%	[0-5]%
UK and Ireland	[20-30]%	[20-30]%	[40-50]%	[0-5]%	[50-60]%

Table 10: Weighted-average concentration indicators by cluster, 700km, Speciality Cans (Sleek and Slim, with 250ml slim)

Catchment areas around customer filling plants located in region	Post-merger HHI	Max. HHI	Delta HHI	Max. Delta HHI
Benelux	[6,500-7,000]	[8,500-9,000]	[2,700-2,800]	[3,400-3,500]
Central Europe	[9,000-9,500]	[9,000-9,500]	[2,200-2,300]	[3,300-3,400]
France	[7,000-7,500]	[8,500-9,000]	[2,000-2,100]	[2,900-3,000]
Iberia	[5,000-5,500]	[6,500-7,000]	[100-200]	[400-500]
Italy	[7,000-7,500]	[9,000-9,500]	[1,200-1,300]	[1,900-2,000]
North-East Europe	[5,000-5,500]	[9,500-10,000]	[1,500-1,600]	[2,500-2,600]
Nordics	[8,500-9,000]	[9,500-10,000]	[900-1000]	[1,900-2,000]
South-East Europe	[5,000-5,500]	[5,000-5,500]	[1,900-2,000]	[2,100-2,200]
UK and Ireland	[5,500-6,000]	[9,500-10,000]	[1,000-1,100]	[1,700-1,800]

Table 11: Weighed average concentration effects for customers with significant concentration effects (by region of location of customer), 700km catchment areas, volume-based*

Location of customer	% affected volumes in Region	Average combined market share	Average increment	Average post-merger HHI	Average Delta HHI
Benelux	[90-100]%	[70-80]%	[20-30]%	[6,000-6,500]	[2,500-2,600]
Central Europe	[90-100]%	[80-90]%	[30-40]%	[7,000-7,500]	[3,100-3,200]
France	[90-100]%	[70-80]%	[20-30]%	[6,000-6,500]	[2,000-2,100]
Iberia	[90-100]%	[60-70]%	[10-20]%	[5,000-5,500]	1,500-1,600]
Italy	[90-100]%	[80-90]%	[20-30]%	[7,000-7,500]	[2,500-2,600]
North-East Europe	[80-90]%	[50-60]%	[20-30]%	[4,000-4,500]	[1,400-1,500]
Nordics	[30-40]%	[70-80]%	[10-20]%	[6,500-7,000]	[1,800-1,900]
South-East Europe	[40-50]%	[60-70]%	[20-30]%	[5,000-5,500]	[1,800-1,900]
UK and Ireland	[90-100]%	[70-80]%	[20-30]%	[5,500-6,000]	[2,300-2,400]
Total (EEA)	[80-90]%	[70-80]%	[20-30]%	[5,500-6,000]	[2,300-2,400]

* Customers with significant concentration effects are defined, for illustrative purposes, as those with a combined post-merger market share of at least 40% and a market share increment of at least 10%, and/or a combined post-merger market share of at least 50% and a market share increment of at least 5%. The averages reported in this table are weighed by the volumes of each customer.

Table 12: Weighed average concentration effects for customers with significant concentration effects (by region of location of customer), 900km catchment areas, volume-based*

Location of customer	% affected volumes in Region	Average combined market share	Average increment	Average post-merger HHI	Average Delta HHI
Benelux	[90-100]%	[70-80]%	[30-40]%	[6,000-6,500]	[2,900-3,000]
Central Europe	[90-100]%	[80-90]%	[30-40]%	[6,500-7,000]	[3,100-3,200]
France	[90-100]%	[70-80]%	[30-40]%	[6,000-6,500]	[2,700-2,800]
Iberia	[90-100]%	[60-70]%	[20-30]%	[5,000-5,500]	[1,600-1,700]
Italy	[90-100]%	[80-90]%	[20-30]%	[6,500-7,000]	[2,900-3,000]
North-East Europe	[90-100]%	[50-60]%	[20-30]%	[4,000-4,500]	[1,600-1,700]
Nordics	[40-50]%	[80-90]%	[30-40]%	[6,500-7,000]	[2,900-3,000]
South-East Europe	[50-60]%	[60-70]%	[20-30]%	[5,000-5,500]	[2,000-2,100]
UK and Ireland	[90-100]%	[70-80]%	[20-30]%	[5,500-6,000]	[2,200-2,300]
Total (EEA)	[80-90]%	[70-80]%	[20-30]%	[5,500-6,000]	[2,400-2,500]

* Customers with significant concentration effects are defined, for illustrative purposes, as those with a combined post-merger market share of at least 40% and a market share increment of at least 10%, and/or a combined post-merger market share of at least 50% and a market share increment of at least 5%. The averages reported in this table are weighed by the volumes of each customer.

Table 13: Weighed average concentration effects for customers significant concentration effects (by region of location of customer), 500km catchment areas, volume-based*

Location of customer	% affected volumes in Region	Average combined market share	Average increment	Average post-merger HHI	Average Delta HHI
Benelux	[90-100]%	[70-80]%	[10-20]%	[6,000-6,500]	[1,900-2,000]
Central Europe	[90-100]%	[80-90]%	[20-30]%	[7,000-7,500]	[2,800-2,900]
France	[90-100]%	[80-90]%	[20-30]%	[6,000-6,500]	[2,700-2,800]
Iberia	[70-80]%	[60-70]%	[20-30]%	[5,600-6,000]	[1,700-1,800]
Italy	[70-80]%	[90-100]%	[10-20]%	[8,000-8,500]	[2,200-2,300]
North-East Europe	[40-50]%	[50-60]%	[10-20]%	[4,000-4,500]	[1,100-1,200]
Nordics	[0-5]%	N/A	N/A	N/A	N/A
South-East Europe	[40-50]%	[60-70]%	[20-30]%	[4,500-5,000]	[1,700-1,800]
UK and Ireland	[90-100]%	[60-70]%	[20-30]%	[5,000-5,500]	[2,000-2,100]
Total (EEA)	[70-80]%	[70-80]%	[20-30]%	[6,000-6,500]	[2,200-2,300]

* Customers with significant concentration effects are defined, for illustrative purposes, as those with a combined post-merger market share of at least 40% and a market share increment of at least 10%, and/or a combined post-merger market share of 50% and a market share increment of at least 5%. The averages reported in this table are weighed by the volumes of each customer.

Annex D - Post-Commitments Concentration Analysis

Figure 29: Capacity-based concentration indicators, Commitments of 18 November 2015, 700 km catchment areas, baseline scenario

Capacity shares around customers in a 700 km radius area

[...]

- ◆ 0-40% or less than 5% increment
- ◆ 40-50% and at least 5% increment
- ◆ 50-60% and at least 5% increment
- ◆ 60-70% and at least 5% increment

Table 1: Capacity-based concentration indicators¹, Commitments of 18 November 2015, 700 km catchment areas, baseline scenario

Catchment areas around customer filling plants located in region	All customers			Customers with significant concentration effects ²			
	Average Combined Market Share	Average Increment	Average Delta HHI	% volumes in region	Average Combined Market Share	Average Increment	Average Delta HHI
Benelux	[40-50]%	[(-20)-(-10)]%	[(-500)-(-400)]	[0-5]%	N/A	N/A	N/A
Central Europe	[50-60]%	[(-5)-0]%	[(-100)-0]	[20-30]%	[50-60]%	[5-10]%	[300-400]
Non-Red Bull	[50-60]%	[0-5]%	[100-200]	[30-40]%	[50-60]%	[5-10]%	[300-400]
Red Bull	[40-50]%	[(-20)-(-10)]%	[(-300)-(-200)]	[0-5]%	N/A	N/A	N/A
France	[40-50]%	[(-5)-0]%	[(-200)-(-100)]	[10-20]%	[50-60]%	[5-10]%	[200-300]
Iberia	[40-50]%	[0-5]%	[0-100]	[0-5]%	N/A	N/A	N/A
Italy	[60-70]%	[(-10)-(-5)]%	[(-900)-(-800)]	[0-5]%	N/A	N/A	N/A
North-East Europe	[30-40]%	[(-5)-0]%	[(-100)-0]	[0-5]%	[50-60]%	[10-20]%	[800-900]
Nordics	[70-80]%	[0-5]%	[0-5]	[0-5]%	N/A	N/A	N/A
South-East Europe	[40-50]%	[0-5]%	[0-100]	[5-10]%	[60-70]%	[10-20]%	[800-900]
UK and Ireland	[30-40]%	[(-5)-0]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A

¹ Tables 1 to 11 show the weighted-average combined market share, increment and delta HHI in each catchment area for all customers located in the corresponding region. The weights correspond to the overall volumes of each customer. The "combined market share" measure refers to the position in each catchment area of *either* the merged entity *or* the divested package (depending on which is the largest). The "increment" is defined as the increase in the position in each catchment area of *either* the merged entity *or* the divested package (depending on which is larger), relative to the larger of Ball and Rexam pre-Transaction. Customers in Central Europe are split between Non-Red Bull and Red Bull.

² Customers with particularly significant concentration effects are defined, for illustrative purposes, as those with a combined post-merger market share of at least 40% and a market share increment of at least 10%, and/or a combined post-merger market share of at least 50% and a market share increment of at least 5%. The averages reported in this table are weighed by the volumes of each customer.

Figure 2: Capacity-based concentration indicators, Final Commitments, 700 km catchment areas, baseline scenario

Capacity shares around customers in a 700 km radius area

[...]

- ◆ 0-40% or less than 5% increment
- ◆ 40-50% and at least 5% increment
- ◆ 50-60% and at least 5% increment

Table 2: Capacity-based concentration indicators, Final Commitments, 700 km catchment areas, baseline scenario

Catchment areas around customer filling plants located in region	All customers			Customers with significant concentration effects			
	Average Combined Market Share	Average Increment	Average Delta HHI	% volumes in region	Average Combined Market Share	Average Increment	Average Delta HHI
Benelux	[40-50]%	[(-20)-(-10)]%	[(-500)-(-400)]	[0-5]%	N/A	N/A	N/A
Central Europe	[40-50]%	[(-5)-0]%	[(-100)-0]	[10-20]%	[50-60]%	[5-10]%	[200-300]
Non-Red Bull	[50-60]%	[0-5]%	[(-100)-0]	[10-20]%	[50-60]%	[5-10]%	[200-300]
Red Bull	[40-50]%	[(-20)-(-10-20)]%	[(-300)-(-200)]	[0-5]%	N/A	N/A	N/A
France	[40-50]%	[(-5)-0]%	[(-200)-(-100)]	[10-20]%	[50-60]%	[5-10]%	[200-300]
Iberia	[40-50]%	[0-5]%	[0-100]	[0-5]%	N/A	N/A	N/A
Italy	[60-70]%	[(-20)-(-10-20)]%	[(-900)-(-800)]	[0-5]%	N/A	N/A	N/A
North-East Europe	[30-40]%	[5-10]%	[200-300]	[20-30]%	[40-50]%	[10-20]%	[600-700]
Nordics	[70-80]%	[0-5]%	[0-100]	[0-5]%	N/A	N/A	N/A
South-East Europe	[30-40]%	[0-5]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A
UK and Ireland	[30-40]%	[(-5)-0]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A

Figure 3: Capacity-based concentration indicators, Final Commitments, 700 km catchment areas, [...]

Capacity shares around customers in a 700 km radius area

[...]

- 0-40% or less than 5% increment
- 50-60% and at least 5% increment

Table 3: Capacity-based concentration indicators, Final Commitments, 700 km catchment areas, [...]

Catchment areas around customer filling plants located in region	All customers			Customers with significant concentration effects			
	Average Combined Market Share	Average Increment	Average Delta HHI	% volumes in region	Average Combined Market Share	Average Increment	Average Delta HHI
Benelux	[40-50]%	[(-20)-(-10)]%	[(-700)-(-600)]	[0-5]%	N/A	N/A	N/A
Central Europe	[40-50]%	[(-5)-0]%	[(-100)-0]	[5-10]%	[50-60]%	[5-10]%	[200-300]
Non-Red Bull	[50-60]%	[0-5]%	[0-100]	[10-20]%	[50-60]%	[5-10]%	[200-300]
Red Bull	[40-50]%	[(-20)-(-10)]%	[(-300)-(-200)]	[0-5]%	N/A	N/A	N/A
France	[40-50]%	[(-5)-0]%	[(-300)-(-200)]	[5-10]%	[50-60]%	[5-10]%	[200-300]
Iberia	[40-50]%	[0-5]%	[0-100]	[0-5]%	N/A	N/A	N/A
Italy	[60-70]%	[(-5)-0]%	[(-900)-(-800)]	[0-5]%	N/A	N/A	N/A
North-East Europe	[30-40]%	[0-5]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A
Nordics	[70-80]%	[0-5]%	[0-100]	[0-5]%	N/A	N/A	N/A
South-East Europe	[30-40]%	[0-5]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A
UK and Ireland	[30-40]%	[(-5)-0]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A

Robustness Analysis

Table 4: Volume-based concentration indicators, Commitments of 18 November 2015, 700 km catchment areas, baseline scenario

Catchment areas around customer filling plants located in region	All customers			Customers with significant concentration effects			
	Average Combined Market Share	Average Increment	Average Delta HHI	% volumes in region	Average Combined Market Share	Average Increment	Average Delta HHI
Benelux	[40-50]%	[(-20)-(-10)]%	[(-400)-(-300)]	[0-5]%	N/A	N/A	N/A
Central Europe	[50-60]%	[0-5]%	[(-100)-0]	[5-10]%	[50-60]%	[5-10]%	[200-300]
Non-Red Bull	[50-60]%	[0-5]%	[0-100]	[5-10]%	[50-60]%	[5-10]%	[200-300]
Red Bull	[50-60]%	[(-10)-(-5)]%	[(-400)-(-300)]	[0-5]%	N/A	N/A	N/A
France	[40-50]%	[(-10)-(-5)]%	[(-300)-(-200)]	[5-10]%	[60-70]%	[10-20]%	[500-600]
Iberia	[30-40]%	[(-10)-(-5)]%	[(-400)-(-300)]	[0-5]%	N/A	N/A	N/A
Italy	[60-70]%	[(-5)-0]%	[(-300)-(-200)]	[0-5]%	[60-70]%	[5-10]%	[800-900]
North-East Europe	[30-40]%	[(-5)-0]%	[0-100]	[10-20]%	[50-60]%	[10-20]%	[600-700]
Nordics	[70-80]%	[0-5]%	[0-100]	[0-5]%	N/A	N/A	N/A
South-East Europe	[30-40]%	[(-5)-0]%	[(-200)-(-100)]	[0-5]%	N/A	N/A	N/A
UK and Ireland	[30-40]%	[(-10)-(-5)]%	[(-200)-(-100)]	[0-5]%	N/A	N/A	N/A

Table 5: Volume-based concentration indicators, Final Commitments, 700 km catchment areas, baseline scenario

Catchment areas around customer filling plants located in region	All customers			Customers with significant concentration effects			
	Average Combined Market Share	Average Increment	Average Delta HHI	% volumes in region	Average Combined Market Share	Average Increment	Average Delta HHI
Benelux	[40-50]%	[(-10)-(-5)]%	[(-400)-(-300)]	[0-5]%	N/A	N/A	N/A
Central Europe	[50-60]%	[(-5)-0]%	[(-200)-(-100)]	[5-10]%	[50-60]%	[5-10]%	[200-300]
Non-Red Bull	[40-50]%	[0-5]%	[(-100)-0]	[5-10]%	[50-60]%	[5-10]%	[200-300]
Red Bull	[50-60]%	[(-10)-(-5)]%	[(-400)-(-300)]	[0-5]%	N/A	N/A	N/A
France	[40-50]%	[(-5)-0]%	[(-300)-(-200)]	[5-10]%	[60-70]%	[10-20]%	[500-600]
Iberia	[30-40]%	[(-10)-0]%	[(-400)-(-300)]	[0-5]%	N/A	N/A	N/A
Italy	[60-70]%	-[(-5)-0]%	[(-300)-(-200)]	[0-5]%	N/A	N/A	N/A
North-East Europe	[40-50]%	[0-5]%	[0-100]	[5-10]%	[40-50]%	[10-20]%	[400-500]
Nordics	[70-80]%	[0-5]%	[0-100]	[0-5]%	N/A	N/A	N/A
South-East Europe	[30-40]%	[(-5)-0]%	[(-200)-(-100)]	[0-5]%	N/A	N/A	N/A
UK and Ireland	[30-40]%	[(-10)-(-5)]%	[(-200)-(-100)]	[0-5]%	N/A	N/A	N/A

Table 6: Capacity-based concentration indicators, Commitments of 18 November 2015, 900 km catchment areas, [...]

