

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

_____)	
In the Matter of)	
)	
BALL CORPORATION,)	
a corporation,)	
)	
and)	Docket No. C-4581
)	
REXAM PLC,)	
a public limited company.)	
_____)	

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Ball Corporation (“Ball”) of the voting securities of Respondent Rexam PLC (“Rexam”), collectively “Respondents,” and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34,

the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Ball Corporation, is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Indiana with its executive offices and principal place of business at 10 Longs Peak Drive, Bloomfield, CO 80021.
2. Respondent Rexam PLC, is a public limited company organized, existing, and doing business under, and by virtue of, the laws of England and Wales with its principal executive offices located at 4 Millbank, London SW1P 3XR, United Kingdom, and its United States address for service of process and the Complaint, the Decision and Order, and the Order to Maintain Assets, as follows: Corporate Secretary, Rexam Beverage Can Company, 4201 Congress Street, Suite 340, Charlotte, NC 28209.
3. The Commission has jurisdiction over the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order to Maintain Assets, the following definitions, and all other definitions used in the Consent Agreement and proposed Decision and Order (and when made final, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Ball” means Ball Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Ball Corporation, including, but not limited to, Ball UK Acquisition Ltd., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Ball includes Rexam, after the Acquisition Date.
- B. “Rexam” means Rexam PLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Rexam PLC, including, but not limited to, Rexam Beverage Can Company (“RBCC”), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Respondents” means Ball and Rexam, individually and collectively.
- D. “Commission” means the Federal Trade Commission.

- E. “Decision and Order” means the:
1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and
 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.
- F. “Acquirer” means:
1. Ardagh; or
 2. A Person approved by the Commission to acquire the Aluminum Beverage Cans Business pursuant to the Decision and Order.
- G. “Aluminum Beverage Cans Business” means all of RBCCs assets, including Tangible Personal Property and intangible assets, businesses and goodwill, related to the research, development, manufacture, distribution, marketing or sale of Aluminum Beverage Cans Products including, but not limited to:
1. The Aluminum Beverage Cans Manufacturing Facilities;
 2. The Aluminum Beverage Cans Corporate Facility;
 3. The Aluminum Beverage Cans Technical and Engineering Facility;
 4. The Aluminum Beverage Cans Contracts;
 5. An upfront, paid up, perpetual and royalty-free license to all Intellectual Property relating to the research, development, manufacture, distribution, marketing or sale of Aluminum Beverage Cans Products; *PROVIDED, HOWEVER*, this license shall include rights to all of Respondent Rexam’s Intellectual Property related to the Aluminum Beverage Cans Products worldwide;
 6. All inventories relating to Aluminum Beverage Cans Products, affiliated with an Aluminum Beverage Cans Manufacturing Facility, wherever located;
 7. All consents, licenses, certificates, registrations, or permits issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement relating to the research, development, manufacture, distribution, marketing or sale of Aluminum Beverage Cans Products, and all pending applications therefor or renewals thereof;
 8. All Business Records relating to the research, development, manufacture, distribution, marketing or sale of Aluminum Beverage Cans Products; *PROVIDED, HOWEVER*, that where documents or other materials included in the Business Records to be divested contain information: (a) that relates both to the

Aluminum Beverage Cans Business to be divested and to the Retained Business or other products or businesses and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Aluminum Beverage Cans Business to be divested; or (b) for which the relevant party has a legal obligation to retain the original copies, the relevant party shall be required to provide only copies or relevant excerpts of the documents and materials containing this information, then Respondents may keep such records and provide copies with appropriate redactions to the Acquirer. In instances where such copies are provided to the Acquirer, the relevant party shall provide the Acquirer access to original documents under circumstances where copies of the documents are insufficient for evidentiary or regulatory purposes.

PROVIDED, HOWEVER, assets contained in Schedules 1.2(c), 1.2(m), 1.2(n)(i), 1.2(n)(ii), and 1.2(v) of the Divestiture Agreement shall be excluded.

