

AKZO NOBEL N.V./METLAC HOLDING S.R.L. MERGER INQUIRY

Summary of hearing with Rexam Beverage Can Europe held on 22 June 2012

Background

1. Rexam Beverage Can Europe (Rexam) is part of the larger global company, Rexam plc. The majority of the Rexam group is dedicated towards the manufacture of beverage cans, but also manufactures other packaging solutions in other markets and industries. Rexam covers Europe, Asia and the Middle East; whilst the other two beverage arms of the Rexam group cover North America and South America. Rexam services 25 can body and can end plants in the European market.
2. Rexam has continued to grow in recent years through the acquisition of a number of beverage can manufacturers.

Market

3. Within the European beverage can market, Rexam's main competitors were Ball and Crown, closely followed by Can-Pack which was newer to the market and so was arguably smaller. Ball and Crown also operated in market sectors where Rexam did not, such as the food and general line sectors, and also three-piece cans.
4. In order to differentiate from its competitors, Rexam needed to offer customers something new and exclusive, and so relationships with suppliers were important. [REDACTED]
5. Coatings manufacturers were increasingly seeking to protect their innovations in the external coatings market through patents given the important competitive advantages conferred by developing differentiated product offerings. Historically, the industry had seen a lot of 'copycatting', where innovation by one coatings manufacturer was copied by another. Innovation within the internal coatings market tended to focus on reducing costs rather than enhancing performance, since all coatings had to meet certain technical requirements, and beyond such requirements brand owners did not see significant value in innovations in the same way they did with external coatings.
6. Internal coatings had a novel intellectual property because of the legal duty required to protect the filling inside the can. Rexam viewed external coatings as a differentiator, where innovation on the colour, touch or feel of a can could be the key to winning new business. Internal coating specifications varied for different products but could also vary for different beverages. [REDACTED] To bring to a halt to other product lines, or to change lacquers and/or sprays, would increase the downtime in its production facilities. It currently sprayed [REDACTED] cans per minute.
7. The beer and beverage sector was a distinct market segment compared with other types of coatings within the general line or caps and closures sectors because of the way products were manufactured. Caps and closures, for example, were made on a single flat sheet, whereas cans had to be sprayed when they were fully formed.
8. The European market was currently pretty flat, but there was the potential for growth—[REDACTED]. There would always be competition between aluminium, plastic and glass.

Purchasing process

9. Price was a significant driver behind purchasing decisions and technical support at its plants was also key. [X]
10. Contracts were awarded via a tender process. Companies tendering were unaware of what others were bidding but were aware of what the raw material cost differences were. The process was a fairly iterative one, with companies proffering new bids if their prices were not competitive enough. Metlac was a competitive bidder and often the lowest cost price leader, [X].
11. Rexam used the same contract template for all suppliers; key terms included provisions on competitive pricing, annual pricing, [X] and Rexam's payment terms.
12. [X]

Switching

13. Switching from one coating to another was not instant and required significant start-up costs. For example, to start production of internal spray from scratch could cost up to £15 million and to start production of over-varnish from scratch could cost £5–£8 million.

BPA-NI technology

14. Rexam indicated that rather than developing bisphenol-A (BPA)-free products, coatings manufacturers were looking to develop BPA non-intent (BPA-NI) products, ie coatings that had not had BPA intentionally added to them, as was currently the case with epoxy resins. This emphasis recognized the fact that BPA was present in the environment (as the chemical was very widely used), making it extremely difficult to guarantee that any given product would not contain traces of it. The French National Assembly voted to suspend BPA on all food contact packaging from 1 January 2014 (and for infants and small children (under 3) from 1 January 2013) subject to a report from the French Food and Environmental Agency on the safety of alternative solutions. The industry was working collectively with whole supply chain to identify and qualify alternatives for beverage can coatings but to date no BPA-NI coating had been successfully qualified.
15. There were currently some formulations used commercially (in the baby food segment), [X].
16. [X]
17. [X]
18. [X]

Customer sponsorship of entry and/or expansion

19. Qualifying new products in the internal spray market was both costly and time-consuming. [X]
20. [X]

21. Rexam had sought to assist a number of coatings manufacturers to enter the market, [X].
22. The smaller suppliers [X] had no desire to expand [X]. They were reluctant to enter the beverage can coatings market, both external and internal, as a result of the significant costs associated with developing new products and supporting customers with scaling them up, together with the low margins to be made in these markets.

Barriers to entry

23. Start-up costs (such as those quoted in paragraph 13 above) were a barrier to entry for small suppliers. For all suppliers, production costs and credibility in the market were also barriers to entry.
24. Every time Rexam switched products, it was required to go through a customer's rigorous approval process (even if the product was the same chemical formulation but just another company providing it), which was another (relatively high) barrier to entry. For example, when it switched a number of its plants from [X] to [X], it had to go to its customers ([X]) and seek their permission despite the fact that [X] product had already been used for years in a number of plants throughout Europe.
25. [X]

Parties to the merger

26. Rexam had brought Metlac into the marketplace and supported its development over a number of years both because Metlac offered more innovative products and because it offered more competitive prices and contract terms compared with the larger coatings suppliers.
27. What made Metlac different from its competitors was that it was always competitive. [X]
28. Metlac had a proven track record and could be trusted to supply on a large scale [X]. Rexam believed that Ball and Crown were therefore converting some of their plants to Metlac products.
29. The acquisition of Metlac ('the market price and innovation driver, and the go-getter') by AkzoNobel would affect competition in the external coatings market. [X]