



EUROPEAN COMMISSION
DG Competition

***Case M.7567 – BALL /
REXAM***

Only the English text is available and authentic.

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

Purchaser approval - Art. 8(2)

Date: 17.06.2016



EUROPEAN COMMISSION

Brussels, 17.6.2016
C(2016) 3891final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
IMPLEMENTATION OF
COMMITMENTS

To the notifying party

Dear Sir/Madam,

**Subject: Case M.7567 - BALL / REXAM
Approval of Ardagh Group S.A. as purchaser of the Divestment
Business in light of your reasoned proposal of 29 April 2016 and the
Trustee's opinion of 6 May 2016**

I. FACTS AND PROCEDURE

1. By decision of 15 January 2016 (the "Decision") based on Article 8(2) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings¹ (the "Merger Regulation"), the Commission declared the transaction by which Ball Corporation ("Ball") is to acquire the entire issued and to be issued share capital of Rexam PLC ("Rexam") (the "Transaction") compatible with the internal market subject to conditions and obligations (the "Commitments").

¹ OJ L 24, 29.01.2004, 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. In particular, the Commitments provide that Ball will divest the following facilities (the "Divestment Business") to a suitable purchaser:
 - Ball's beverage can body plants in Rugby and Wrexham (the UK), Weissenthurm, Hassloch and Hermsdorf (Germany), Oss (the Netherlands), Radomsko (Poland) and La Ciotat (France);
 - Rexam's beverage can body plants in Enzesfeld (Austria) and Valdemorillo (Spain);
 - Ball's beverage can end plants in Deeside (the UK) and Braunschweig (Germany);
 - Ball's Business and Technical Centre in Bonn; and
 - Ball's European head office site operated in Zurich (Switzerland).
3. On 22 April 2016, Ball, Rexam and the Ardagh Group S.A. ("Ardagh") entered into an Equity and Asset Purchase Agreement (the "Initial EAPA").
4. The Initial EAPA differed from the Commitments in two ways:
 - a. *Changes to legal entities*– [...] (together with [...]) would be retained by Ball and replaced by [...], a newly created company to which the French divestment assets are transferred. Moreover, Ball would retain [...], which is effectively a dormant company to which assets related to a plant retained by Ball have been transferred. Conversely, certain legal entities listed as excluded in the Commitments would be included in the Divestment Business.
 - b. *Changes in personnel* – Certain changes would be made, with some personnel not transferring eventually to the Divestment Business, and conversely other additional personnel transferring to the Divestment Business. Final personnel allocation would remain subject to Ball and Ardagh approaching certain staff prior to closing and agreeing individual arrangements where needed.
5. On 29 April 2016, Ball submitted a Reasoned Proposal, together with a signed copy of the Initial EAPA, proposing Ardagh Group S.A. ("Ardagh") for approval by the Commission as purchaser of the Divestment Business.
6. On 6 May 2016, ING Bank N.V. (the "Trustee") submitted its opinion ("Reasoned Opinion") on Ardagh's suitability as a purchaser. The Reasoned Opinion considers that Ardagh fulfils the criteria of the purchaser requirements listed in section D of the Commitments. The Reasoned Opinion also indicated that, on the basis of the Initial EAPA, the Divestment Business would be sold in a manner materially consistent with the Commitments.
7. On 9 June 2016, Ball, Rexam and Ardagh signed an Amendment to the EAPA, submitted to the Commission on 10 June 2016. The EAPA as amended (the "Final EAPA") also differs from the Commitments in the two ways described in paragraph 4 above. On 13 June 2016, Ball submitted an updated version of certain transitional services arrangements ("TSAs"). On 14 June 2016, Ball submitted a side letter to the EAPA on information access.

8. On 10 June 2016, the Trustee submitted an addendum to its Reasoned Opinion. The Trustee also submitted its view on the updated TSAs on 15 June 2016.

II. ASSESSMENT OF THE PROPOSAL

(a) Legal Framework

9. Pursuant to section D of the Commitments, the purchaser of the Divestment Business (the "Purchaser") must fulfil the following criteria:
 - The Purchaser must be independent of and unconnected to Ball;
 - The Purchaser must 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 Ball and other competitors;
 - The Purchaser must have the ability and willingness to develop the Divestment Business, including through investment in new capacity and keep pace with industry innovation; and
 - The acquisition of the Divestment Business by the Purchaser must neither be likely to create *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.

(b) Description of the Purchaser

10. Ardagh is company headquartered in Luxembourg, active in the manufacturing of glass and metal packaging for food, beverage and other consumer product industries. It currently operates 89 production facilities located in 21 countries across four continents and manufactured approximately 35 billion containers in 2015. It supplies more than 2,000 customers worldwide.

(c) Independence from the post-merger Ball

11. For the reasons set out below, the Commission concludes that Ardagh is independent and unconnected to the post-merger Ball.
12. First, there are currently no structural links, with the exception of the common shareholding in Copal SAS ("Copal") described below, between Ardagh and Ball. Neither Ardagh, nor any of its affiliates or subsidiaries, has any direct or indirect participation or interest in Ball. Ball does not hold any shares or interests in Ardagh or in any of its affiliates or subsidiaries. There are no board or management links between Ardagh and Ball.
13. Second, Ball and Ardagh's common shareholding in Copal is not such as to affect Ardagh's independence from Ball. Copal is a French tolling joint-venture for aluminium slugs that supplies Ball and Ardagh with slugs used in the production of aerosols. Copal accounts, however, only for a small part of Ardagh's and Ball's overall aluminium demand as both source most of their requirements on the merchant market.