- H. “Aluminum Beverage Cans Designated Employee” means any person employed by RBCC (1) at the Aluminum Beverage Cans Manufacturing Facilities; (2) working at or out of the Aluminum Beverage Cans Corporate Facility; (3) at the Aluminum Beverage Cans Technical and Engineering Facility; (4) who has spent over twenty-five percent (25%) of his or her time, from January 2015 to December 2015, working for or on behalf of the Aluminum Beverage Cans Business, wherever located; or (5) identified by agreement between Respondent Rexam and an Acquirer and made a part of a Divestiture Agreement including, but not limited to, the Aluminum Beverage Cans Divestiture Employees.
- I. “Aluminum Beverage Cans Divestiture Employees” are certain employees working at or out of the Aluminum Beverage Cans Corporate Facility and the Aluminum Beverage Cans Technical and Engineering Facility, and are identified in Non-Public Confidential Appendix C attached to the Decision and Order.
- J. “Ardagh” means Ardagh Group S.A., a limited liability corporation organized, existing, and doing business under, and by virtue of, the laws of Luxembourg with its office and principal executive offices located at 56, rue Charles Martel, Luxembourg, and its United States address for business operations is 401 E. Jackson Street, Suite 2800, Tampa, FL 33062.
- G. “Confidential Business Information” means information owned by, or in the possession or control of, RBCC that is not in the public domain and that is directly related to the conduct of the Aluminum Beverage Cans Business. The term “Confidential Business Information” *excludes* the following:
1. information specifically excluded from the Aluminum Beverage Cans Business conveyed to the Acquirer;
 2. information that is contained in documents, records, or books of RBCC that is provided to an Acquirer that is unrelated to the Aluminum Beverage Cans

Business acquired by that Acquirer or that is exclusively related to businesses or products retained by Respondent Rexam;

3. information that is protected by the attorney work product, attorney-client, joint defense, or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition law; and
4. information that Respondent Rexam demonstrates to the satisfaction of the Commission, in the Commission's sole discretion:
 - a. Was or becomes generally available to the public other than as a result of disclosure by Respondent Rexam;
 - b. Is necessary to be included in Respondent Rexam's mandatory regulatory filings; *PROVIDED, HOWEVER*, that Respondent Rexam shall make all reasonable efforts to maintain the confidentiality of such information in the regulatory filings;
 - c. Was available, or becomes available, to Respondent Ball on a non-confidential basis, but only if, to the knowledge of Respondent Ball, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information;
 - d. Is information the disclosure of which is consented to by the Acquirer;
 - e. Is necessary to be exchanged in the course of consummating the Acquisition or the transaction under the Divestiture Agreement or any Remedial Agreement;
 - f. Is disclosed in complying with the Order;
 - g. Is information the disclosure of which is necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries, and decisions of Government Entities; or
 - h. Is disclosed in obtaining legal advice.

K. "Divestiture Agreement" means:

1. the Equity and Asset Purchase Agreement by and among Ardagh Group S.A., Ball Corporation, and Rexam PLC, dated April 22, 2016, and all amendments, exhibits, attachments, agreements, and schedules thereto, attached to the Decision and Order as Non-public Confidential Appendix A; or
2. any agreement that receives the prior approval of the Commission between Respondents (or between a Divestiture Trustee appointed pursuant to Paragraph IV. of this Order) and an Acquirer to purchase the Aluminum Beverage Cans

Business, and all amendments, exhibits, attachments, agreements, and schedules thereto that have been approved by the Commission.

- L. “Divestiture Date” means the date on which Respondent Rexam (or a Divestiture Trustee) closes on the divestiture of the Aluminum Beverage Cans Business as required by Paragraph II (or Paragraph IV) of the Decision and Order.
- M. “Employee Access Period” means one (1) year from the Divestiture Date.
- N. “Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph III of the Decision and Order.
- O. “Monitor Agreement” means the Monitor Agreement dated February 25, 2016, between ING Financial Markets LLC, and Ball Corporation. The Monitor Agreement is attached to the Decision and Order as Public Appendix E.
- P. “Orders” means the Decision and Order and the Order to Maintain Assets.
- Q. “Remedial Agreement(s)” means:
1. Any agreement between Respondents and an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, and divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission’s determination to make this Order final; and/or
 2. Any agreement between Respondents and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Order.
- R. “Transition Services” means any transitional services required by the Acquirer for the operation of the divested business including, but not limited to administrative assistance (including, but not limited to, order processing, shipping, accounting, and information transitioning services), technical assistance, and supply agreements.
- S. “Transitional Services Agreement(s)” means:
1. The agreements between Respondents and Ardagh for the provision of Transition Services and attached to the Decision and Order as Non-Public Confidential Appendix B; or