Catchment areas around customer filling plants located in region	All customers			Customers with significant concentration effects			
	Average Combined Market Share	Average Increment	Average Delta HHI	% volumes in region	Average Combined Market Share	Average Increment	Average Delta HHI
Benelux	[50-60]%	[5-10]%	[100-200]	[80-90]%	[50-60]%	[5-10]%	[100-200]
Central Europe	[40-50]%	[0-5]%	[0-100]	[20-30]%	[50-60]%	[5-10]%	[200-300]
Non-Red Bull	[40-50]%	[0-5]%	[100-200]	[30-40]%	[50-60]%	[5-10]%	[200-300]
Red Bull	[40-50]%	[(-5)-0]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A
France	[40-50]%	[(-5)-0]%	[(-100)-0]	[5-10]%	[50-60]%	[10-20]%	[300-400]
Iberia	[30-40]%	[0-5]%	[0-100]	[0-5]%	N/A	N/A	N/A
Italy	[50-60]%	[(-5)-0]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A
North-East Europe	[30-40]%	[(-5)-0]%	[0-100]	[5-10]%	[50-60]%	[10-20]%	[600-700]
Nordics	[60-70]%	[0-5]%	[0-100]	[0-5]%	N/A	N/A	N/A
South-East Europe	[40-50]%	[0-5]%	[200-300]	[30-40]%	[50-60]%	[5-10]%	[600-700]
UK and Ireland	[40-50]%	[(-5)-0]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A

Table 7: Capacity-based concentration indicators, Commitments of 18 November 2015, 500 km catchment areas, [...]

Catchment areas around customer filling plants located in region	All customers			Customers with significant concentration effects			
	Average Combined Market Share	Average Increment	Average Delta HHI	% volumes in region	Average Combined Market Share	Average Increment	Average Delta HHI
Benelux	[40-50]%	[(-20)-(-10)]%	[(-700)-(-600)]	[0-5]%	N/A	N/A	N/A
Central Europe	[50-60]%	[(-10)-(-5)]%	[(-600)-(-500)]	[5-10]%	[50-60]%	[10-20]%	[200-300]
Non-Red Bull	[50-60]%	[(-10)-(-5)]%	[(-900)-(-800)]	[10-20]%	[50-60]%	[10-20]%	[200-300]
Red Bull	[50-60]%	[0-5]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A
France	[50-60]%	[(-5)-0]%	[(-100)-0]	[10-20]%	[50-60]%	[10-20]%	[200-300]
Iberia	[30-40]%	[0-5]%	[0-100]	[0-5]%	[60-70]%	[20-30]%	[200-2100]
Italy	[90-100]%	[(-5)-0]%	[(-200)-(-100)]	[0-5]%	N/A	N/A	N/A
North-East Europe	[30-40]%	[(-5)-0]%	[(-200)-(-100)]	[5-10]%	[70-80]%	[20-30]%	[1400-1500]
Nordics	[80-90]%	[0-5]%	[0-100]	[0-5]%	N/A	N/A	N/A
South-East Europe	[20-30]%	[(-5)-0]%	[(-400)-(-300)]	[0-5]%	N/A	N/A	N/A
UK and Ireland	[30-40]%	[(-5)-0]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A

Table 8: Capacity-based concentration indicators, Final Commitments, 900 km catchment areas, [...]

Catchment areas around customer filling plants located in region	All customers			Customers with significant concentration effects			
	Average Combined Market Share	Average Increment	Average Delta HHI	% volumes in region	Average Combined Market Share	Average Increment	Average Delta HHI
Benelux	[50-60]%	[5-10]%	[100-200]	[80-90]%	[50-60]%	[5-10]%	[100-200]
Central Europe	[40-50]%	[0-5]%	[0-100]	[10-20]%	[50-60]%	[5-10]%	[200-300]
Non-Red Bull	[40-50]%	[0-5]%	[0-100]	[20-30]%	[50-60]%	[5-10]%	[200-300]
Red Bull	[50-60]%	[5-10]%	[0-100]	[90-100]%	[50-60]%	[5-10]%	[0-100]
France	[40-50]%	[(-5)-0]%	[(-100)-0]	[5-10]%	[50-60]%	[10-20]%	[300-400]
Iberia	[30-40]%	[0-5]%	[0-100]	[0-5]%	N/A	N/A	N/A
Italy	[50-60]%	[(-5)-0]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A
North-East Europe	[40-50]%	[5-10]%	[200-300]	[40-50]%	[40-50]%	[10-20]%	[600-700]
Nordics	[60-70]%	[0-5]%	[0-100]	[0-5]%	N/A	N/A	N/A
South-East Europe	[30-40]%	[0-5]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A
UK and Ireland	[40-50]%	[(-5)-0]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A

Table 9: Capacity-based concentration indicators, Final Commitments, 500 km catchment areas, [...]

Catchment areas around customer filling plants located in region	All customers			Customers with significant concentration effects			
	Average Combined Market Share	Average Increment	Average Delta HHI	% volumes in region	Average Combined Market Share	Average Increment	Average Delta HHI
Benelux	[40-50]%	[(-20)-(-10)]%	[(-700)-(-600)]	[0-5]%	N/A	N/A	N/A
Central Europe	[50-60]%	[(-10)-(-5)]%	[(-600)-(-500)]	[5-10]%	[50-60]%	[10-20]%	[200-300]
Non-Red Bull	[50-60]%	[(-10)-(-5)]%	[(-900)-(-800)]	[10-20]%	[50-60]%	[10-20]%	[200-300]
Red Bull	[50-60]%	[0-5]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A
France	[50-60]%	[(5)-0]%	[(-100)-0]	[10-20]%	[50-60]%	[10-20]%	[200-300]
Iberia	[30-40]%	[0-5]%	[0-100]	[0-5]%	[60-70]%	[20-30]%	[2000-2100]
Italy	[90-100]%	[(5)-0]%	[(-200)-(-100)]	[0-5]%	N/A	N/A	N/A
North-East Europe	[30-40]%	[5-10]%	[100-200]	[5-10]%	[70-80]%	[20-30]%	[1400-1500]
Nordics	[80-90]%	[0-5]%	[0-100]	[0-5]%	N/A	N/A	N/A
South-East Europe	[20-30]%	[(5)-0]%	[(-400)-(-300)]	[0-5]%	[40-50]%	[20-30]%	[900-1000]
UK and Ireland	[30-40]%	[(5)-0]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A

Table 10: Capacity-based concentration indicators, Final Commitments, 900 km catchment areas, [...]

Catchment areas around customer filling plants located in region	All customers			Customers with significant concentration effects			
	Average Combined Market Share	Average Increment	Average Delta HHI	% volumes in region	Average Combined Market Share	Average Increment	Average Delta HHI
Benelux	[50-60]%	[5-10]%	[100-200]	[80-90]%	[50-60]%	[5-10]%	[100-200]
Central Europe	[40-50]%	[0-5]%	[0-100]	[40-50]%	[50-60]%	[5-10]%	[100-200]
Non-Red Bull	[40-50]%	[0-5]%	[0-100]	[20-30]%	[50-60]%	[5-10]%	[200-300]
Red Bull	[50-60]%	[5-10]%	[0-100]	[90-100]%	[50-60]%	[5-10]%	[0-100]
France	[40-50]%	[(-5)-0]%	[(-200)-(-100)]	[5-10]%	[50-60]%	[10-20]%	[200-300]
Iberia	[30-40]%	[0-5]%	[0-100]	[0-5]%	N/A	N/A	N/A
Italy	[50-60]%	[(-5)-0]%	[(-100)-0]	[5-10]%	N/A	N/A	N/A
North-East Europe	[30-40]%	[0-5]%	[0-100]	[0-5]%	[40-50]%	[10-20]%	[400-500]
Nordics	[60-70]%	[0-5]%	[0-100]	[0-5]%	N/A	N/A	N/A
South-East Europe	[30-40]%	[0-5]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A
UK and Ireland	[30-40]%	[(-10)-(-5)]%	[(-200)-(-100)]	[0-5]%	N/A	N/A	N/A

Table 11: Capacity-based concentration indicators, Final Commitments, 500 km catchment areas, [...]

Catchment areas around customer filling plants located in region	All customers			Customers with significant concentration effects			
	Average Combined Market Share	Average Increment	Average Delta HHI	% volumes in region	Average Combined Market Share	Average Increment	Average Delta HHI
Benelux	[50-60]%	[(-20)-(-10)]%	[(-1200)-(-1100)]	[0-5]%	N/A	N/A	N/A
Central Europe	[50-60]%	[(-10)-(-5)]%	[(-700)-(-600)]	[0-5]%	N/A	N/A	N/A
Non-Red Bull	[50-60]%	[(-10)-(-5)]%	[(-1000)-(-900)]	[0-5]%	N/A	N/A	N/A
Red Bull	[50-60]%	[0-5]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A
France	[50-60]%	[(-10)-(-5)]%	[(-300)-(-200)]	[0-5]%	N/A	N/A	N/A
Iberia	[30-40]%	[0-5]%	[0-100]	[0-5]%	[60-70]%	[20-30]%	[2000-2100]
Italy	[90-100]%	[(-5)-0]%	[(-200)-(-100)]	[0-5]%	N/A	N/A	N/A
North-East Europe	[30-40]%	[0-5]%	[(-100)-0]	[0-5]%	[60-70]%	[10-20]%	[700-800]
Nordics	[80-90]%	[0-5]%	[0-100]	[0-5]%	N/A	N/A	N/A
South-East Europe	[20-30]%	[(-5)-0]%	[(-400)-(-300)]	[0-5]%	[40-50]%	[20-30]%	[900-1000]
UK and Ireland	[30-40]%	[(-5)-0]%	[(-100)-0]	[0-5]%	N/A	N/A	N/A

Annex E

Case M.7567 – Ball / Rexam

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 8(2) of Council Regulation (EC) No 139/2004 (the “**Merger Regulation**”), Ball Corporation (“**Ball**”, or the “**Notifying Party**”) hereby enters into the following Commitments (the “**Commitments**”) vis-à-vis the European Commission (the “**Commission**”) with a view to rendering the proposed acquisition by Ball of sole control over Rexam PLC (the “**Concentration**”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission’s decision pursuant to Article 8(2) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the “**Decision**”), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the “**Remedies Notice**”).

SECTION A. DEFINITIONS

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the “**Consolidated Jurisdictional Notice**”).

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraphs 5 and 6 and described in more detail in the Schedules.

Ball: Ball Corporation, a corporation listed on the New York Stock Exchange and headquartered in Broomfield, Colorado, USA.

Ball European Divestment Plants: The plants operated by Ball at Rugby, Wrexham, Oss, Hermsdorf, Weissenthurm, Hassloch, La Ciotat, Radomsko, Braunschweig and Deeside.

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

Closing Period: the period of [...] from the approval of the Purchaser and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee’s objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the business of Ball’s Metal Beverage Packaging, Europe segment, as described in its Form 10-K for the financial year ending 31 December 2014 and as further described in section B of these Commitments, save for certain excluded

entities, assets and personnel as listed in Appendix 2 of these Commitments, together with the Rexam European Divestment Plants, all of which Ball commits to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Ball and who has/have received from Ball 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.

European Divestment Plant: the Ball European Divestment Plants and the Rexam European Divestment Plants and European Divestment Plants shall be construed accordingly.

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

Hold Separate Manager: the person or persons appointed by Ball for the Divestment Business to manage the day-to-day business of the Divestment 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 Schedules, including the Hold Separate Manager.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Ball, and who has/have the duty to monitor Ball's compliance with the conditions and obligations attached to the Decision.

Parties: Ball and Rexam.

Personnel: all staff currently employed by, or contributing towards the operation of, the Divestment Business, including staff seconded to the Divestment Business and shared personnel, except for the employees expressly excluded in these Commitments.

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

Purchaser Criteria: the criteria laid down in paragraph 19 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Rexam: Rexam PLC is a company incorporated in the United Kingdom, whose registered office is at 4 Millbank, London SW1P 3XR.

Rexam European Divestment Plants: the plants operated by Rexam at Enzesfeld and Valdemorillo.

Schedules: the schedules to these Commitments describing the Divestment Business in more detail.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

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

SECTION B. The commitment to divest and the Divestment Business

Commitment to divest

1. In order to maintain effective competition, Ball 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 19. To carry out the divestiture, Ball 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 Divestiture Period. If Ball has not entered into such an agreement at the end of the First Divestiture Period, Ball shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 32 in the Trustee Divestiture Period.
2. The proposed concentration shall not be implemented before Ball or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Divestment Business and the Commission has approved the purchaser and the terms of sale in accordance with paragraph 19.
3. Ball shall be deemed to have complied with this commitment if:
 - (i) by the end of the Trustee Divestiture Period, Ball or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 19; and
 - (ii) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.
4. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 45 of these Commitments), the Commission finds 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 internal market.

Structure and definition of the Divestment Business

5. The Divestment Business consists of Ball's Metal Beverage Packaging, Europe segment, save for certain excluded entities, assets and personnel as listed in Appendix 2 to these Commitments, together with certain plants and other assets operated by Rexam. The Divestment Business includes:

- (i) The following legal entities:
 - (a) [...]
 - (b) [...]
 - (c) [...]
 - (d) [...]
- (ii) The following plants, sites and other assets:
 - (a) The plant operated by Ball at Rugby, United Kingdom (“**Rugby**”);
 - (b) The plant operated by Ball at Wrexham, United Kingdom (“**Wrexham**”);
 - (c) The plant operated by Ball at Hermsdorf, Germany (“**Hermsdorf**”);
 - (d) The plant operated by Ball at Weissenthurm, Germany (“**Weissenthurm**”);
 - (e) The plant operated by Ball at Hassloch, Germany (“**Hassloch**”);
 - (f) The plant operated by Ball at Oss, the Netherlands (“**Oss**”);
 - (g) The plant operated by Rexam at Enzesfeld, Austria (“**Enzesfeld**”);
 - (h) The plant operated by Rexam at Valdemorillo, Spain (“**Valdemorillo**”);
 - (i) The plant operated by Ball at La Ciotat, France (“**La Ciotat**”);
 - (j) The plant operated by Ball at Radomsko, Poland (“**Radomsko**”);
 - (k) The plant operated by Ball at Braunschweig, Germany (“**Braunschweig**”);
 - (l) The plant operated by Ball at Deeside, United Kingdom (“**Deeside**”);
 - (m) The shared services site operated by Ball at Bonn, Germany (“**Bonn**”);
 - (n) The shared services site operated by Ball at Chester, United Kingdom (“**Chester**”); and

- (o) At the option of the Purchaser, the European head office site operated by Ball at Zurich, Switzerland (“**Zurich**”).
6. The legal and functional structure of the Divestment Business as operated to date is described in the Schedules. The Divestment Business, described in more detail in the Schedules, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:
- (i) all tangible and intangible assets (including, subject to these Commitments, intellectual property rights);
 - (ii) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (iii) subject to appropriate consent where necessary, all customer contracts, leases, commitments and orders of the Divestment Business; all customer, credit and other records of the Divestment Business (save, in each case, for any excluded customers as contained in Appendix 2). Subject to reallocations which are necessary to implement the divestment and are approved by the Monitoring Trustee, relevant customer contracts will be identified based on: (a) contracts that are supplied from the European Divestment Plants at the time of the Decision (to the extent they do not expire prior to Closing); and (b) new contracts won prior to Closing and planned to be supplied by a European Divestment Plant;
 - (iv) unless the Purchaser elects to take supply as outlined at paragraph 7, and subject to relevant consent where necessary, all supplier contracts, commitments and orders (or portions thereof) of the Divestment Business as at Closing (an indicative list of whom is contained in Appendix 1 (Suppliers)). Ball shall use best endeavours to ensure that necessary consents are obtained; and
 - (v) the Personnel.
7. In addition, and at the option of the Purchaser, the Divestment Business includes the benefit, for a transitional period of up to [...] after Closing or the duration of the existing relevant supply contract and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which the Parties or their Affiliated Undertakings supply products or services to the Divestment Business, unless otherwise agreed with the Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the units providing the service.
8. If there is any asset or personnel which is not covered by paragraphs 5 or 6 of these Commitments but which is both used (exclusively or not) in the

Divestment Business at the time of Closing and is necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.

SECTION C. RELATED COMMITMENTS

Preservation of viability, marketability and competitiveness

9. From the Effective Date until Closing, Ball shall preserve, or procure the preservation of, 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 Ball undertakes:
- (i) not to carry out any action 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;
 - (ii) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
 - (iii) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to Ball's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, Ball shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. Ball must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

10. The Notifying Party commits, from the Effective Date until Closing, to procure that the Divestment Business is kept separate from the business that Ball will be retaining and, after closing of the notified transaction, to keep the Divestment Business separate from the business it is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the business retained by Ball have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by Ball and do not report to any individual outside the Divestment Business.
11. Until Closing, Ball shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business which Ball is retaining. Immediately after the adoption of the Decision, Ball shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the businesses

with a view to ensuring their continued economic viability, marketability and competitiveness and independence from the business retained by Ball. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 9(iii). The Commission may, after having heard Ball, require Ball to replace the Hold Separate Manager.

12. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise Ball's (or, as the case may be, Rexam's) rights as shareholder in the legal entity or entities that constitute the Divestment Business (except for Ball or Rexam's rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling Ball's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of Ball (or Rexam). Upon request of the Monitoring Trustee, Ball (or, as the case may be, Rexam) shall resign as a member of the boards or shall cause such members of the boards to resign.

Ring-fencing

13. Ball shall implement, or procure the implementation of, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by Ball before the Effective Date will be eliminated and not be used by Ball. This includes measures vis-à-vis Ball's appointees on the supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. Ball may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to Ball is required by law.

Non-solicitation clause

14. The Parties undertake, 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

15. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Ball shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

- (i) provide to potential purchasers sufficient information as regards the Divestment Business;
- (ii) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

16. Ball 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). Ball shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.
17. Ball 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 any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers (except to the extent such actions have occurred in advance of the Monitoring Trustee being appointed).

SECTION D. THE PURCHASER

18. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:
- (a) The Purchaser shall be independent of and unconnected to the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);
 - (b) The Purchaser shall have the financial resources, proven expertise in the packaging sector and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
 - (c) The Purchaser shall have the ability and willingness to develop the Divestment Business, including through investment in new capacity at the European Divestment Plants and / or in new plants in different locations in the EEA, and keep pace with industry innovation;
 - (d) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in 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. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
19. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When Ball has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. Ball must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments, including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different 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

20. Ball shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to close the Concentration before the appointment of a Monitoring Trustee.
21. If Ball has not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Ball at that time or thereafter, Ball shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
22. **THE TRUSTEE SHALL:**
- (i) at the time of appointment, be independent of the Parties and their Affiliated Undertakings;
 - (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
 - (iii) neither have nor become exposed to a Conflict of Interest.
23. The Trustee shall be remunerated by the Notifying Party 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, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by Ball

24. No later than two weeks after the Effective Date, Ball shall submit the name or names of one or more natural or legal persons whom Ball 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 or on request by the Commission, Ball shall submit a list of one or more persons whom Ball proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 22 and shall include:
- (i) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

- (ii) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
- (iii) 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

25. 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, Ball shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Ball 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 Ball

26. If all the proposed Trustees are rejected, Ball shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 20 to 25.

Trustee nominated by the Commission

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

II. Functions of the Trustee

28. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Ball, 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

29. 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, in close co-operation with the Hold Separate Manager, the ongoing management of the Divestment Business with a view to ensuring their continued economic viability, marketability and competitiveness

and monitor compliance by Ball with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

- (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 10 and 11;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 12;
 - (c) with respect to Confidential Information:
 - determine all necessary measures to ensure that Ball does not after the Effective Date obtain any Confidential Information 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,
 - make sure that any Confidential Information relating to the Divestment Business obtained by Ball before the Effective Date is eliminated and will not be used by Ball; and
 - decide whether such information may be disclosed to or kept by Ball as the disclosure is reasonably necessary to allow Ball 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 Ball or Affiliated Undertakings.
- (iii) propose to Ball such measures as the Monitoring Trustee considers necessary to ensure Ball'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;
 - (iv) 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 and correct 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;
 - (v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;
 - (vi) provide to the Commission, sending Ball a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the businesses are held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;
 - (vii) promptly report in writing to the Commission, sending Ball a non-confidential copy at the same time, if it concludes on reasonable grounds that Ball is failing to comply with these Commitments;
 - (viii) within one week after receipt of the documented proposal referred to in paragraph 20 of these Commitments, submit to the Commission, sending Ball a non-confidential copy at the same time, a reasoned opinion as to:
 - (a) the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the sale; and
 - (b) 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 account of the proposed purchaser;
 - (ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.
30. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

31. 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 (and ancillary agreements) as in line with the

Commission's Decision and the Commitments in accordance with paragraphs 18 and 19. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) 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 Ball, subject to the Notifying Party's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

32. 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 the Notifying Party.

III. Duties and obligations of the Parties

33. Ball 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 Ball'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 Ball and the Divestment Business shall provide the Trustee upon request with copies of any document. Ball 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.
34. Ball shall provide, or cause to be provided to, the Monitoring Trustee 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. Ball 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. Ball shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.
35. Ball shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), 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, Ball shall cause the documents required for effecting the sale and the Closing to be duly executed.

36. Ball 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 Ball 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 advisors.
37. At the expense of Ball, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Ball’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 Ball refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Ball. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 36 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Ball during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
38. Ball agrees that the Commission may share Confidential Information proprietary to Ball with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply mutatis mutandis.
39. Ball agrees that the contact details of the Monitoring Trustee may be published on the website of the Commission's Directorate-General for Competition and it shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.
40. For a period of 10 years from the Effective Date, the Commission may request all information from Ball that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

41. 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:

- (i) the Commission may, after hearing the Trustee and Ball, require Ball to replace the Trustee; or
 - (ii) Ball may, with the prior approval of the Commission, replace the Trustee.
42. If the Trustee is removed according to paragraph 41, 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 20 to 27.
43. Unless removed according to paragraph 41, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all 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

44. The Commission may extend the time periods foreseen in the Commitments in response to a request from Ball or, in appropriate cases, on its own initiative. Where Ball requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall Ball be entitled to request an extension within the last month of any period.

45. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

SECTION G. ENTRY INTO FORCE

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

Brussels, 3 December 2015

.....
duly authorised for and on behalf of
Ball Corporation

SCHEDULE A – Rugby

47. Rugby includes Ball’s plant in Rugby, manufacturing [...] cans.
48. In accordance with paragraph 6 of these Commitments, Rugby also includes, but is not limited to:
- (i) The main tangible assets listed in Annex A.1 (including the know-how for the operation of the production lines);
 - (ii) The following main intangible assets:
 - (a) The grant of a perpetual, irrevocable, non-exclusive, royalty-free licence for use for the manufacture and / or sale of beverage cans in the Divestment Business in the EEA (including all future can plants owned or operated by the Purchaser in the EEA) of all of the intellectual property which is owned by the Rugby plant or another Ball entity and used in connection with the manufacture and / or sale of beverage cans at Rugby or is being developed for use in connection with the manufacture and / or sale of beverage cans at Ball as at the date of these Commitments;
 - (b) In respect of the following intellectual property that is not owned by Rugby or a Ball entity but is used in connection with the manufacture of beverage cans at Rugby as at the date of these Commitments:
 - (I) Trademarks (especially those belonging to customers): Ball will use best endeavours to grant a royalty-free licence to use those trademarks in the manufacture and/or sale of beverage cans for those customers for the remaining life of the printing plates transferred at Closing;
 - (II) Software embedded in standalone equipment such gauges and test equipment will transfer with the ownership of the requisite equipment; and
 - (III) All other IP used by Rugby but not owned by a Ball entity (including IP embedded in the general production equipment and production lines, and any software used in production planning, production reviews or associated activities): until such time as the Purchaser is able to reach an agreement with the owner of the IP, Ball agrees to operate that IP on the behalf of the Purchaser for a period of [...] (or such longer period as may be agreed with the Purchaser and subject to the consent of the Monitoring Trustee) and/or work with the purchaser to reach an agreement with the entity that is able to grant a licence.

- (c) A licence to use the Ball name in respect of products produced on printing plates transferred at the time of Closing for the remaining life of those plates;
 - (d) A licence to use the Ball name in respect of all stocks, work in progress and semi-finished and finished goods transferred that contain the Ball name have been sold;
- (iii) Subject to relevant consent where necessary, all contracts, agreements, commitments and understandings (or, in each case, portions thereof) relating to those customers who will be supplied by Rugby. Subject to reallocations which are necessary to implement the divestment and are approved by the Monitoring Trustee, relevant customer contracts will be identified based on: (a) contracts that are supplied from Rugby at the time of the Decision (to the extent they do not expire prior to Closing); and (b) new contracts won prior to Closing and planned to be supplied by Rugby;
 - (iv) Customer, credit and other relevant records (including lists, sales, marketing and promotional information), recognising that Ball may retain a copy of such records to the extent that these relate to suppliers or customers or customer volumes not transferred to the Divestment Business or are required for legal compliance purposes;
 - (v) Unless the Purchaser elects to take supply as outlined at paragraph 7 of these Commitments, and subject to relevant consent where necessary, all contracts, agreements, commitments, understandings and orders (or portions thereof) relating to suppliers that supply Rugby as at Closing. Ball shall use best endeavours to ensure that necessary consents are obtained. Where the Purchaser elects to take supply as outlined in paragraph 7 of these Commitments, Ball will supply these relevant products or services on terms and conditions equivalent to those at present afforded to the Divestment Business, for a period of up to [...] after Closing or for the duration of the relevant existing Ball or Rexam contract in respect of those products or services;
 - (vi) All raw materials, stocks built up in the ordinary course of business including in anticipation of seasonal demand, work in progress and semi-finished and finished goods held at the date of Closing;
 - (vii) The main licences, permits and authorisations, to the extent transferable under applicable law;
 - (viii) Subject to applicable legal requirements, the Personnel (as further described in Annex A.2); and
 - (ix) The goodwill relating to Rugby at the time of Closing together with the exclusive right for the Purchaser to represent itself as carrying on the operation of Rugby in succession to Ball.

49. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in Rugby and is necessary for the continued viability and competitiveness of Rugby, that asset or adequate substitute will be offered to potential purchasers.
50. Ball proposes to offer the Purchaser of Rugby, at the option of the Purchaser, transitional services to replicate the essential functions in place as at Closing in order to ensure the viability of Rugby. In particular, where required by the Purchaser, Ball shall:
- (i) Provide reasonable technical assistance to the Purchaser to facilitate the procurement of raw materials necessary for the manufacture of the products manufactured at Rugby. If the Purchaser is not able to source such raw materials, Ball commits to enter, at the option of the Purchaser, into supply agreements with certain raw material suppliers and to make such raw materials available to the Purchaser at cost (subject to reasonable administrative expenses to be agreed with the Purchaser and with the consent of the Monitoring Trustee), for such period as is required by the Purchaser to establish Rugby as a viable and independent business, but not exceeding one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent. Strict firewall procedures will be adopted in relation to this agreement, so as to ensure that any competitively sensitive information related thereto will not be shared with, or passed on to, anyone outside the Ball units providing the supply service.
 - (ii) Enter into transitional arrangements on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current IT systems support for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
 - (iii) Enter into transitional arrangements at cost on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current logistics and distribution services for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
51. The scope and terms of the transitional agreements and of the technical assistance referred to in the above paragraphs will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. These agreements shall include appropriate provisions to ensure that Ball provides the services to the Purchaser expeditiously. Ball shall carry out these services in accordance with good industry practice including

as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.

Annex A.1 Tangible Assets of Rugby

[...]

**Annex A.2
Personnel at Rugby**

Ball will transfer all Personnel at Rugby to the Purchaser.

Key Personnel

FUNCTION	NAME
[...]	[...]

The following table shows, by function, the personnel located at the Rugby plant that will transfer to the Divestment Business.

Personnel at Rugby

Service description	Function	No. that will transfer to the Divestment Business
Operations	Manufacturing	[...]
Sales, General and Administrative	Supply and Demand	[...]
	Sales and marketing	[...]
	Graphics	[...]
	Customer Technical Service	[...]
	Finance	[...]
	IT	[...]
	Procurement / sourcing	[...]
	Innovation	[...]
	Human Resources	[...]
	Total	[...]

Note [1] This table includes inactive personnel but excludes temporary and contracted personnel. Ball will transfer as part of Rugby all relevant and appropriate personnel working at Rugby at the date of the Decision. To the extent that these personnel numbers change between the date of the Decision and Closing, Ball shall explain such changes to the Commission.

Excluded Personnel

The Purchaser will be able to propose the exclusion of any other employees whom it considers unnecessary for the operation of Rugby, subject to the Commission's approval in accordance with paragraph 19 of these Commitments.

SCHEDULE B – Wrexham

1. Wrexham includes Ball’s plant in Wrexham, manufacturing [...] cans.
2. In accordance with paragraph 6 of these Commitments, Wrexham also includes, but is not limited to:
 - (i) The main tangible assets listed in Annex B.1 (including the know-how for the operation of the production lines);
 - (ii) The following main intangible assets:
 - (a) The grant of a perpetual, irrevocable, non-exclusive, royalty-free licence for use for the manufacture and / or sale of beverage cans by the Divestment Business in the EEA (including all future can plants owned or operated by the Purchaser in the EEA) of all of the intellectual property which is owned by the Wrexham plant or another Ball entity and used in connection with the manufacture and / or sale of beverage cans at Wrexham or is being developed for use in connection with the manufacture and / or sale of beverage cans at Ball as at the date of these Commitments;
 - (b) In respect of the following intellectual property that is not owned by Wrexham or a Ball entity but is used in connection with the manufacture of beverage cans at Wrexham as at the date of these Commitments:
 - (I) Trademarks (especially those belonging to customers): Ball will use best endeavours to grant a royalty-free licence to use those trademarks in the manufacture and/or sale of beverage cans for those customers for the remaining life of the printing plates transferred at the time of Closing;
 - (II) Software embedded in standalone equipment such gauges and test equipment will transfer with the ownership of the requisite equipment; and
 - (III) All other IP used by Wrexham but not owned by a Ball entity (including IP embedded in the general production equipment and production lines, and any software used in production planning, production reviews or associated activities): until such time as the Purchaser is able to reach an agreement with the owner of the IP, Ball agrees to operate that IP on the behalf of the Purchaser for a period of [...] (or such longer period as may be agreed with the Purchaser and subject to the consent of the Monitoring Trustee) and/or work with the purchaser to reach an agreement with the entity that is able to grant a licence.

- (c) A licence to use the Ball name in respect of products produced on printing plates transferred at the time of Closing for the remaining life of those plates;
 - (d) A licence to use the Ball name in respect of all stocks, work in progress and semi-finished and finished goods transferred that contain the Ball name have been sold;
- (iii) Subject to relevant consent where necessary, all contracts, agreements, commitments and understandings (or, in each case, portions thereof) relating to those customers who will be supplied by Wrexham. Subject to reallocations which are necessary to implement the divestment and are approved by the Monitoring Trustee, relevant customer contracts will be identified based on: (a) contracts that are supplied from Wrexham at the time of the Decision (to the extent they do not expire prior to Closing); and (b) new contracts won prior to Closing and planned to be supplied by Wrexham;
- (iv) Customer, credit and other relevant records (including lists, sales, marketing and promotional information), recognising that Ball may retain a copy of such lists, sales, marketing and promotional information to the extent that these relate to suppliers or customers or customer volumes not transferred to the Divestment Business or are required for legal compliance purposes;
- (v) Unless the Purchaser elects to take supply as outlined at paragraph 7 of these Commitments, and subject to relevant consent where necessary, all contracts, agreements, commitments, understandings and orders (or portions thereof) relating to suppliers that supply Wrexham as at Closing. Ball shall use best endeavours to ensure that necessary consents are obtained. Where the Purchaser elects to take supply as outlined in paragraph 7 of these Commitments, Ball will supply these relevant products or services on terms and conditions equivalent to those at present afforded to the Divestment Business, for a period of up to [...] after Closing or for the duration of the relevant existing Ball or Rexam contract in respect of those products or services
- (vi) All raw materials, stocks built up in the ordinary course of business including in anticipation of seasonal demand, work in progress and semi-finished and finished goods held at the date of Closing;
- (vii) The main licences, permits and authorisations, to the extent transferable by applicable law;
- (viii) Subject to applicable legal requirements, all Personnel (as further described in Annex B.2); and

- (ix) The goodwill relating to Wrexham at the time of the divestment together with the exclusive right for the Purchaser to represent itself as carrying on the operation of Wrexham in succession to Ball.
3. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in Wrexham and is necessary for the continued viability and competitiveness of Wrexham, that asset or adequate substitute will be offered to potential purchasers.
4. Ball proposes to offer the Purchaser of Wrexham, at the option of the Purchaser, transitional services to replicate the essential functions in place as at Closing in order to ensure the viability of Wrexham. In particular, where required by the Purchaser, Ball shall:
- (x) *Provide reasonable technical assistance to the Purchaser to facilitate the procurement of raw materials necessary for the manufacture of the products manufactured at Wrexham. If the Purchaser is not able to source such raw materials, Ball commits to enter, at the option of the Purchaser, into supply agreements with certain raw material suppliers and to make such raw materials available to the Purchaser at cost (subject to reasonable administrative expenses to be agreed with the Purchaser and with the consent of the Monitoring Trustee), for such period as is required by the Purchaser to establish Wrexham as a viable and independent business, but not exceeding one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent. Strict firewall procedures will be adopted in relation to this agreement, so as to ensure that any competitively sensitive information related thereto will not be shared with, or passed on to, anyone outside the Ball units providing the supply service.*
 - (xi) *Enter into transitional arrangements on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current IT/systems support for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.*
 - (xii) *Enter into transitional arrangements on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current logistics and distribution services for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.*

5. The scope and terms of the transitional agreements and of the technical assistance referred to in the above paragraphs will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. These agreements shall include appropriate provisions to ensure that Ball provides the services to the Purchaser expeditiously. Ball shall carry out these services in accordance with good industry practice including as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.