14. Third, Ball and Ardagh have *de minimis* commercial relationships that do not affect Ardagh's independence from Ball. In 2015, Ardagh supplied [...] to Ball for a total value of approximately [...] euros. Moreover, in 2015 Ardagh made a one-off purchase of [...] from Ball for a total value of approximately[...] euros.

(d) Financial resources, proven expertise in the packaging sector and incentive to maintain and develop the Divestment Business as a viable and active competitor

15. For the reasons set out below, the Commission concludes that Ardagh has the financial resources, proven expertise in the packaging sector and incentive to maintain and develop the Divestment Business as a viable and active competitor.

16. First, on 29 April 2016, Ardagh launched a bond issuance to finance the acquisition of the Divestment Business which has been fully underwritten. It is expected, on the basis of pro-forma consolidated financial projections, that post-transaction Ardagh will have sufficient cash flow post-debt servicing to maintain and invest in the Divestment Business.

17. Second, Ardagh has a long experience in the packaging industry, in which it has been active since its establishment in 1932 as the Irish Glass Company. Ardagh currently offers a wide portfolio of packaging products to a broad range of customers worldwide. These include beverage producers such as Coca-Cola, AB InBev, Heineken, and Nestlé, some of which are also customers of the Divestment Business.

18. Third, Ardagh intends to implement the capital expenditure and growth plans for the Divestment Business developed by its current management and maintain the Divestment Business' existing R&D facilities at Bonn (Germany) and Elk Grove (the United States).

19. Fourth, Ardagh has completed several significant acquisitions in recent years that have resulted in a material growth of its activities.

20. Fifth, Ardagh has invested in new capacity, including the opening of two new metal can facilities in the United States, and technologies, such as a DWI technology for its Czech plant.²

21. Sixth, Ardagh has successfully completed R&D projects which have led to improvements to its existing products or to the launch of new ones, including improving the glass bottles it produces in its plant in Irvine, the United Kingdom and developing a new microwaveable bowl.³

² See <http://www.ardaghgroup.com/news-centre/ardagh-opens-two-new-can-manufacturing-facilities-in-america> and <http://www.ardaghgroup.com/news-centre/ardagh-invests-in-new-dwi-food-can-line-in-central-europe-2>.

³ See <http://www.ardaghgroup.com/news/facility-focus-irvine-scotland> and <http://www.ardaghgroup.com/news-centre/all-in-one-fondu-proves-the-value-of-collaboration-in-the-design-and-production-chain>.

(e) **Absence of *prima facie* competition concerns in the EEA**

22. For the reasons set out below, the Commission concludes that Ardagh's acquisition of the Divestment Business will not raise *prima facie* competition concerns in the EEA.
23. First, the activities of Ardagh and the Divestment Business do not overlap since Ardagh does not produce or sell beverage cans.
24. Second, there is no vertical relationship between Ardagh and the Divestment Business.

III. ASSESSMENT OF THE FINAL EAPA

25. For the reasons set out below, the Commission concludes that the Divestment Business will be sold pursuant to the Final EAPA in a manner consistent with the Commitments.
26. First, paragraph 19 of the Commitments states that "*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*".
27. Second, the differences between the Commitments and the Final EAPA will not affect the viability and competitiveness of the Divestment Business.
28. In the first place, in relation to changes in legal entities as proposed by Ball, the Divestment Business has indicated that those changes will not affect its viability and competitiveness.
29. In the second place, in relation to changes in personnel, the Divestment Business has been closely involved in discussions, notably relating to the personnel needs, and the changes address the needs of the Divestment Business.
30. In the third place, the inclusion of a comprehensive wrong-pockets clause under 4.17(c) of the Final EAPA will allow Ball and Ardagh to rectify any potential misallocations of assets.⁴
31. Third, the fact that, because of French law requirements, [...] will not affect the viability and competitiveness of the Divestment Business. The French part of the Divestment Business will continue to be held separate and ring-fenced until the closing of the sale of that part of the Divestment Business.
32. Fourth, in its Reasoned Opinion and the addendum, the Trustee came to the view that the changes in the Final EAPA and the fact that the French part of the Divestment Business may occur later than the closing of the sale of the rest of the Divestment Business will not affect the viability and competitiveness of the Divestment Business.

⁴ [...]

IV. CONCLUSION

33. On the basis of the above assessment, the Commission approves Ardagh as a suitable purchaser and concludes that the Divestment Business will be sold pursuant to the Final EAPA in a manner consistent with the Commitments.
34. This decision only constitutes approval of the proposed purchaser identified herein and the Final EAPA. This decision does not constitute a confirmation that Ball has complied with its Commitments.
35. This decision is based on paragraphs 18 and 19 of the Commitments attached to the Commission Decision of 15 January 2016.

For the Commission

(signed)

*Johannes LAITENBERGER
Director-General*