2. Any agreement entered into between Respondents and an Acquirer (or the Divestiture Trustee and an Acquirer) for the provision of Transition Services.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective:

- A. Respondents shall take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Aluminum Beverage Cans Business, to minimize any risk of loss of competitive potential for such Aluminum Beverage Cans Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Aluminum Beverage Cans Business except for ordinary wear and tear. Respondents shall not sell, transfer, encumber, or otherwise impair the Aluminum Beverage Cans Business (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the related Aluminum Beverage Cans Business.
- B. Respondents shall maintain the operations of the Aluminum Beverage Cans Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such business) and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors; customers; employees; and others having business relations with the Aluminum Beverage Cans Business. Respondents' responsibilities shall include, but are not limited to, the following:
 1. Providing the Aluminum Beverage Cans Business with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business, and to carry on, at least at their scheduled pace, all capital projects, business plans, and promotional activities for the Aluminum Beverage Cans Business;
 2. Continuing, at least at their scheduled pace, any additional expenditures for the Aluminum Beverage Cans Business authorized prior to the date the Consent Agreement was signed by Respondents, including, but not limited to, all research, development, manufacturing, distribution, marketing, and sales expenditures;
 3. Providing such resources as may be necessary to respond to competition against the Aluminum Beverage Cans Business and/or to prevent any diminution in sales of each of the Aluminum Beverage Cans Products prior to the divestiture;
 4. Making available for use by the Aluminum Beverage Cans Business funds sufficient to perform all routine maintenance and other maintenance as may be necessary to, and all replacements of, the assets related to the Aluminum Beverage Cans Business;

5. Providing the Aluminum Beverage Cans Business with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the Aluminum Beverage Cans Business;
 6. Providing such support services to the Aluminum Beverage Cans Business as were being provided by Respondents as of the date the Consent Agreement was signed by Respondents; and
 7. Maintaining a work force at least equivalent in size, training, and expertise to what has been associated with the Aluminum Beverage Cans Business for the last fiscal year.
- C. Until the Divestiture Date, Respondents shall provide all Aluminum Beverage Cans Designated Employees with reasonable financial incentives to continue in their positions and to research, develop, manufacture, and/or market the Aluminum Beverage Cans Products consistent with past practices and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Aluminum Beverage Cans Business pending divestiture. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondents until the divestiture of the Aluminum Beverage Cans Business has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to prevent any diminution of the competitiveness of the Aluminum Beverage Cans Business.
- D. From the date Respondents execute the Divestiture Agreement until the Employee Access Period terminates, Respondents shall provide a proposed Acquirer with the opportunity to recruit and employ any Aluminum Beverage Cans Designated Employee in conformance with the following:
1. No later than ten (10) days after a request from a proposed Acquirer, or staff of the Commission, Respondents shall provide a proposed Acquirer with the following information for each Aluminum Beverage Cans Designated Employee, as and to the extent permitted by law:
 - a. name, job title or position, date of hire and effective service date;
 - b. a specific description of the employee's responsibilities;
 - c. the base salary or current wages;
 - d. the most recent bonus paid, aggregate annual compensation for RBCC's last fiscal year, and current target or guaranteed bonus, if any;
 - e. employment status (*i.e.*, active or on leave or disability; full-time or part-time);