Annex B.1
Tangible Assets of Wrexham

[...]

**Annex B.2
Personnel at Wrexham**

Ball will transfer all Personnel at Wrexham to the Purchaser.

Key Personnel

FUNCTION	NAME
[...]	[...]

The following table shows, by function, the personnel located at the Wrexham plant that will transfer to the Divestment Business.

Personnel at Wrexham

Service description	Function	No. that will transfer to the Divestment Business
Operations	Manufacturing	[...]
Sales, General and Administrative	Supply and Demand	[...]
	Sales and marketing	[...]
	Graphics	[...]
	Customer Technical Service	[...]
	Finance	[...]
	IT	[...]
	Procurement / sourcing	[...]
	Innovation	[...]
	Human Resources	[...]
Other	Other	[...]
	Total	[...]

Note [1] This table includes inactive personnel but excludes temporary and contracted personnel. Ball will transfer as part of Wrexham all relevant and appropriate personnel working at Wrexham at the date of the Decision. To the extent that these personnel numbers change between the date of the Decision and Closing, Ball shall explain such changes to the Commission. .

Excluded Personnel

The Purchaser will be able to propose the exclusion of any other employees whom it considers unnecessary for the operation of Wrexham, subject to the Commission's approval in accordance with paragraph 19 of these Commitments.

SCHEDULE C – Hermsdorf

1. Hermsdorf includes Ball’s plant in Hermsdorf, manufacturing [...].
2. In accordance with paragraph 6 of these Commitments, Hermsdorf also includes, but is not limited to:
 - (i) The main tangible assets listed in Annex C.1 (including the know-how for the operation of the production lines);
 - (ii) The following main intangible assets:
 - (a) The grant of a perpetual, irrevocable, non-exclusive, royalty-free licence or sub-licence for use in the manufacture and / or sale of beverage cans by the Divestment Business in the EEA (including all future can plants owned or operated by the Purchaser in the EEA) of the intellectual property that is owned by Ball and that is used in connection with the manufacture and / or sale of beverage cans by Hermsdorf or is being developed for use in connection with the manufacture and / or sale of beverage cans at Ball as at the date of these Commitments;
 - (b) In respect of the following intellectual property that is not owned by Hermsdorf or a Ball entity but is used in connection with the manufacture of beverage cans at Hermsdorf as at the date of these Commitments:
 - (I) Trademarks (especially those belonging to customers): Ball will use best endeavours to grant a royalty-free licence to use those trademarks in the manufacture and/or sale of beverage cans for those customers for the remaining life of the printing plates transferred at the time of Closing;
 - (II) Software embedded in standalone equipment such gauges and test equipment will transfer with the ownership of the requisite equipment; and
 - (III) All other IP used by Hermsdorf but not owned by Ball (including IP embedded in the general production equipment and production lines, and any software used in production planning, production reviews or associated activities): until such time as the Purchaser is able to reach an agreement with the owner of the IP, Ball agrees to operate that IP on the behalf of the Purchaser for a period of [...] (or such longer period as may be agreed with the Purchaser and subject to the consent of the Monitoring Trustee) and/or work with the purchaser to reach an agreement with the entity that is able to grant a licence.

- (c) A licence to use the Ball name in respect of products produced on printing plates transferred at the time of Closing for the remaining life of those plates;
 - (d) A licence to use the Ball name in respect of all stocks, work in progress and semi-finished and finished goods transferred that contain the Ball name have been sold;
- (iii) Subject to relevant consent where necessary, all contracts, agreements, commitments and understandings (or, in each case, portions thereof) relating to those customers who will be supplied by Hermsdorf. Subject to reallocations which are necessary to implement the divestment and are approved by the Monitoring Trustee, relevant customer contracts will be identified based on: (a) contracts that are supplied from Hermsdorf at the time of the Decision (to the extent they do not expire prior to Closing); and (b) new contracts won prior to Closing and planned to be supplied by Hermsdorf;
- (iv) Customer, credit and other relevant records (including lists, sales, marketing and promotional information), recognising that Ball may retain a copy of such lists, sales, marketing and promotional information to the extent that these relate to suppliers or customers or customer volumes not transferred to the Divestment Business or are required for legal compliance purposes;
- (v) Unless the Purchaser elects to take supply as outlined at paragraph 7 in the Commitments, and subject to relevant consent where necessary, all contracts, agreements, commitments, understandings and orders (or portions thereof) relating to suppliers that supply Hermsdorf as at Closing. Ball shall use best endeavours to ensure that necessary consents are obtained. Where the Purchaser elects to take supply as outlined in paragraph 7 of these Commitments, Ball will supply these relevant products or services on terms and conditions equivalent to those at present afforded to the Divestment Business for a period of up to [...] after Closing or for the duration of the relevant existing Ball or Rexam contract in respect of those products or services;
- (vi) All raw materials, stocks built up in the ordinary course of business including in anticipation of seasonal demand, work in progress and semi-finished and finished goods held at the date of Closing;
- (vii) The main licences, permits and authorisations, to the extent transferable by applicable law;
- (viii) Subject to applicable legal requirements, all Personnel (as further described in Annex C.2);

- (ix) The goodwill relating to Hermsdorf at the time of the divestment together with the exclusive right for the Purchaser to represent itself as carrying on the operation of Hermsdorf in succession to Ball; and
3. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in Hermsdorf and is necessary for the continued viability and competitiveness of Hermsdorf, that asset or adequate substitute will be offered to potential purchasers.
 4. Ball proposes to offer the Purchaser of Hermsdorf, at the option of the Purchaser, transitional services to replicate the essential functions in place at Closing in order to ensure the viability of Hermsdorf. In particular, where required by the Purchaser, Ball shall:
 - (i) Provide reasonable technical assistance to the Purchaser to facilitate the procurement of raw materials necessary for the manufacture of the products manufactured at Hermsdorf. If the Purchaser is not able to source such raw materials, Ball commits to enter, at the option of the Purchaser, into supply agreements with certain raw material suppliers and to make such raw materials available to the Purchaser at cost (subject to reasonable administrative expenses to be agreed with the Purchaser and with the consent of the Monitoring Trustee), for such period as is required by the Purchaser to establish Hermsdorf as a viable and independent business, but not exceeding one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent. Strict firewall procedures will be adopted in relation to this agreement, so as to ensure that any competitively sensitive information related thereto will not be shared with, or passed on to, anyone outside the Ball units providing the supply service.
 - (ii) Enter into transitional arrangements on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current IT/systems support for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
 - (iii) Enter into transitional arrangements on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current logistics and distribution services for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.

5. The scope and terms of the transitional agreements and of the technical assistance referred to in the above paragraphs will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. These agreements shall include appropriate provisions to ensure that Ball provides the services to the Purchaser expeditiously. Ball shall carry out these services in accordance with good industry practice including as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.

ANNEX C.1
TANGIBLE ASSETS OF HERMSDORF

Overview of the property

[...]

ANNEX C.2
Personnel at Hermsdorf

Ball will transfer all Personnel at Hermsdorf to the Purchaser.

The Table below sets out those personnel of Hermsdorf who are Key Personnel.

Key Personnel

FUNCTION	NAME
[...]	[...]

The following table shows, by function, the personnel located at Hermsdorf that will transfer to the Divestment Business.

Personnel located at Hermsdorf

Service	Function	No. that will transfer to the Divestment Business
Operations	Manufacturing	[...]
Sales, General and Administrative	Customer Technical Service	[...]
	Supply and Demand	[...]
	Sales and marketing	[...]
	Finance	[...]
	IT	[...]
	Sourcing	[...]
	Innovation	[...]
Human Resources	[...]	
Total		[...]

Note [1] This table includes inactive personnel but excludes temporary and contracted personnel. Ball will transfer as part of Hermsdorf all relevant and appropriate personnel working at Hermsdorf at the date of the Decision. To the extent that these personnel numbers change between the date of the Decision and Closing, Ball shall explain such changes to the Commission..

Excluded Personnel

The Purchaser will be able to propose the exclusion of any other employees whom it considers unnecessary for the operation of Hermsdorf, subject to the Commission's approval in accordance with paragraph 19 of these Commitments.

SCHEDULE D – Weissenthurm

1. Weissenthurm includes Ball's plant in Weissenthurm, manufacturing [...] cans.
2. In accordance with paragraph 6 of these Commitments, Weissenthurm also includes, but is not limited to:
 - (i) The main tangible assets listed in Annex D.1 (including the know-how for the operation of the production lines);
 - (ii) The following main intangible assets:
 - (a) The grant of a perpetual, irrevocable, non-exclusive, royalty-free licence or sub-licence for use in the manufacture and / or sale of beverage cans by the Divestment Business in the EEA (including all future can plants owned or operated by the Purchaser in the EEA) of the intellectual property that is owned by Ball and that is used in connection with the manufacture and / or sale of beverage cans by Weissenthurm or is being developed for use in connection with the manufacture and / or sale of beverage cans at Ball as at the date of these Commitments;
 - (b) In respect of the following intellectual property that is not owned by Ball but is used in connection with the manufacture of beverage cans at Weissenthurm as at the date of these Commitments:
 - (I) Trademarks (especially those belonging to customers): Ball will use best endeavours to grant a royalty-free licence to use those trademarks in the manufacture and/or sale of beverage cans for those customers for the remaining life of the printing plates transferred at the time of Closing;
 - (II) Software embedded in standalone equipment such gauges and test equipment will transfer with the ownership of the requisite equipment; and
 - (III) All other IP used by Weissenthurm but not owned by Ball (including IP embedded in the general production equipment and production lines, and any software used in production planning, production reviews or associated activities): until such time as the Purchaser is able to reach an agreement with the owner of the IP, Ball agrees to operate that IP on the behalf of the Purchaser for a period of [...] (or such longer period as may be agreed with the Purchaser and subject to the consent of the Monitoring

Trustee) and/or work with the purchaser to reach an agreement with the entity that is able to grant a licence.

- (c) A licence to use the Ball name in respect of products produced on printing plates transferred at the time of Closing for the remaining life of those plates;
- (d) A licence to use the Ball name respect of all stocks, work in progress and semi-finished and finished goods transferred that contain the Ball name have been sold;
- (iii) Subject to relevant consent where necessary, all contracts, agreements, commitments and understandings (or, in each case, portions thereof) relating to Ball's customers who will be supplied by Weissenthurm. Subject to reallocations which are necessary to implement the divestment and are approved by the Monitoring Trustee, relevant customer contracts will be identified based on: (a) contracts that are supplied from Weissenthurm at the time of the Decision (to the extent they do not expire prior to Closing); and (b) new contracts won prior to Closing and planned to be supplied by Weissenthurm;
- (iv) Customer, credit and other relevant records (including lists, sales, marketing and promotional information), recognising that Ball may retain a copy of such lists, sales, marketing and promotional information to the extent that these relate to suppliers or to customers or customer volumes not transferred to the Divestment Business or are required for legal compliance purposes;
- (v) Unless the Purchaser elects to take supply as outlined at paragraph 7 in the Commitments, and subject to relevant consent where necessary, all contracts, agreements, leases, commitments and understandings and orders (or portions thereof) relating to suppliers that supply Weissenthurm as at Closing. Ball shall use best endeavours to ensure that necessary consents are obtained. Where the Purchaser elects to take supply as outlined in paragraph 7 of these Commitments, Ball will supply these relevant products or services on terms and conditions equivalent to those at present afforded to the Divestment Business for a period of up to [...] after Closing or for the duration of the relevant existing Ball or Rexam contract in respect of those products or services;
- (vi) All raw materials, stocks built up in the ordinary course of business including in anticipation of seasonal demand, work in progress and semi-finished and finished goods held at the date of closing;
- (vii) The main licences, permits and authorisations, to the extent transferable under applicable law;
- (viii) Subject to applicable legal requirements, all Personnel (as further described in Annex D.2);

- (ix) The goodwill relating to Weissenthurm at the time of the divestment together with the exclusive right for the Purchaser to represent itself as carrying on the operation of Weissenthurm in succession to Ball; and
 - (x) [...]
3. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in Weissenthurm and is necessary for the continued viability and competitiveness of Weissenthurm, that asset or adequate substitute will be offered to potential purchasers.
4. Ball proposes to offer the Purchaser of Weissenthurm, at the option of the Purchaser, transitional services to replicate the essential functions in place at Closing in order to ensure the viability of Weissenthurm. In particular, where required by the Purchaser, Ball shall:
- (i) Provide reasonable technical assistance to the Purchaser to facilitate the procurement of raw materials necessary for the manufacture of the products manufactured at Weissenthurm. If the Purchaser is not able to source such raw materials, Ball commits to enter, at the option of the Purchaser, into supply agreements with certain raw material suppliers and to make such raw materials available to the Purchaser at cost (subject to reasonable administrative expenses to be agreed with the Purchaser and with the consent of the Monitoring Trustee), for such period as is required by the Purchaser to establish Weissenthurm as a viable and independent business, but not exceeding one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent. Strict firewall procedures will be adopted in relation to this agreement, so as to ensure that any competitively sensitive information related thereto will not be shared with, or passed on to, anyone outside the Ball units providing the supply service.
 - (ii) Enter into transitional arrangements on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current IT/systems support for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
 - (iii) Enter into transitional arrangements on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current logistics and distribution services for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.

5. The scope and terms of the transitional agreements and of the technical assistance referred to in the above paragraphs will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. These agreements shall include appropriate provisions to ensure that Ball provides the services to the Purchaser expeditiously. Ball shall carry out these services in accordance with good industry practice including as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.

Annex D.1
Tangible Assets of Weissenthurm

[...]

**Annex D.2
Personnel at Weissenthurm**

Ball will transfer all Personnel at Weissenthurm to the Purchaser.

The following table shows those employees at Weissenthurm who are considered Key Personnel.

Key Personnel

FUNCTION	NAME
[...]	[...]

The following table shows, by function, the numbers of employees located at Weissenthurm that will transfer to the Divestment Business.

Personnel located at Weissenthurm

Service description	Function	No. that will transfer to the Divestment Business
Operations	Manufacturing	[...]
Sales, General and Administrative	Customer Technical Service	[...]
	Supply and Demand	[...]
	Sales and marketing	[...]
	Graphics	[...]
	Finance	[...]
	IT	[...]
	Sourcing	[...]
	Innovation	[...]
Human Resources	[...]	
Total		[...]

Note [1] This table includes inactive personnel but excludes temporary and contracted personnel. Ball will transfer as part of Weissenthurm all relevant and appropriate personnel working at Weissenthurm at the date of the Decision. To the extent that these personnel numbers change between the date of the Decision and Closing, Ball shall explain such changes to the Commission.

Excluded Personnel

Please see Appendix 2 for a list of excluded personnel at Weissenthurm, along with the reasons for their exclusion.

The Purchaser will be able to propose the exclusion of any other employees whom it considers unnecessary for the operation of Weissenthurm, subject to the Commission's approval in accordance with paragraph 19 of these Commitments.

SCHEDULE E – Hassloch

1. Hassloch includes Ball's plant in Hassloch, manufacturing [...] cans.
2. In accordance with paragraph 6 of these Commitments, Hassloch also includes, but is not limited to:
 - (i) The main tangible assets listed in Annex E.1 (including the know-how for the operation of the production lines);
 - (ii) The following main intangible assets:
 - (a) The grant of a perpetual, irrevocable, non-exclusive, royalty-free licence or sub-licence for use in the manufacture and / or sale of beverage cans by the Divestment Business in the EEA (including all future can plants owned or operated by the Purchaser in the EEA) of the intellectual property that is owned by Ball and that is used in connection with the manufacture and / or sale of beverage cans by Hassloch or is being developed for use in connection with the manufacture and / or sale of beverage cans at Ball as at the date of these Commitments;
 - (b) In respect of the following intellectual property that is not owned by Ball but is used in connection with the manufacture of beverage cans at Hassloch as at the date of these Commitments:
 - (I) Trademarks (especially those belonging to customers): Ball will use best endeavours to grant a royalty-free licence to use those trademarks in the manufacture and/or sale of beverage cans for those customers for the remaining life of the printing plates transferred at the time of Closing;
 - (II) Software embedded in standalone equipment such gauges and test equipment will transfer with the ownership of the requisite equipment; and
 - (III) All other IP used by Hassloch but not owned by Ball (including IP embedded in the general production equipment and production lines, and any software used in production planning, production reviews or associated activities): until such time as the Purchaser is able to reach an agreement with the owner of the IP, Ball agrees to operate that IP on the behalf of the Purchaser for a period of [...] (or such longer period as may be agreed with the Purchaser and subject to the consent of the Monitoring Trustee) and/or work with the purchaser to reach an agreement with the entity that is able to grant a licence.