- f. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly-situated employees; and
 - g. at a proposed Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant Aluminum Beverage Cans Designated Employee(s);
2. No later than ten (10) days after a request from a proposed Acquirer, Respondents shall provide the proposed Acquirer with:
- a. an opportunity to meet, personally and outside the presence or hearing of any employee or agent of Respondents, with any Aluminum Beverage Cans Designated Employee;
 - b. an opportunity to inspect the personnel files and other documentation relating to any such employee, to the extent permissible under applicable laws; and
 - c. to make offers of employment to any Aluminum Beverage Cans Designated Employee;
3. Respondents shall (i) not interfere, directly or indirectly, with the hiring or employing by a proposed Acquirer of any Aluminum Beverage Cans Designated Employee, (ii) not offer any incentive to any Aluminum Beverage Cans Designated Employee to decline employment with a proposed Acquirer, (iii) not make any counteroffer to any Aluminum Beverage Cans Designated Employee who receives a written offer of employment from a proposed Acquirer, and (iv) remove any impediments within the control of Respondents that may deter any Aluminum Beverage Cans Designated Employee from accepting employment with a proposed Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability of such employee to be employed by a proposed Acquirer; *PROVIDED, HOWEVER*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee.
- E. Respondents shall provide reasonable financial incentives to the Aluminum Beverage Cans Divestiture Employees as needed to facilitate the employment of such employees by the Acquirer; *PROVIDED, HOWEVER*, (i) if the proposed Acquirer has made a written offer of employment to an Aluminum Beverage Can Divestiture Employee, and (ii) such employee has declined employment with the proposed Acquirer, then Respondents, in consultation with the Monitor (if one is appointed), shall make available a substitute employee with substantially the same skills and job function to the Acquirer for employment.

- F. For a period of two (2) years after the Divestiture Date, Respondents shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Person employed by an Acquirer of the Aluminum Beverage Cans Business, to terminate his or her employment relationship with an Acquirer;

PROVIDED, HOWEVER, Respondents may: (1) advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, so long as these actions are not targeted specifically at any Aluminum Beverage Cans Designated Employees; and (2) hire employees of the Aluminum Beverage Cans Business who apply for employment with Respondents, so long as such individuals were not solicited by Respondents in violation of this paragraph;

PROVIDED, FURTHER, HOWEVER, that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any employee of the Aluminum Beverage Cans Business if an Acquirer has notified Respondents in writing that an Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the individual's employment has been terminated by an Acquirer.

- G. Respondents shall ensure that employees of the Respondents' Retained Business shall not receive, have access to, use or continue to use, or disclose any Confidential Business Information pertaining to the Aluminum Beverage Cans Business except in the course of:
1. Performing their obligations as permitted under this Order to Maintain Assets or the Decision and Order;
 2. Performing their obligations under any Remedial Agreement; or
 3. Complying with financial reporting requirements or environmental, health, and safety policies and standards, ensuring the integrity of the financial and operational controls on the Aluminum Beverage Cans Business, obtaining legal advice, defending legal claims, investigations, or enforcing actions threatened or brought against the Aluminum Beverage Cans Business, or as required by law;

PROVIDED, HOWEVER, for purposes of this Paragraph, Respondents' employees who provide or are involved in the receipt of support services under this Order to Maintain Assets shall be deemed to be performing obligations under the Decision and Order.

- H. If the receipt, access to, use, or disclosure of Confidential Business Information pertaining to the Aluminum Beverage Cans Business is permitted to Respondents' employees under Paragraph II.F. of the Decision and Order, Respondents shall limit such information (1) only to those Persons who require such information for the purposes permitted under Paragraph II.F. of the Decision and Order, (2) only to the extent such Confidential Business Information is required, and (3) only after such Persons have signed an appropriate agreement in writing to maintain the confidentiality of such information.

- I. Respondents shall enforce the confidentiality terms of this Order to Maintain Assets and the Decision and Order as to any Person other than the Acquirer of the Aluminum Beverage Cans Business and take such action as is necessary to cause each such Person to comply with these terms, including training of Respondents' employees and all other actions that Respondents would take to protect its own trade secrets and proprietary information.
- J. Respondents shall adhere to and abide by the Remedial Agreements (which agreement shall not vary or contradict, or be construed to vary from or contradict, the terms of the Orders, it being understood that nothing in the Orders shall be construed to reduce any obligations of Respondents under such agreements), which are incorporate by reference into this Order to Maintain Assets and made a part hereof.
- K. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Aluminum Beverage Cans Business within the Geographic Territory through its full transfer and delivery to the Acquirer, to minimize any risk of loss of competitive potential for the Aluminum Beverage Cans Business within the Geographic Territory, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Aluminum Beverage Cans Business except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