- (c) A licence to use the Ball name in respect of products produced on printing plates transferred at the time of Closing for the remaining life of those plates;
- (d) A licence to use the Ball name in respect of all stocks, work in progress and semi-finished and finished goods transferred that contain the Ball name have been sold;
- (iii) Subject to relevant consent where necessary, all contracts, agreements, commitments and understandings (or, in each case, portions thereof) relating to those customers who will be supplied by Hassloch. Subject to reallocations which are necessary to implement the divestment and are approved by the Monitoring Trustee, relevant customer contracts will be identified based on: (a) contracts that are supplied from Hassloch at the time of the Decision (to the extent they do not expire prior to Closing); and (b) new contracts won prior to Closing and planned to be supplied by Hassloch;
- (iv) Customer, credit and other relevant records (including lists, sales, marketing and promotional information), recognising that Ball may retain a copy of such records to the extent that these relate to suppliers or customers or customer volumes not transferred to the Divestment Business or are required for legal compliance purposes;
- (v) Unless the Purchaser elects to take supply as outlined at paragraph 7 in the Commitments, and subject to relevant consent where necessary, all contracts, agreements, commitments, understandings and orders (or portions thereof) relating to suppliers that supply Hassloch as at Closing. Ball shall use best endeavours to ensure that necessary consents are obtained. Where the Purchaser elects to take supply as outlined in paragraph 7 of these Commitments, Ball will supply these relevant products or services on terms and conditions equivalent to those at present afforded to the Divestment Business, for a period of up to [...] after Closing or for the duration of the relevant existing Ball or Rexam contract in respect of those products or services;
- (vi) All raw materials, stocks built up in the ordinary course of business including in anticipation of seasonal demand, work in progress and semi-finished and finished goods held at the date of closing;
- (vii) The main licences, permits and authorisations, to the extent transferable under applicable law;
- (viii) Subject to applicable legal requirements, the Personnel (as further described in Annex E.2);
- (ix) The goodwill relating to Hassloch at the time of the divestment together with the exclusive right for the Purchaser to represent itself as carrying on the operation of Hassloch in succession to Ball; and

3. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in Hassloch and is necessary for the continued viability and competitiveness of Hassloch, that asset or adequate substitute will be offered to potential purchasers.
4. Ball proposes to offer the Purchaser of Hassloch, at the option of the Purchaser, transitional services to replicate the essential functions in place at Closing in order to ensure the viability of Hassloch. In particular, where required by the Purchaser, Ball shall:
 - (i) Provide reasonable technical assistance to the Purchaser to facilitate the procurement of raw materials necessary for the manufacture of the products manufactured at Hassloch. If the Purchaser is not able to source such raw materials, Ball commits to enter, at the option of the Purchaser, into supply agreements with certain raw material suppliers and to make such raw materials available to the Purchaser at cost (subject to reasonable administrative expenses to be agreed with the Purchaser and with the consent of the Monitoring Trustee), for such period as is required by the Purchaser to establish Hassloch as a viable and independent business, but not exceeding one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent. Strict firewall procedures will be adopted in relation to this agreement, so as to ensure that any competitively sensitive information related thereto will not be shared with, or passed on to, anyone outside the Ball units providing the supply service.
 - (ii) Enter into transitional arrangements on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current IT/systems support for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
 - (iii) Enter into transitional arrangements at cost on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current logistics and distribution services for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
5. The scope and terms of the transitional agreements and of the technical assistance referred to in the above paragraphs will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. These agreements shall include appropriate provisions to ensure that Ball provides the services to the Purchaser expeditiously. Ball shall

carry out these services in accordance with good industry practice including as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.

Annex E.1
Tangible Assets of Hassloch

[...]

**Annex E.2
Personnel at Hassloch**

Ball will transfer all Personnel at Hassloch to the Purchaser.

The following table shows those employees at Hassloch who are considered Key Personnel.

Key Personnel

FUNCTION	NAME
[...]	[...]

The following table shows, by function, the personnel located at the Hassloch plant that will transfer to the Divestment Business.

Personnel located at Hassloch

Service description	Function	No. that will transfer to the Divestment Business
Operations	Manufacturing	[...]
Sales, General and Administrative	Supply and Demand	[...]
	Sales and marketing	[...]
	Graphics	[...]
	Customer Technical Service	[...]
	Finance	[...]
	IT	[...]
	Procurement / sourcing	[...]
	Innovation	[...]
Human Resources	[...]	
Total		[...]

Note [1] This table includes inactive personnel but excludes temporary and contracted personnel. Ball will transfer as part of Hassloch all relevant and appropriate personnel working at Hassloch at the date of the Decision. To the extent that these personnel numbers change between the date of the Decision and Closing, Ball shall explain such changes to the Commission.

Excluded Personnel

The Purchaser will be able to propose the exclusion of any other employees whom it considers unnecessary for the operation of Weissenthurm, subject to the Commission's approval in accordance with paragraph 19 of these Commitments.

SCHEDULE F – Oss

1. Oss includes Ball's plant in Oss, manufacturing [...] cans.
2. In accordance with paragraph 6 of these Commitments, Oss also includes, but is not limited to:
 - (i) The main tangible assets listed in Annex F.1 (including the know-how for the operation of the production lines);
 - (ii) The following main intangible assets:
 - (a) The grant of a perpetual, irrevocable, non-exclusive, royalty-free licence or sub-licence for use in the manufacture and / or sale of beverage cans by the Divestment Business in the EEA (including all future can plants owned or operated by the Purchaser in the EEA) of the intellectual property that is owned by Ball and that is used in connection with the manufacture and / or sale of beverage cans by Oss or is being developed for use in connection with the manufacture and / or sale of beverage cans at Ball as at the date of these Commitments;
 - (b) In respect of the following intellectual property that is not owned by Ball but is used in connection with the manufacture of beverage cans at Oss as at the date of these Commitments:
 - (I) Trademarks (especially those belonging to customers): Ball will use best endeavours to grant a royalty-free licence to use those trademarks in the manufacture and/or sale of beverage cans for those customers for the remaining life of the printing plates transferred at the time of Closing;
 - (II) Software embedded in standalone equipment such gauges and test equipment will transfer with the ownership of the requisite equipment; and
 - (III) All other IP used by Oss but not owned by Ball (including IP embedded in the general production equipment and production lines, and any software used in production planning, production reviews or associated activities): until such time as the Purchaser is able to reach an agreement with the owner of the IP, Ball agrees to operate that IP on the behalf of the Purchaser for a period of [...] (or such longer period as may be agreed with the Purchaser and subject to the consent of the Monitoring Trustee) and/or work with the purchaser to reach an agreement with the entity that is able to grant a licence.

- (c) A licence to use the Ball name in respect of products produced on printing plates transferred at the time of Closing for the remaining life of those plates;
 - (d) A licence to use the Ball name in respect of all stocks, work in progress and semi-finished and finished goods transferred that contain the Ball name have been sold;
- (iii) Subject to relevant consent where necessary, all contracts, agreements, commitments and understandings (or, in each case, portions thereof) relating to those customers who will be supplied by Oss. Subject to reallocations which are necessary to implement the divestment and are approved by the Monitoring Trustee, relevant customer contracts will be identified based on: (a) contracts that are supplied from Oss at the time of the Decision (to the extent they do not expire prior to Closing); and (b) new contracts won prior to Closing and planned to be supplied by Oss;
- (iv) Customer, credit and other relevant records (including lists, sales, marketing and promotional information), recognising that Ball may retain a copy of such records to the extent that these relate to suppliers or customers or customer volumes not transferred to the Divestment Business or are required for legal compliance purposes;
- (v) Unless the Purchaser elects to take supply as outlined at paragraph 7 in the Commitments, and subject to relevant consent where necessary, all contracts, agreements, commitments, understandings and orders (or portions thereof) relating to suppliers that supply Oss as at Closing. Ball shall use best endeavours to ensure that necessary consents are obtained. Where the Purchaser elects to take supply as outlined in paragraph 7 of these Commitments, Ball will supply these relevant products or services on terms and conditions equivalent to those at present afforded to the Divestment Business, for a period of up to [...] after Closing or for the duration of the relevant existing Ball or Rexam contract in respect of those products or services;
- (vi) All raw materials, stocks built up in the ordinary course of business including in anticipation of seasonal demand, work in progress and semi-finished and finished goods held at the date of closing;
- (vii) The main licences, permits and authorisations, to the extent transferable under applicable law;
- (viii) Subject to applicable legal requirements, the Personnel (as further described in Annex F.2); and
- (ix) The goodwill relating to Oss at the time of the divestment together with the exclusive right for the Purchaser to represent itself as carrying on the operation of Oss in succession to Ball.

3. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in Oss and is necessary for the continued viability and competitiveness of Oss, that asset or adequate substitute will be offered to potential purchasers.
4. Ball proposes to offer the Purchaser of Oss, at the option of the Purchaser, transitional services to replicate the essential functions in place at Closing in order to ensure the viability of Oss. In particular, where required by the Purchaser, Ball shall:
 - (i) Provide reasonable technical assistance to the Purchaser to facilitate the procurement of raw materials necessary for the manufacture of the products manufactured at Oss. If the Purchaser is not able to source such raw materials, Ball commits to enter, at the option of the Purchaser, into supply agreements with certain raw material suppliers and to make such raw materials available to the Purchaser at cost (subject to reasonable administrative expenses to be agreed with the Purchaser and with the consent of the Monitoring Trustee), for such period as is required by the Purchaser to establish Oss as a viable and independent business, but not exceeding one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent. Strict firewall procedures will be adopted in relation to this agreement, so as to ensure that any competitively sensitive information related thereto will not be shared with, or passed on to, anyone outside the Ball units providing the supply service.
 - (ii) Enter into transitional arrangements on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current IT systems support for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
 - (iii) Enter into transitional arrangements at cost on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current logistics and distribution services for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
5. The scope and terms of the transitional agreements and of the technical assistance referred to in the above paragraphs will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. These agreements shall include appropriate provisions to ensure that Ball provides the services to the Purchaser expeditiously. Ball shall carry out these services in accordance with good industry practice including

as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.

Annex F.1
Tangible Assets of Oss

[...]

**Annex F.2
Personnel at Oss**

Ball will transfer all Personnel at Oss to the Purchaser.

The following table shows those employees at Oss who are considered Key Personnel.

Key Personnel

FUNCTION	NAME
[...]	[...]

The following table shows, by function, the personnel located at Oss that will transfer to the Divestment Business.

Personnel located at Oss

Service description	Function	No. that will transfer to the Divestment Business
Operations	Manufacturing	[...]
Sales, General and Administrative	Supply and Demand	[...]
	Sales and marketing	[...]
	Graphics	[...]
	Customer Technical Service	[...]
	Finance	[...]
	IT	[...]
	Procurement / sourcing	[...]
	Innovation	[...]
Human Resources	[...]	
Total	Total	[...]

Note [1] This table includes inactive personnel but excludes temporary and contracted personnel. Ball will transfer as part of Oss all relevant and appropriate personnel working at Oss at the date of the Decision. To the extent that these personnel numbers change between the date of the Decision and Closing, Ball shall explain such changes to the Commission.

Excluded Personnel

Please see Appendix 2 for a list of excluded personnel at Oss, along with the reasons for their exclusion.

The Purchaser will be able to propose the exclusion of any other employees whom it considers unnecessary for the operation of Oss, subject to the Commission's approval in accordance with paragraph 19 of these Commitments.

SCHEDULE G – ENZESFELD

1. Enzesfeld includes Rexam's plant in Enzesfeld, manufacturing [...] cans.
2. In accordance with paragraph 6 of these Commitments, Enzesfeld also includes, but is not limited to:
 - (i) The main tangible assets listed in Annex G.1 (including the know-how for the operation of the production lines);
 - (ii) The following main intangible assets:
 - (a) The grant of a perpetual, irrevocable, non-exclusive, royalty-free licence for use for the manufacture and / or sale of beverage cans by the Divestment Business in the EEA (including all future can plants owned or operated by the Purchaser in the EEA) of all of the intellectual property which is owned by the Enzesfeld plant or another Rexam entity and used in connection with the manufacture and / or sale of beverage cans at Enzesfeld or is being developed for use in connection with the manufacture and / or sale of beverage cans at Rexam at the date of these Commitments. All licences to use Rexam owned intellectual property will be subject to the purchaser extending a licence to Ball to use the same intellectual property in connection with the manufacture and / or sale of beverage cans at any of the Parties' retained plants including the right to transfer the licence to affiliates and technology partners of Ball;
 - (b) In respect of the following intellectual property that is not owned by Enzesfeld or a Rexam entity but is used in connection with the manufacture of beverage cans at Enzesfeld as at the date of these Commitments:
 - (I) Trademarks (especially those belonging to customers): Ball will use best endeavours to procure that Rexam grants a royalty-free licence to use those trademarks in the manufacture and/or sale of beverage cans for those customers for the remaining life of the printing plates transferred at the time of Closing;
 - (II) Software embedded in standalone equipment such gauges and test equipment will transfer with the ownership of the requisite equipment; and
 - (III) All other IP used by Enzesfeld but not owned by Rexam (including IP embedded in the general production equipment and production lines, and any software used in production planning, production reviews or associated activities): until such time as the Purchaser is able to reach

an agreement with the owner of the IP, Ball agrees to operate that IP on the behalf of the Purchaser for a period of [...] (or such longer period as may be agreed with the Purchaser and subject to the consent of the Monitoring Trustee) and/or work with the Purchaser to reach an agreement with the entity that is able to grant a licence.

- (c) A licence to use the Rexam name in respect of products produced on printing plates transferred at the time of Closing for the remaining life of those plates;
 - (d) A licence to use the Rexam name in respect of all stocks, work in progress and semi-finished and finished goods transferred that contain the Rexam name have been sold;
- (iii) Subject to relevant consent where necessary, all contracts, agreements, commitments and understandings (or, in each case, portions thereof) relating to those customers who will be supplied by Enzesfeld, other than the excluded customer listed in Appendix 2. Subject to reallocations which are necessary to implement the divestment and are approved by the Monitoring Trustee, relevant customer contracts will be identified based on: (a) contracts that are supplied from Enzesfeld at the time of the Decision (to the extent they do not expire prior to Closing); and (b) new contracts won prior to Closing and planned to be supplied by Enzesfeld;
- (iv) Customer, credit and other relevant records (including lists, sales, marketing and promotional information), recognising that Ball may retain a copy of such records to the extent that these relate to suppliers or customers or customer volumes not transferred to the Divestment Business or are required for legal compliance purposes;
- (v) Unless the Purchaser elects to take supply as outlined at paragraph 7 in the Commitments, and subject to relevant consent where necessary, all contracts, agreements, commitments, understandings and orders (or portions thereof) relating to suppliers that supply Enzesfeld as at Closing. Ball shall use best endeavours to ensure that necessary consents are obtained. Where the Purchaser elects to take supply as outlined in paragraph 7 of these Commitments, Ball will supply these relevant products or services on terms and conditions equivalent to those at present afforded to the Divestment Business, for a period of up to [...] after Closing or for the duration of the relevant existing Ball or Rexam contract in respect of those products or services;
- (vi) All raw materials, stocks built up in the ordinary course of business including in anticipation of seasonal demand, work in progress and semi-finished and finished goods held at the date of Closing;
- (vii) The main licences, permits and authorisations, to the extent transferrable by applicable law;

- (viii) Subject to applicable legal requirements, the Personnel (as further described in Annex G.2);
 - (ix) The goodwill relating to Enzesfeld at the time of the divestment together with the exclusive right for the Purchaser to represent itself as carrying on the operation of Enzesfeld in succession to Rexam.
3. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in Enzesfeld and is necessary for the continued viability and competitiveness of Enzesfeld, that asset or adequate substitute will be offered to potential purchasers.
4. Ball proposes to offer the Purchaser of Enzesfeld, at the option of the Purchaser, transitional services to replicate the essential functions in place at Closing in order to ensure the viability of Enzesfeld. In particular, where required by the Purchaser, Ball shall:
- (i) Provide reasonable technical assistance to the Purchaser to facilitate the procurement of raw materials necessary for the manufacture of the products manufactured at Enzesfeld. If the Purchaser is not able to source such raw materials, Ball commits to enter, at the option of the Purchaser, into supply agreements with certain raw material suppliers and to make such raw materials available to the Purchaser at cost (subject to reasonable administrative expenses to be agreed with the Purchaser and with the consent of the Monitoring Trustee), for such period as is required by the Purchaser to establish Enzesfeld as a viable and independent business, but not exceeding one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent. Strict firewall procedures will be adopted in relation to this agreement, so as to ensure that any competitively sensitive information related thereto will not be shared with, or passed on to, anyone outside the Ball units providing the supply service.
 - (ii) Enter into transitional arrangements on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current IT systems support for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
 - (iii) Enter into transitional arrangements at cost on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current logistics and distribution services for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such

extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.