- A. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Monitor") to assure that the Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements. The Commission hereby appoints ING Financial Markets LLC ("ING") as the Monitor and approves the Monitor Agreement between ING and Respondents which agreement, *inter alia*, names Philip Comerford, Jr., as ING designated Project Manager.
- B. Not later than one (1) day after the appointment of the Monitor, Respondents shall, pursuant to the Monitor Agreement and to the Orders, confer on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- C. The Monitor shall serve until the later of (1) eighteen (18) months after the Divestiture Date or (2) the termination of all Respondents' obligations under all Remedial Agreements; *PROVIDED, HOWEVER*, the Commission may extend or modify this period as may be necessary to accomplish the purposes of the Orders.
- D. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related

requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission, including, but not limited to:

- a. Assuring that Respondents expeditiously comply with all of their obligations and performs all of their responsibilities as required by this Orders and the Remedial Agreements;
 - b. Monitoring all Remedial Agreements; and
 - c. Assuring that Confidential Business Information is not received or used by Respondents or the Acquirer, except as allowing in the Orders;
2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of the Orders and the Remedial Agreements;
 4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with its obligations under the Orders and the Remedial Agreements. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with the Orders and the Remedial Agreements;
 5. The Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission;
 6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph III, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph III.D.5 of this Order to Maintain Assets and Paragraph III.D.5 of the Decision and Order;

7. Respondents shall report to the Monitor in accordance with the requirements of the Orders and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by the Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under the Orders and the Remedial Agreements;
 8. Within one (1) month from the date the Monitor is appointed pursuant to this Paragraph, every sixty (60) days thereafter, and otherwise requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondents' of their obligations under the Orders and the Remedial Agreements;
 9. Respondents may require the Monitor and each of the Monitors consultants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor.
- G. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the proposed substitute Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed substitute Monitor, Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor. Not later than ten (10) days after appointment of a substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the substitute Monitor all the rights and powers necessary to permit the substitute Monitor to monitor Respondent's compliance with the terms of the Orders and the Remedial Agreements in a manner consistent with the purposes of the Orders.
- H. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders and the Remedial Agreements.

IV.

I.
IT IS FURTHER ORDERED that:

- A. Within five (5) days of the Acquisition Date, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Respondents shall submit to the Commission and, if appointed, the Monitor, a verified written report setting forth in detail the manner and form in which it intends to comply, are complying, and have complied with this Order:
 - 1. Within thirty (30) days after the date this Order to Maintain Assets becomes final;
 - 2. Every thirty (30) days thereafter until Respondents have fully divested, licensed, transferred and/or granted the Aluminum Beverage Cans Business to an Acquirer; and
 - 3. Every three (3) months thereafter so long as Respondents have a continuing obligation under this Order and/or the Remedial Agreements to render services to the Acquirer or otherwise to comply with this Order;

PROVIDED, HOWEVER, THAT, AFTER THE PROPOSED Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as the reports required to be submitted by Respondents pursuant to the Decision and Order.

V.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondents;
- B. Any proposed acquisition, merger, or consolidation of Respondents; or
- C. Any other change in the Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VI.

IT IS FURTHER ORDERED that for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, with respect to any matter contained in this Order, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence,

memoranda and other records and documents in the possession or under the control of Respondents related to compliance with the Consent Agreement and/or this Order, which copying services shall be provided by Respondents at the request of the authorized representative of the Commission and at the expense of Respondents; and

- B. Upon five (5) days' notice to Respondents and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the later of:

- A. The day after the divestiture of the Aluminum Beverage Cans Business, as required by and described in the proposed Decision and Order, has been completed and the Monitor, in consultation with the Commission staff and the Acquirer, notified the Commission that all assignments, conveyances, deliveries, grants, license, transactions, transfers and other transitions related to such divestiture are complete;
- B. The day the proposed Decision and Order becomes final; or
- C. The Commission otherwise directs that this Order to Maintain Assets be terminated;

PROVIDED, HOWEVER, if the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of the Commission Rule 2.34, 16 C.F.R. § 2.34, this Order to Maintain Assets shall terminate no later than three (3) days after such action by the Commission.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: June 28, 2016