5. The scope and terms of the transitional agreements and of the technical assistance referred to in the above paragraphs will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. These agreements shall include appropriate provisions to ensure that Ball provides the services to the Purchaser expeditiously. Ball shall carry out these services in accordance with good industry practice including as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.

Annex G.1
Tangible Assets of Enzesfeld

[...]

**Annex G.2
Personnel at Enzesfeld**

Ball will transfer all Personnel at Enzesfeld to the Purchaser.

The following table shows those employees at Enzesfeld who are considered Key Personnel.

Key Personnel

FUNCTION	NAME
[...]	[...]

The following table shows, by function, the personnel located at Enzesfeld that will transfer to the Divestment Business.

Personnel located at Enzesfeld

Service description	Function	No. that will transfer to the Divestment Business
Operations	Manufacturing	[...]
Sales, General and Administrative	Supply and Demand	[...]
	Sales and marketing	[...]
	Graphics	[...]
	Customer Technical Service	[...]
	Finance	[...]
	IT	[...]
	Procurement / sourcing	[...]
	Innovation	[...]
	Human Resources	[...]
Other	Other	[...]
	Total	[...]

Note [1] This table includes inactive personnel but excludes temporary and contracted personnel. Ball will transfer as part of Enzesfeld all relevant and appropriate personnel working at Enzesfeld at the date of the Decision. To the extent that these personnel numbers change between the date of the Decision and Closing, Ball shall explain such changes to the Commission.

Excluded Personnel

The Purchaser will be able to propose the exclusion of any other employees whom it considers unnecessary for the operation of Enzesfeld, subject to the Commission's approval in accordance with paragraph 19 of these Commitments.

SCHEDULE H – Valdemorillo

1. Valdemorillo includes Rexam’s plant in Valdemorillo, manufacturing [...] cans.
2. In accordance with paragraph 6 of these Commitments, Valdemorillo also includes, but is not limited to:
 - (i) The main tangible assets listed in Annex H.1 (including the know-how for the operation of the production lines);
 - (ii) The following main intangible assets:
 - (a) The grant of a perpetual, irrevocable, non-exclusive, royalty-free licence for use for the manufacture and / or sale of beverage cans by the Divestment Business in the EEA (including all future can plants owned or operated by the Purchaser in the EEA) of all of the intellectual property which is owned by the Valdemorillo plant or another Rexam entity and used in connection with the manufacture and/or sale of beverage cans at Valdemorillo or is being developed for use in connection with the manufacture and / or sale of beverage cans at Rexam as at the date of these Commitments. All licences to use Rexam owned intellectual property will be subject to the purchaser extending a licence to Ball to use the same intellectual property in connection with the manufacture and / or sale of beverage cans at any of the Parties’ retained plants including the right to transfer the licence to affiliates and technology partners of Ball;
 - (b) In respect of the following intellectual property that is not owned by Valdemorillo or a Rexam entity but is used in connection with the manufacture of beverage cans at Valdemorillo as at the date of these Commitments:
 - (I) Trademarks (especially those belonging to customers): Ball will use best endeavours to procure that Rexam grants a royalty-free licence to use those trademarks in the manufacture and/or sale of beverage cans for those customers for the remaining life of the printing plates transferred at the time of Closing;
 - (II) Software embedded in standalone equipment such gauges and test equipment will transfer with the ownership of the requisite equipment; and
 - (III) All other IP used by Valdemorillo but not owned by Rexam (including IP embedded in the general production equipment and production lines, and any software used in production planning, production reviews or associated

activities): until such time as the Purchaser is able to reach an agreement with the owner of the IP, Ball agrees to operate that IP on the behalf of the Purchaser for a period of [...] (or such longer period as may be agreed with the Purchaser and subject to the consent of the Monitoring Trustee) and/or work with the Purchaser to reach an agreement with the entity that is able to grant a licence.

- (c) A licence to use the Rexam name in respect of products produced on printing plates transferred at the time of Closing for the remaining life of those plates;
 - (d) A licence to use the Rexam name in respect of all stocks, work in progress and semi-finished and finished goods transferred that contain the Rexam name have been sold;
- (iii) Subject to relevant consent where necessary, all contracts, agreements, commitments and understandings (or, in each case, portions thereof) relating to those customers who will be supplied by Valdemorillo. Subject to reallocations which are necessary to implement the divestment and are approved by the Monitoring Trustee, relevant customer contracts will be identified based on: (a) contracts that are supplied from Valdemorillo at the time of the Decision (to the extent they do not expire prior to Closing); and (b) new contracts won prior to Closing and planned to be supplied by Valdemorillo;
- (iv) Customer, credit and other relevant records (including lists, sales, marketing and promotional information), recognising that Ball may retain a copy of such records to the extent that these relate to suppliers or customers or customer volumes not transferred to the Divestment Business or are required for legal compliance purposes;
- (v) Unless the Purchaser elects to take supply as outlined at paragraph 7 in the Commitments, and subject to relevant consent where necessary, all contracts, agreements, commitments, understandings and orders (or portions thereof) relating to suppliers that supply Valdemorillo as at Closing. Ball shall use best endeavours to ensure that necessary consents are obtained. Where the Purchaser elects to take supply as outlined in paragraph 7 of these Commitments, Ball will supply these relevant products or services on terms and conditions equivalent to those at present afforded to the Divestment Business, for a period of up to [...] after Closing or for the duration of the relevant existing Ball or Rexam contract in respect of those products or services ;
- (vi) All raw materials, stocks built up in the ordinary course of business including in anticipation of seasonal demand, work in progress and semi-finished and finished goods held at the date of Closing;

- (vii) The main licences, permits and authorisations, to the extent transferable by applicable law;
 - (viii) Subject to applicable legal requirements, the Personnel (as further described in Annex H.2); and
 - (ix) The goodwill relating to Valdemorillo at the time of the divestment together with the exclusive right for the Purchaser to represent itself as carrying on the operation of Valdemorillo in succession to Rexam.
3. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in Valdemorillo and is necessary for the continued viability and competitiveness of Valdemorillo, that asset or adequate substitute will be offered to potential purchasers.
4. Ball proposes to offer the Purchaser of Valdemorillo, at the option of the Purchaser, transitional services to replicate the essential functions in place at Closing in order to ensure the viability of Valdemorillo. In particular, where required by the Purchaser, Ball shall:
- (i) Provide reasonable technical assistance to the Purchaser to facilitate the procurement of raw materials necessary for the manufacture of the products manufactured at Valdemorillo. If the Purchaser is not able to source such raw materials, Ball commits to enter, at the option of the Purchaser, into supply agreements with certain raw material suppliers and to make such raw materials available to the Purchaser at cost (subject to reasonable administrative expenses to be agreed with the Purchaser and with the consent of the Monitoring Trustee), for such period as is required by the Purchaser to establish Valdemorillo as a viable and independent business, but not exceeding one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent. Strict firewall procedures will be adopted in relation to this agreement, so as to ensure that any competitively sensitive information related thereto will not be shared with, or passed on to, anyone outside the Ball units providing the supply service.
 - (ii) Enter into transitional arrangements on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current IT systems support for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
 - (iii) Enter into transitional arrangements at cost on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current logistics and distribution services for a period

determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.

5. The scope and terms of the transitional agreements and of the technical assistance referred to in the above paragraphs will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. These agreements shall include appropriate provisions to ensure that Ball provides the services to the Purchaser expeditiously. Ball shall carry out these services in accordance with good industry practice including as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.

Annex H.1
Tangible Assets of Valdemorillo

[...]

**Annex H.2
Personnel at Valdemorillo**

Ball will transfer all Personnel at Valdemorillo to the Purchaser.

The Table below shows all Key Personnel at Valdemorillo.

Key Personnel

FUNCTION	NAME
[...]	[...]

The following table shows, by function, the personnel located at Valdemorillo that will transfer to the Divestment Business.

Personnel located at Valdemorillo

Service description	Function	No. that will transfer to the divestment purchaser
Operations	Manufacturing	[...]
Sales, General and Administrative	Supply and Demand	[...]
	Sales and marketing	[...]
	Graphics	[...]
	Customer Technical Service	[...]
	Finance	[...]
	IT	[...]
	Procurement / sourcing	[...]
	Innovation	[...]
	Human Resources	[...]
Other	Other	[...]
	Total	[...]

Note [1] This table includes inactive personnel but excludes temporary and contracted personnel. Ball will transfer as part of Valdemorillo all relevant and appropriate personnel working at Valdemorillo at the date of the Decision. To the extent that these personnel numbers change between the date of the Decision and Closing, Ball shall explain such changes to the Commission. [...].

Excluded Personnel

The Purchaser will be able to propose the exclusion of any other employees whom it considers unnecessary for the operation of Valdemorillo, subject to the Commission's approval in accordance with paragraph 19 of these Commitments.

SCHEDULE I – La Ciotat

1. La Ciotat includes Ball's plant in La Ciotat, manufacturing [...] cans.
2. In accordance with paragraph 6 of these Commitments, La Ciotat also includes, but is not limited to:
 - (i) The main tangible assets listed in Annex I.1 (including the know-how for the operation of the production lines);
 - (ii) The following main intangible assets:
 - (a) The grant of a perpetual, irrevocable, non-exclusive, royalty-free licence for use for the manufacture and / or sale of beverage cans by the Divestment Business in the EEA (including all future can plants owned or operated by the Purchaser in the EEA) of all of the intellectual property which is owned by the La Ciotat plant or another Ball entity and used in connection with the manufacture and / or sale of beverage cans at La Ciotat or is being developed for use in connection with the manufacture and / or sale of beverage cans at Ball as at the date of these Commitments;
 - (b) In respect of the following intellectual property that is not owned by La Ciotat or a Ball entity but is used in connection with the manufacture of beverage cans at La Ciotat as at the date of these Commitments:
 - (I) Trademarks (especially those belonging to customers): Ball will use best endeavours to grant a royalty-free licence to use those trademarks in the manufacture and/or sale of beverage cans for those customers for the remaining life of the printing plates transferred at the time of Closing;
 - (II) Software embedded in standalone equipment such gauges and test equipment will transfer with the ownership of the requisite equipment; and
 - (III) All other IP used by La Ciotat but not owned by Ball (including IP embedded in the general production equipment and production lines, and any software used in production planning, production reviews or associated activities): until such time as the Purchaser is able to reach an agreement with the owner of the IP, Ball agrees to operate that IP on the behalf of the Purchaser for a period of [...] (or such longer period as may be agreed with the Purchaser and subject to the consent of the Monitoring Trustee) and/or work with the Purchaser to reach an agreement with the entity that is able to grant a licence.

- (c) A licence to use the Ball name in respect of products produced on printing plates transferred at the time of Closing for the remaining life of those plates;
- (d) A licence to use the Ball name in respect of all stocks, work in progress and semi-finished and finished goods transferred that contain the Ball name have been sold;
- (iii) Subject to relevant consent where necessary, all contracts, agreements, commitments and understandings (or, in each case, portions thereof) relating to those customers who will be supplied by La Ciotat.[...] Subject to reallocations which are necessary to implement the divestment and are approved by the Monitoring Trustee, relevant customer contracts will be identified based on: (a) contracts that are supplied from La Ciotat at the time of the Decision (to the extent they do not expire prior to Closing); and (b) new contracts won prior to Closing and planned to be supplied by La Ciotat;
- (iv) Customer, credit and other relevant records (including lists, sales, marketing and promotional information), recognising that Ball may retain a copy of such records to the extent that these relate to suppliers or customers or customer volumes not transferred to the Divestment Business or are required for legal compliance purposes;
- (v) Unless the Purchaser elects to take supply as outlined at paragraph 7 in the Commitments, and subject to relevant consent where necessary, all contracts, agreements, commitments, understandings and orders (or portions thereof) relating to suppliers that supply La Ciotat as at Closing. Ball shall use best endeavours to ensure that necessary consents are obtained. Where the Purchaser elects to take supply as outlined in paragraph 7 of these Commitments, Ball will supply these relevant products or services on terms and conditions equivalent to those at present afforded to the Divestment Business, for a period of up to [...] after Closing or for the duration of the relevant existing Ball or Rexam contract in respect of those products or services;
- (vi) All raw materials, stocks built up in the ordinary course of business including in anticipation of seasonal demand, work in progress and semi-finished and finished goods held at the date of Closing;
- (vii) The main licences, permits and authorisations, to the extent transferable by applicable law;
- (viii) Subject to applicable legal requirements, the Personnel (as further described in Annex I.2); and
- (ix) The goodwill relating to La Ciotat at the time of the divestment together with the exclusive right for the Purchaser to represent itself as carrying on the operation of La Ciotat in succession to Ball.

3. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in La Ciotat and is necessary for the continued viability and competitiveness of La Ciotat, that asset or adequate substitute will be offered to potential purchasers.
4. Ball proposes to offer the Purchaser of La Ciotat, at the option of the Purchaser, transitional services to replicate the essential functions in place at Closing in order to ensure the viability of La Ciotat. In particular, where required by the Purchaser, Ball shall:
 - (i) Provide reasonable technical assistance to the Purchaser to facilitate the procurement of raw materials necessary for the manufacture of the products manufactured at La Ciotat. If the Purchaser is not able to source such raw materials, Ball commits to enter, at the option of the Purchaser, into supply agreements with certain raw material suppliers and to make such raw materials available to the Purchaser at cost (subject to reasonable administrative expenses as agreed with the Purchaser and with the consent of the Monitoring Trustee), for such period as is required by the Purchaser to establish La Ciotat as a viable and independent business, but not exceeding one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent. Strict firewall procedures will be adopted in relation to this agreement, so as to ensure that any competitively sensitive information related thereto will not be shared with, or passed on to, anyone outside the Ball units providing the supply service.
 - (ii) Enter into transitional arrangements on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current IT systems support for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
 - (iii) Enter into transitional arrangements at cost on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current logistics and distribution services for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
5. The scope and terms of the transitional agreements and of the technical assistance referred to in the above paragraphs will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. These agreements shall include appropriate provisions to ensure that Ball provides the services to the Purchaser expeditiously. Ball shall carry out these services in accordance with good industry practice including

as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.

Annex I.1
Tangible Assets of La Ciotat

[...]

**Annex I.2
Personnel at La Ciotat**

Ball will transfer all Personnel at La Ciotat to the Purchaser.

The following Table shows all Key Personnel at La Ciotat.

Key Personnel

FUNCTION	NAME
[...]	[...]

The following table shows, by function, the personnel located at La Ciotat that will transfer to the Divestment Business.

Personnel located at La Ciotat

Service description	Function	No. that will transfer to the Divestment Business
Operations	Manufacturing	[...]
Sales, General and Administrative	Supply and Demand	[...]
	Sales and marketing	[...]
	Graphics	[...]
	Customer Technical Service	[...]
	Finance	[...]
	IT	[...]
	Procurement / sourcing	[...]
	Innovation	[...]
	Human Resources	[...]
Total		[...]

Note [...]

[...]

[3] This table includes inactive personnel but excludes temporary and contracted personnel. Ball will transfer as part of La Ciotat all relevant and appropriate personnel working at La Ciotat at the date of the Decision. To the extent that these personnel numbers change between the date of the Decision and Closing, Ball shall explain such changes to the Commission.

Excluded Personnel

The Purchaser will be able to propose the exclusion of any other employees whom it considers unnecessary for the operation of La Ciotat, subject to the Commission's approval in accordance with paragraph 19 of these Commitments.

SCHEDULE J – Radomsko

1. Radomsko includes Ball’s plant in Radomsko, manufacturing [...] cans.
2. In accordance with paragraph 6 of these Commitments, Radomsko also includes, but is not limited to:
 - (i) The main tangible assets listed in Annex J.1 (including the know-how for the operation of the production lines);
 - (ii) The following main intangible assets:
 - (a) The grant of a perpetual, irrevocable, non-exclusive, royalty-free licence for use for the manufacture and / or sale of beverage cans by the Divestment Business in the EEA (including all future can plants owned or operated by the Purchaser in the EEA) of all of the intellectual property which is owned by the Radomsko plant or another Ball entity and used in connection with the manufacture and / or sale of beverage cans at Radomsko or is being developed for use in connection with the manufacture and / or sale of beverage cans at Ball as at the date of these Commitments;
 - (b) In respect of the following intellectual property that is not owned by Radomsko or a Ball entity but is used in connection with the manufacture of beverage cans at Radomsko as at the date of these Commitments:
 - (I) Trademarks (especially those belonging to customers): Ball will use best endeavours to grant a royalty-free licence to use those trademarks in the manufacture and/or sale of beverage cans for those customers for the remaining life of the printing plates transferred at the time of Closing;
 - (II) Software embedded in standalone equipment such gauges and test equipment will transfer with the ownership of the requisite equipment; and
 - (III) All other IP used by Radomsko but not owned by Ball (including IP embedded in the general production equipment and production lines and any software used in production planning, production reviews or associated activities): until such time as the Purchaser is able to reach an agreement with the owner of the IP, Ball agrees to operate that IP on the behalf of the Purchaser for a period of [...] (or such longer period as may be agreed with the Purchaser and subject to the consent of the Monitoring

Trustee) and/or work with the purchaser to reach an agreement with the entity that is able to grant a licence.

- (IV) A licence to use the Ball name in respect of products produced on printing plates transferred at the time of Closing for the remaining life of those plates;
 - (V) A licence to use the Ball name in respect of all stocks, work in progress and semi-finished and finished goods transferred that contain the Ball name have been sold;
- (iii) Subject to relevant consent where necessary, all contracts, agreements, commitments and understandings (or, in each case, portions thereof) relating to those customers who will be supplied by Radomsko. Subject to reallocations which are necessary to implement the divestment and are approved by the Monitoring Trustee, relevant customer contracts will be identified based on: (a) contracts that are supplied from Radomsko at the time of the Decision (to the extent they do not expire prior to Closing); and (b) new contracts won prior to Closing and planned to be supplied by Radomsko;
 - (iv) Customer, credit and other relevant records (including lists, sales, marketing and promotional information), recognising that Ball may retain a copy of such records to the extent that these relate to suppliers or customers or customer volumes not transferred to the Divestment Business or are required for legal compliance purposes;
 - (v) Unless the Purchaser elects to take supply as outlined at paragraph 7 of these Commitments, and subject to relevant consent where necessary, all contracts, agreements, commitments, understandings and orders (or portions thereof) relating to suppliers that supply Radomsko as at Closing. Ball shall use best endeavours to ensure that necessary consents are obtained. Where the Purchaser elects to take supply as outlined in paragraph 7 of these Commitments, Ball will supply these relevant products or services on terms and conditions equivalent to those at present afforded to the Divestment Business, for a period of up to [...] after Closing or for the duration of the relevant existing Ball or Rexam contract in respect of those products or services;
 - (vi) All raw materials, stocks built up in the ordinary course of business including in anticipation of seasonal demand, work in progress and semi-finished and finished goods held at the date of Closing;
 - (vii) The main licences, permits and authorisations, to the extent transferable by applicable law;
 - (viii) Subject to applicable legal requirements, the Personnel (as further described in Annex J.2); and

- (ix) The goodwill relating to Radomsko at the time of the divestment together with the exclusive right for the Purchaser to represent itself as carrying on the operation of Radomsko in succession to Ball.
- 3. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in Radomsko and is necessary for the continued viability and competitiveness of Radomsko, that asset or adequate substitute will be offered to potential purchasers.
- 4. Ball proposes to offer the Purchaser of Radomsko, at the option of the Purchaser, transitional services to replicate the essential functions in place at Closing in order to ensure the viability of Radomsko. In particular, where required by the Purchaser, Ball shall:
 - (i) Provide reasonable technical assistance to the Purchaser to facilitate the procurement of raw materials necessary for the manufacture of the products manufactured at Radomsko. If the Purchaser is not able to source such raw materials, Ball commits to enter, at the option of the Purchaser, into supply agreements with certain raw material suppliers and to make such raw materials available to the Purchaser at cost (subject to reasonable administrative expenses as agreed with the Purchaser and with the consent of the Monitoring Trustee), for such period as is required by the Purchaser to establish Radomsko as a viable and independent business, but not exceeding one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent. Strict firewall procedures will be adopted in relation to this agreement, so as to ensure that any competitively sensitive information related thereto will not be shared with, or passed on to, anyone outside the Ball units providing the supply service.
 - (ii) Enter into transitional arrangements on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current IT systems support for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
 - (iii) Enter into transitional arrangements at cost on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current logistics and distribution services for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.

5. The scope and terms of the transitional agreements and of the technical assistance referred to in the above paragraphs will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. These agreements shall include appropriate provisions to ensure that Ball provides the services to the Purchaser expeditiously. Ball shall carry out these services in accordance with good industry practice including as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.

Annex J.1
Tangible Assets of Radomsko

[...]

**Annex J.2
Personnel at Radomsko**

Ball will transfer all Personnel at Radomsko to the Purchaser.

The following table shows those employees at Radomsko who are considered Key Personnel.

Key Personnel

FUNCTION	NAME
[...]	[...]

The following table shows, by function, the personnel located at Radomsko that will transfer to the Divestment Business.

Personnel located at Radomsko

Service description	Function	No. that will transfer to the Divestment Business
Operations	Manufacturing	[...]
Sales, General and Administrative	Supply and Demand	[...]
	Sales and marketing	[...]
	Graphics	[...]
	Customer Technical Service	[...]
	Finance	[...]
	IT	[...]
	Procurement / sourcing	[...]
	Innovation	[...]
	Human Resources	[...]

Total		[...]
--------------	--	--------------

Note [1] This table includes inactive personnel but excludes temporary and contracted personnel. Ball will transfer as part of Radomsko all relevant and appropriate personnel working at Radomsko at the date of the Decision. To the extent that these personnel numbers change between the date of the Decision and Closing, Ball shall explain such changes to the Commission.

Excluded Personnel

The Purchaser will be able to propose the exclusion of any other employees whom it considers unnecessary for the operation of Radomsko, subject to the Commission’s approval in accordance with paragraph 19 of these Commitments.

SCHEDULE K - Braunschweig

1. Braunschweig includes Ball's can-ends manufacturing facility located in Braunschweig, manufacturing [...] can-ends.
2. In accordance with paragraph 6 of these Commitments, Braunschweig also includes, but is not limited to:
 - (i) The main tangible assets listed in Annex K.1 (including the know-how for the operation of the production lines);
 - (ii) The following main intangible assets:
 - (a) The grant of a perpetual, irrevocable, non-exclusive, royalty-free licence or sub-licence for use for production of can-ends by the Divestment Business in the EEA (including all future can plants owned or operated by the Purchaser in the EEA) of the intellectual property that is owned by Ball and that is used in connection with the manufacture and / or sale of beverage can-ends by Braunschweig or is being developed for use in connection with the manufacture and / or sale of beverage cans at Ball as at the date of these Commitments;
 - (b) In respect of all other IP used by Braunschweig as at the date of these Commitments but not owned by Ball (including IP embedded in the general production equipment and production lines, the CDL patent, and any software used in production planning, production reviews or associated activities) but is used in connection with the manufacture of beverage can-ends at Braunschweig, Ball agrees to operate that IP on the behalf of the Purchaser for a period of [...] (or such longer period as may be agreed with the Purchaser and subject to the consent of the Monitoring Trustee) and/or work with the Purchaser to reach an agreement with the entity that is able to grant a licence;
 - (c) A licence to use the Ball name in respect of products produced on printing plates transferred at the time of Closing for the remaining life of those plates;
 - (d) A licence to use the Ball name in respect of all stocks, work in progress and semi-finished and finished goods transferred that contain the Ball name have been sold;
 - (iii) Subject to relevant consent where necessary, all contracts, agreements, commitments, customer lists and understandings (or, in each case, portions thereof) relating to customers who will be supplied by Braunschweig. Subject to reallocations which are necessary to implement the divestment and are approved by the Monitoring Trustee, relevant customer contracts will be identified based on: (a) contracts that

are supplied from Braunschweig at the time of the Decision (to the extent they do not expire prior to Closing); and (b) new contracts won prior to Closing and planned to be supplied by Braunschweig;

- (iv) Customer, credit and other relevant records (including lists, sales, marketing and promotional information), recognising that Ball may retain a copy of such records to the extent that these relate to suppliers or customers or customer volumes not transferred to the Divestment Business or are required for legal compliance purposes;
 - (v) Unless the Purchaser elects to take supply as outlined at paragraph 7 in the Commitments, and subject to relevant consent where necessary, all contracts, agreements, commitments, understandings and orders (or portions thereof) relating to suppliers that supply Braunschweig as at Closing. Ball shall use best endeavours to ensure that necessary consents are obtained. Where the Purchaser elects to take supply as outlined in paragraph 7 of these Commitments, Ball will supply these relevant products or services on terms and conditions equivalent to those at present afforded to the Divestment Business, for a period of up to [...] after Closing or for the duration of the relevant existing Ball or Rexam contract in respect of those products or services;
 - (vi) All raw materials, stocks built up in the ordinary course of business including in anticipation of seasonal demand, work in progress and semi-finished and finished goods held at the date of closing;
 - (vii) The main licences, permits and authorisations, to the extent transferable by applicable law;
 - (viii) Subject to applicable legal requirements, the Personnel (as further described in Annex K.2);
 - (ix) The goodwill relating to Braunschweig at the time of the divestment together with the exclusive right for the Purchaser to represent itself as carrying on the operation of Braunschweig in succession to the Parties; and
3. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in Braunschweig and is necessary for the continued viability and competitiveness of Braunschweig, that asset or adequate substitute will be offered to potential purchasers.
4. Ball proposes to offer the Purchaser of Braunschweig, at the option of the Purchaser, transitional services to replicate the essential functions in place at Closing in order to ensure the viability of Braunschweig. In particular, where required by the Purchaser, Ball shall:
- (i) Provide reasonable technical assistance to the Purchaser to facilitate the procurement of raw materials necessary for the manufacture of the

products manufactured at Braunschweig. If the Purchaser is not able to source such raw materials, Ball commits to enter, at the option of the Purchaser, into supply agreements with certain raw material suppliers and to make such raw materials available to the Purchaser at cost (subject to reasonable administrative expenses to be agreed with the Purchaser and with the consent of the Monitoring Trustee), for such period as is required by the Purchaser to establish Braunschweig as a viable and independent business, but not exceeding one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent. Strict firewall procedures will be adopted in relation to this agreement, so as to ensure that any competitively sensitive information related thereto will not be shared with, or passed on to, anyone outside the Ball units providing the supply service.

- (ii) Enter into transitional arrangements on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current IT systems support for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
 - (iii) Enter into transitional arrangements at cost on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current logistics and distribution services for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
5. The scope and terms of the transitional agreements and of the technical assistance referred to in the above paragraphs will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. These agreements shall include appropriate provisions to ensure that Ball provides the services to the Purchaser expeditiously. Ball shall carry out these services in accordance with good industry practice including as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.

Annex K.1
Tangible Assets of Braunschweig

[...]

**Annex K.2
Personnel at Braunschweig**

Ball will transfer all Personnel at Braunschweig to the Purchaser.

The following table shows the Key Personnel at Braunschweig.

Key Personnel

FUNCTION	NAME
[...]	[...]

The following table shows, by function, the personnel located at Braunschweig that will transfer to the Divestment Business.

Personnel at Braunschweig

SERVICE DESCRIPTION	FUNCTION	NO. THAT WILL TRANSFER TO THE DIVESTMENT BUSINESS
Operations	Manufacturing	[...]
Sales, General and Administrative	Customer Technical Service	[...]
	Supply and demand	[...]
	Sales and marketing	[...]
	Finance	[...]
	IT	[...]
	Procurement / sourcing	[...]
	Innovation	[...]
	Human Resources	[...]
	Total	[...]

Note [1] This table includes inactive personnel but excludes temporary and contracted personnel. Ball will transfer as part of Braunschweig all relevant and appropriate personnel working at Braunschweig at the date of the Decision. To the extent that these personnel numbers change between the date of the Decision and Closing, Ball shall explain such changes to the Commission.

Excluded Personnel

The Purchaser will be able to propose the exclusion of any other employees whom it considers unnecessary for the operation of Braunschweig, subject to the Commission's approval in accordance with paragraph 19 of these Commitments.

SCHEDULE L – Deeside

1. Deeside includes Ball's can-ends manufacturing facility located in Deeside, manufacturing [...] can-ends.
2. In accordance with paragraph 6 of these Commitments, Deeside also includes, but is not limited to:
 - (i) The main tangible assets listed in Annex L.1 (including the know-how for the operation of the production lines);
 - (ii) The following main intangible assets:
 - (a) The grant of a perpetual, irrevocable, non-exclusive, royalty-free licence or sub-licence for use for production of can-ends in the Divestment Business in the EEA (including at any future can-end plants owned or operated by the Purchaser in the EEA) of the intellectual property that is owned by Ball and that is used in connection with the manufacture and / or sale of beverage can-ends at Deeside or is being developed for use in connection with the manufacture and / or sale of beverage cans at Ball as at the date of these Commitments;
 - (b) In respect of all other IP used by Deeside as at the date of these Commitments but not owned by Ball (including IP embedded in the general production equipment and production lines, the CDL patent, and any software used in production planning, production reviews or associated activities) but is used in connection with the manufacture of beverage can-ends at Deeside, Ball agrees to operate that IP on the behalf of the Purchaser for a period of [...] (or such longer period as may be agreed with the Purchaser and subject to the consent of the Monitoring Trustee) and/or work with the Purchaser to reach an agreement with the entity that is able to grant a licence.
 - (c) A licence to use the Ball name in respect of products produced on printing plates transferred at the time of Closing for the remaining life of those plates;
 - (d) A licence to use the Ball name in respect of all stocks, work in progress and semi-finished and finished goods transferred that contain the Ball name have been sold;
 - (iii) Subject to relevant consent where necessary, all contracts, agreements, commitments and understandings (or, in each case, portions thereof) relating to customers who will be supplied by Deeside. Subject to reallocations which are necessary to implement the divestment and are approved by the Monitoring Trustee, relevant customer contracts will be identified based on: (a) contracts that are supplied from Deeside at the

time of the Decision (to the extent they do not expire prior to Closing); and (b) new contracts won prior to Closing and planned to be supplied by Deeside;

- (iv) Customer, credit and other relevant records (including lists, sales, marketing and promotional information), recognising that Ball may retain a copy of such records to the extent that these relate to suppliers or customers or customer volumes not transferred to the Divestment Business or are required for legal compliance purposes;
 - (v) Unless the Purchaser elects to take supply as outlined at paragraph 7 in the Commitments, and subject to relevant consent where necessary, all contracts, agreements, commitments, understandings and orders (or portions thereof) relating to suppliers that supply Deeside as at Closing. Ball shall use best endeavours to ensure that necessary consents are obtained. Where the Purchaser elects to take supply as outlined in paragraph 7 of these Commitments, Ball will supply these relevant products or services on terms and conditions equivalent to those at present afforded to the Divestment Business, for a period of up to [...] after Closing or for the duration of the relevant existing Ball or Rexam contract in respect of those products or services;
 - (vi) All raw materials, stocks built up in the ordinary course of business including in anticipation of seasonal demand, work in progress and semi-finished and finished goods held at the date of closing;
 - (vii) The main licences, permits and authorisations, to the extent transferable by applicable law;
 - (viii) Subject to applicable legal requirements, the Personnel (as further described in Annex L.2); and
 - (ix) The goodwill relating to Deeside at the time of the divestment together with the exclusive right for the Purchaser to represent itself as carrying on the operation of Deeside in succession to the Parties.
3. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in Deeside and is necessary for the continued viability and competitiveness of Deeside, that asset or adequate substitute will be offered to potential purchasers.
4. Ball proposes to offer the Purchaser of Deeside, at the option of the Purchaser, transitional services to replicate the essential functions in place at Closing in order to ensure the viability of Deeside. In particular, where required by the Purchaser, Ball shall:
- (i) Provide reasonable technical assistance to the Purchaser to facilitate the procurement of raw materials necessary for the manufacture of the products manufactured at Deeside. If the Purchaser is not able to source

such raw materials, Ball commits to enter, at the option of the Purchaser, into supply agreements with certain raw material suppliers and to make such raw materials available to the Purchaser at cost (subject to reasonable administrative expenses as agreed with the Purchaser and with the consent of the Monitoring Trustee), for such period as is required by the Purchaser to establish Deeside as a viable and independent business, but not exceeding one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent. Strict firewall procedures will be adopted in relation to this agreement, so as to ensure that any competitively sensitive information related thereto will not be shared with, or passed on to, anyone outside the Ball units providing the supply service.

- (ii) Enter into transitional arrangements at cost on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current IT systems support for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
 - (iii) Enter into transitional arrangements at cost on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current logistics and distribution services for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
5. The scope and terms of the transitional agreements and of the technical assistance referred to in the above paragraphs will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. These agreements shall include appropriate provisions to ensure that Ball provides the services to the Purchaser expeditiously. Ball shall carry out these services in accordance with good industry practice including as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.

Annex L.1
Tangible Assets of Deeside

[...]

**Annex L.2
Personnel at Deeside**

Ball will transfer all Personnel at Deeside to the Purchaser.

The following table shows the Key Personnel at Deeside.

Key Personnel

FUNCTION	NAME
[...]	[...]

The following table shows, by function, the personnel located at Deeside that will transfer to the Divestment Business.

Other Personnel

Service description	Function	No. that will transfer to the Divestment Business
Operations	Manufacturing	[...]
Sales, General and Administrative	Customer Technical Service	[...]
	Supply and Demand	[...]
	Sales and marketing	[...]
	Finance	[...]
	IT	[...]
	Procurement/sourcing	[...]
	Innovation	[...]
Human Resources	[...]	
Other	Other	[...]
	Total	[...]

Note [1] This table includes inactive personnel but excludes temporary and contracted personnel. Ball will transfer as part of Deeside all relevant and appropriate personnel working at Deeside at the date of the Decision. To the extent that these personnel numbers change between the date of the Decision and Closing, Ball shall explain such changes to the Commission.

Excluded Personnel

The Purchaser will be able to propose the exclusion of any other employees whom it considers unnecessary for the operation of Deeside, subject to the Commission's approval in accordance with paragraph 19 of these Commitments.

SCHEDULE M – Bonn

1. Bonn includes Ball's corporate support functions for its current European business and Ball's dedicated R&D and innovation centre.
2. In accordance with paragraph 6 of these Commitments, Bonn also includes, but is not limited to:
 - (i) The main tangible assets listed in Annex M.1 (including relevant know-how);
 - (ii) The following main intangible assets:
 - (a) The grant of a perpetual, irrevocable, non-exclusive, royalty-free licence or sub-licence of the intellectual property that is owned by Ball and that is used in connection with the current operation of Bonn including, in particular, in-house technology licences relating to Bonn's technical and R&D centre, or intellectual property that is being developed for use in connection with the manufacture and / or sale of beverage cans at Ball, as at the date of these Commitments;
 - (b) In respect of all other IP used by Bonn as at the date of these Commitments but not owned by Ball, Ball agrees to operate that IP on the behalf of the Purchaser for a period of [...] (or such longer period as may be agreed with the Purchaser and subject to the consent of the Monitoring Trustee) and/or work with the Purchaser to reach an agreement with the entity that is able to grant a licence.
 - (c) At the option of the Purchaser and subject to appropriate consent, a licence to use the intellectual property relating to the [...] subject to Ball retaining a right to use and develop the relevant intellectual property. Should the Purchaser not exercise this option, the existing equipment at [...] will be retained by Ball and removed from [...] prior to Closing.
 - (iii) All raw materials, stocks built up in the ordinary course of business including in anticipation of seasonal demand, work in progress and semi-finished and finished goods held at the date of closing;
 - (iv) The main licences, permits and authorisations, to the extent transferable by applicable law;
 - (v) Subject to applicable legal requirements, all Personnel (as further described in Annex M.2);

- (vi) The goodwill relating to Bonn at the time of the divestment together with the exclusive right for the Purchaser to represent itself as carrying on the operation of Bonn in succession to the Parties.
3. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in Bonn and is necessary for the continued viability and competitiveness of Bonn, that asset or adequate substitute will be offered to potential purchasers.
 4. Ball proposes to offer the Purchaser of Bonn, at the option of the Purchaser, transitional services to replicate the essential functions in place at Closing in order to ensure the viability of Bonn. In particular, where requested by the Purchaser, Ball shall:
 - (i) Enter into transitional arrangements on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current IT systems support for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
 - (ii) Enter into transitional arrangements at cost on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current logistics and distribution services for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
 5. The scope and terms of the transitional agreements and of the technical assistance referred to in the above paragraphs will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. These agreements shall include appropriate provisions to ensure that Ball provides the services to the Purchaser expeditiously. Ball shall carry out these services in accordance with good industry practice including as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.
 6. Following a sale of Bonn to the Purchaser, Ball may also require transitional services to be supplied to it by the Purchaser, in order to replicate, for a transitional period, those services supplied to the Ball retained business by Bonn prior to Closing. Ball and the Purchaser shall negotiate the scope and terms of such transitional services, with the consent of the Monitoring Trustee where necessary in order to ensure the viability and independence of Bonn. The term of any such services shall be limited to a maximum period of [...] from the date of Closing.

Annex M.1
Tangible Assets of Bonn

[...]

Annex M.2

Personnel at Bonn

With the exception of the Excluded Personnel, Ball will transfer all personnel at Bonn to the Purchaser.

The Table below shows the Key Personnel at Bonn.

Key Personnel

FUNCTION	NAME
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]

Note Certain of these Key Personnel are currently located in Zurich. At the Purchaser's option, the Zurich site will be made available to the Purchaser and therefore, while it is Ball's expectation that the Key Personnel will sit in Bonn, it would be open for certain of these personnel to remain in Zurich.

The following table shows, by function, the personnel currently located at Bonn that will transfer to the Divestment Business.

Personnel at Bonn

Function	No. that will transfer to the Divestment Business
Finance	[...]
IT	[...]
HR	[...]
Legal	[...]
Sourcing	[...]
Innovation	[...]

Sales and marketing (includes CTS, Graphics, Supply and demand, Sale and Marketing)	[...]
Health and Safety, Engineering, Quality and Laboratory	[...]
Other	[...]
Total	[...]

Notes: [1] This table includes inactive personnel but excludes temporary and contracted personnel. Ball will transfer as part of Bonn all relevant and appropriate personnel working at Bonn at the date of the Decision. To the extent that these personnel numbers change between the date of the Decision and Closing, Ball shall explain such changes to the Commission.

Excluded Personnel

Please see Appendix 2 for a list of excluded personnel at Bonn, along with the reasons for their exclusion.

The Purchaser will be able to propose the exclusion of any other employees whom it considers unnecessary for the operation of Bonn, subject to the Commission's approval in accordance with paragraph 19 of these Commitments.

SCHEDULE N – Chester

1. Chester includes Ball's shared services site and personnel in the UK, [...].
2. In accordance with paragraph 6 of these Commitments, Chester also includes, but is not limited to:
 - (i) The main tangible assets listed in Annex N.1 (including relevant know-how);
 - (ii) The following main intangible assets:
 - (a) The grant of a perpetual, irrevocable, non-exclusive, royalty-free licence or sub-licence of the intellectual property that is owned by Ball and that is used in connection with the current operation of Chester as at the date of these Commitments;
 - (b) In respect of all other IP used by Chester as at the date of these Commitments but not owned by Ball, Ball agrees to operate that IP on the behalf of the Purchaser for a period of [...] (or such longer period as may be agreed with the Purchaser and subject to the consent of the Monitoring Trustee) and/or work with the Purchaser to reach an agreement with the entity that is able to grant a licence.
 - (c) The main licences, permits and authorisations, to the extent transferable by applicable law;
 - (iii) Subject to applicable legal requirements, all Personnel (as further described in Annex N.2);
 - (iv) The goodwill relating to Chester at the time of the divestment together with the exclusive right for the Purchaser to represent itself as carrying on the operation of Chester in succession to Ball.
3. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in Chester and is necessary for the continued viability and competitiveness of Chester, that asset or adequate substitute will be offered to potential purchasers.
4. Ball proposes to offer the Purchaser of Chester, at the option of the Purchaser, transitional services to replicate the essential functions in place at Closing in order to ensure the viability of Chester. In particular, where requested by the Purchaser, Ball shall:
 - (i) Enter into transitional arrangements on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current IT systems support for a period determined by the Purchaser but limited to a maximum period of [...] from the date of

Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.

- (ii) Enter into transitional arrangements at cost on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current logistics and distribution services for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
5. The scope and terms of the transitional agreements and of the technical assistance referred to in the above paragraphs will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. These agreements shall include appropriate provisions to ensure that Ball provides the services to the Purchaser expeditiously. Ball shall carry out these services in accordance with good industry practice including as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.

Annex N.1
Tangible Assets of Chester

[...]

Annex N.2

Personnel at Chester

Ball will transfer all Personnel at Chester to the Purchaser, as shown in the Table below.

Other Personnel

SERVICE DESCRIPTION	FUNCTION	NO. THAT WILL TRANSFER TO THE DIVESTMENT BUSINESS
Operations	Manufacturing	[...]
Sales, General and Administrative	Supply and Demand	[...]
	Sales and marketing	[...]
	Graphics	[...]
	Customer Technical Service	[...]
	Finance	[...]
	IT	[...]
	Procurement / sourcing	[...]
	Innovation	[...]
	Human Resources	[...]
Other	Other	[...]
Total		[...]

Note [1] This table includes inactive personnel but excludes temporary and contracted personnel. Ball will transfer as part of Chester all relevant and appropriate personnel working at Chester at the date of the Decision. To the extent that these personnel numbers change between the date of the Decision and Closing, Ball shall explain such changes to the Commission.

Excluded Personnel

Please see Appendix 2 for a list of excluded personnel at Chester, along with the reasons for their exclusion.

The Purchaser will be able to propose the exclusion of any other employees whom it considers unnecessary for the operation of Chester, subject to the Commission's approval in accordance with paragraph 19 of these Commitments.

SCHEDULE O – Zurich

1. Zurich includes the benefit of Ball's leasehold property in Zurich, Switzerland (and associated equipment), along with certain personnel currently located in Zurich.
2. In accordance with paragraph 6 of these Commitments, Zurich includes, but is not limited to:
 - (i) The main tangible assets listed in Annex O.1 (including relevant know-how);
 - (ii) The following main intangible assets:
 - (a) The transfer of all intellectual property owned by Ball and used in [...] as at the date of these Commitments; and
 - (b) The main licences, permits and authorisations, to the extent transferable by applicable law;
 - (iii) Subject to applicable legal requirements, all Personnel (as further described in Annex O.2).
3. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in Zurich and is necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.
4. Ball proposes to offer the Purchaser of Zurich, at the option of the Purchaser, transitional services to replicate the essential functions in place at Closing in order to ensure the viability of Zurich. In particular, where requested by the Purchaser, Ball shall:
 - (i) Enter into transitional arrangements on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current IT systems support for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.
 - (ii) Enter into transitional arrangements at cost on terms and conditions equivalent to those at present afforded to the Divestment Business for the continuation of current logistics and distribution services for a period determined by the Purchaser but limited to a maximum period of one year from the date of Closing, which can be extended by one year if such extension is necessary to ensure the viability of the Divestment Business and subject to the Monitoring Trustee's consent.

5. The scope and terms of the transitional agreements and of the technical assistance referred to in the above paragraphs will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. These agreements shall include appropriate provisions to ensure that Ball provides the services to the Purchaser expeditiously. Ball shall carry out these services in accordance with good industry practice including as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.

Annex O.1
Tangible Assets of Zurich

[...]

Annex O.2

Personnel at Zurich

At the Purchaser's option, Ball will transfer all Personnel at Zurich to the Purchaser as shown in the Table below (subject to certain exclusions as explained in further detail below).

Personnel

Function	No. of personnel
Supply / demand	[...]
Sales and marketing	[...]
Finance	[...]
Manufacturing	[...]
Human Resources	[...]
Sourcing	[...]
Others	[...]
Total	[...]

Note [1] This table includes inactive personnel but excludes temporary and contracted personnel. Ball will transfer as part of Zurich all relevant and appropriate personnel working at Zurich at the date of the Decision. To the extent that these personnel numbers change between the date of the Decision and Closing, Ball shall explain such changes to the Commission.

Excluded Personnel

Please see Appendix 2 for a list of excluded personnel at Zurich, along with the reasons for their exclusion.

The Purchaser will be able to propose the exclusion of any other employees whom it considers unnecessary for the operation of Zurich, subject to the Commission's approval in accordance with paragraph 19 of these Commitments.

Appendix 1: Suppliers

[...]

Appendix 2: Exclusions from the Divestment Business

1. Without prejudice to paragraph 6 and 8 of the Commitments, the Divestment Business shall not include the following (by reference to Ball's Metal Beverage Packaging, Europe segment and the Rexam European Divestment Plants):

Entities

2. The Divestment Business shall not include the following entities:

[...]

Assets

3. The Divestment Business shall not include the following assets:

- (i) The Bierne plant. This plant, along with its associated assets (including, without limitation, real estate, inventory, equipment and permits) and personnel, will be carved out of [...] prior to Closing. Alternatively, Ball would retain [...] and transfer the La Ciotat plant along with its associated assets (including, without limitation, real estate, inventory, equipment and permits) and personnel to the purchaser.
- (ii) The Haslach plant. This plant along with its associated assets (including, without limitation, real estate, inventory, equipment and permits) and personnel will be carved out of [...] to Closing. This includes the [...] interest in the Haslach real estate owned by [...], which will be transferred from that entity prior to Closing.
- (iii) Any and all goodwill related to the plants in parts (i) - (ii) above and operations thereat.
- (iv) The following equipment at Bonn dedicated to the Excluded Development IP (as to which, see further below):
 - (a) [...];
 - (b) [...];
 - (c) [...];
 - (d) [...]
 - (e) [...].
- (v) If the Purchaser does not exercise the option outlined in paragraph 2(ii) of Schedule M of these Commitments, the following equipment dedicated to [...], as currently installed in [...] (along with the applicable intellectual property related to the technology specified therein):
 - (a) [...];
 - (b) [...];

- (c) [...];
- (d) [...];
- (e) [...];
- (f) [...];
- (g) [...]; and
- (h) [...].

If the Purchaser does not exercise the abovementioned option, the equipment listed in this paragraph shall be removed from [...] (and carved of the scope of [...] prior to Closing.

- (vi) Existing hedge contracts. The final binding sale and purchase agreement referred to in paragraph 19 of these Commitments shall include provisions whereby the economic benefit (or burden) of these hedging contracts as at Closing shall be transferred to the Purchaser by way of a cash adjustment, such that the Purchaser is placed in the same position as if the outstanding hedges had been transferred.
- (vii) Tax-related assets (other than to the extent held in entities transferred to the Divestment Business).
- (viii) Accounts receivable (other than to the extent held in entities transferred to the Divestment Business).
- (ix) Cash and cash equivalents (other than to the extent held in entities transferred to the Divestment Business).
- (x) Insurance policies. An exclusion of insurance policies is standard practice in disposals of part of a wider business, since (as is the case with Ball) the seller very often has global insurance policies which need to be kept intact. The Purchaser can readily access appropriate insurance on the market for the Divestment Business (which will be effective at Closing) and such an exclusion therefore has no impact on the viability of competitiveness of the Divestment Business.
- (xi) Prepaid expenses, deferred charges, advance payments and security deposits.
- (xii) Causes of action, guaranties and indemnities in favour of Ball arising prior to Closing.
- (xiii) Assets related to employee benefit plans that do not otherwise transfer to the Divestment Business.
- (xiv) Intercompany receivables, accounts and related assets.

- (xv) Customer or supplier contracts, commitments, orders and volumes (or portions thereof) not related to the Divestment Business. For the avoidance of doubt, the Divestment Business shall not include [...] and [...] dated [...].
- (xvi) Any other asset that is used primarily in respect of Ball's retained facilities and which is not necessary for the viability and competitiveness of the Divestment Business.

Intellectual Property

4. The Divestment Business shall not include the following intellectual property:
- (i) Any intellectual property owned by Ball or Rexam (or their Affiliates) other than any intellectual property associated with [...], which will transfer to the Divestment Business. As explained in paragraph 2(ii) of each Schedules A to M of the Commitments, the Purchaser will receive a perpetual, irrevocable, non-exclusive, royalty-free licence for use for the manufacture and / or sale of beverage cans by the Divestment Business in the EEA (including all future can plants owned or operated by the Purchaser in the EEA) of all intellectual property which is owned by Ball or Rexam (or an Affiliate) and which is used in connection with the manufacture and / or sale of beverage cans in the Divestment Business or is being developed for use in connection with the manufacture and / or sale of beverage cans in the Divestment Business as at the date of these Commitments. This license will exclude only the intellectual property associated with the following ongoing Ball development projects (none of which is commercialised and which is not necessary to the viability and competitiveness of the Divestment Business) (the "Excluded Development IP"):
 - (a) [...];
 - (b) [...];
 - (c) [...];
 - (d) [...]; and
 - (e) [...].
 - (ii) Any brands or logos currently held, as owner or licensee, by Ball, Rexam or their Affiliated Undertakings or any rights to the Ball or Rexam names or rights to sell the products manufactured in the plants included in the Divestment Business, with the Ball or Rexam names, other than a licence to use the Ball or Rexam name (as relevant) in respect of products produced on printing plates transferred at the time of Closing for the remaining life of those plates; and in respect of all stocks, work in progress and semi-finished and finished goods transferred that contain the Ball or Rexam name, until those goods have been sold.
 - (iii) Any rights to the ball.com or rexam.com websites or domain names.

Personnel

5. The Divestment Business shall not include (a) the personnel listed below; and (b) any additional personnel who do not spend the majority of their time working for the Divestment Business and who are not necessary for the viability and competitiveness of the Divestment Business.

[...]

Table 15

[...]

Job title	Name	Employing entity
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]

Table 2

[...]

Job title	Name	Employing entity
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]

Table 3

[...]

Job title	Name	Employing entity
[...]	[...]	[...]
[...]	[...]	[...]

[...]

Table 4

[...]

Job title	Name	Employing entity
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]

Table 5

[...]

Job title	Name	Employing entity
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]

[...]

Table 6

[...]

Job title	Name and location of incumbent	Employing entity
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]
[...]	[...]	[...]