number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at :// . . / / by following the instructions on the web-based form. If this Notice appears at :// . . /#! , you also may file a comment through that Web site.

If you file your comment on paper, write ''In the Matter of Ball Corporation and Rexam PLC, File No. 151 0088—Consent Agreement'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at :// . . to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 28, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at :// . . / / . .

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. FTC Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Agreement Containing Consent Order To Aid Public Comment

I. Introduction and Background

Pursuant to an agreement dated February 19, 2015 (the ''Acquisition''), Ball Corporation (''Ball'') seeks to acquire Rexam PLC (''Rexam'') in a transaction valued at approximately £5.4 billion, or $8.4 billion, at the time the Acquisition was announced. In order to preserve competition that would be lessened as a result of the proposed Acquisition, the Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from Ball and Rexam. The Commission has also issued a Complaint and Decision & Order, and has assigned a Monitor Trustee to oversee compliance with the Consent Agreement.

The Commission's Complaint alleges that the proposed Acquisition, if consummated, would violate 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, by lessening competition in the markets for standard 12-ounce aluminum beverage cans (''Standard Cans'') and specialty aluminum beverage cans (''Specialty Cans'') in the United States. The Consent Agreement would remedy the alleged violations by restoring the competition that would be lost as a result of the proposed Acquisition.

Under the terms of the proposed Consent Agreement, Ball and Rexam are required to divest seven aluminum can body plants, one aluminum can end plant, and other innovation and support functions in order to preserve competition in the relevant markets in the United States. These manufacturing plants account for the majority of Rexam's sales in the United States. Ball and Rexam have agreed to divest these and additional assets around the world to Ardagh Group S.A. (''Ardagh'') in a transaction entered into on April 22, 2016 and valued at $3.42 billion, including assumption of liabilities.

The proposed Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Consent Agreement and any comments received, and decide whether the Consent Agreement should be withdrawn, modified, or made final.

II. The Parties

Ball, an Indiana corporation headquartered in Broomfield, CO, is the largest manufacturer of aluminum beverage cans in the both the United States and the world. In 2015, Ball had total sales of $8.0 billion, 74% of which were derived from its worldwide metal beverage container business. Approximately 16% of Ball's revenues come from its worldwide sales of metal food and household containers, and approximately 10% from its U.S. aerospace business. In 2015, Ball had approximately $2.7 billion in sales of aluminum beverage cans in the United States.

Rexam is the second-largest manufacturer of aluminum beverage cans in North America and the world. Rexam is a United Kingdom company headquartered in London. Rexam manufactures only aluminum beverage containers today, after selling its plastic packaging business in 2011 and its glass manufacturing business in 2005. In 2015, Rexam had total aluminum beverage container sales of about $5.7 billion, with approximately $1.75 billion coming from the United States.

Ardagh, headquartered in Luxembourg, is one of the world's largest producers of glass bottles for the beverage industry and metal cans for the food industry. Ardagh does not currently produce aluminum cans for the beverage industry, but it serves many of the same customers as Ball and Rexam through its glass bottle business. In 2015, Ardagh had sales of approximately $5.9 billion, with approximately $3.6 billion coming from glass packaging and $2.3 billion from metal food packaging.

III. Standard Cans

The first relevant line of commerce in which to analyze the Acquisition is standard 12-ounce aluminum beverage cans (''Standard Cans''). Approximately 3 out of every 4 beverage cans sold in the United States today are Standard Cans, which are found, for instance, in a 12-packrwtresgbonated ered intt dbus would be lost e 's reTj -m shelf life, filling efficiency, recyclability, compact storage, and relatively low cost.

Other packaging substrates, such as plastic bottles and glass bottles, do not serve as competitive constraints to Standard Cans. Beverage producers sell their products in different types of containers in order to meet consumer demand, and could not substitute other container types for Standard Cans without risking a loss in sales. Beverage producers have also invested substantial sums of money in specialized filling lines that are designed to fill either aluminum cans, plastic bottles, or glass bottles, and cannot switch from one container type to another. As a result, beverage producers negotiate for Standard Cans independently from plastic bottles and glass bottles, and do not shift volumes between Standard Cans and other packaging substrates in response to fluctuations in their relative prices.

The relevant geographic markets in which to analyze competition for Standard Cans are regional. Beverage producers incur significant freight costs from shipping empty cans to their filling plants. For this reason, manufacturers of Standard Cans have built a network of plants throughout the United States to meet regional customer demand and minimize shipping costs. Although aluminum can manufacturers often ship Standard Cans several hundred miles and win bids when they are not the closest supplier, it is not common or cost-effective for Standard Cans to ship cross-country. As a result, the Complaint identifies three regional markets in the United States in which substantial competition exists between Ball and Rexam for the sale of Standard Cans: (1) The South/Southeast; (2) the Midwest; and (3) the West Coast, consisting primarily of California.

The Commission often calculates the Herfindahl-Hirschman Index (''HHI'') to assess market concentration. Under the Federal Trade Commission and Department of Justice Horizontal Merger Guidelines, markets with an HHI above 2,500 are generally classified as ''highly concentrated,'' and acquisitions ''resulting in highly concentrated markets that involve an increase in the HHI of more than 200 points will be presumed to be likely to enhance market power.'' [2] Absent the proposed remedy, the Acquisition would increase HHIs for Standard Cans by 1,712 points to 4,874 in the South/Southeast; by 2,201 points to 5,050 in the Midwest; and by 1,673 points to 4,680 on the West Coast. As a result, there is a presumption that the proposed merger of Ball and Rexam would substantially lessen competition in each of the regional markets for Standard Cans.

IV. Specialty Cans

The second relevant line of commerce in which to analyze the Acquisition is an assortment of specialty aluminum beverage cans (''Specialty Cans''), which come in a variety of dimensions that differ from Standard Cans. Specialty Cans include 7.5-ounce and 8-ounce slim cans, which are narrower and shorter than Standard Cans; 12-ounce sleek cans, which are narrower and taller than standard 12-ounce cans; 16-ounce cans, which have the same diameter as Standard Cans but are taller; 24-ounce cans, which are wider and taller than Standard Cans; and other aluminum cans in non-standard shapes and sizes. Specialty Can sales have been growing as beverage producers seek to package their products in new shapes and sizes to reach different consumers and consumption occasions.

Beverage producers package in different types of Specialty Cans for different reasons. For example, carbonated soft drink producers package some of their products in 7.5-ounce slim cans specifically to reach consumers who want a smaller portion in an attractive, sub-100 calorie package. Popular with producers of flavored malt beverages are 8-ounce slim cans. Energy drink producers package in 16-ounce and other ''sleek'' cans in order to differentiate their products and convey a premium image in ways that cannot be achieved by using Standard Cans. Some tea and energy drink producers further differentiate their products and convey value by packaging in large 24-ounce cans.

Although one type of Specialty Can is not typically a substitute for another, it is appropriate to group or cluster the different Specialty Cans together for the purposes of market definition analysis because each of the products in the assortment is offered under similar competitive conditions. As such, grouping the many different types of Specialty Cans into a single cluster enables a more efficient evaluation of competitive effects.

Beverage producers would not substitute Standard Cans, glass bottles, plastic bottles, or other container types for Specialty Cans in sufficient quantities to defeat a hypothetical, small but significant and non-transitory increase in the price of Specialty Cans. Beverage producers package in specific shapes and sizes of Specialty Cans to maximize sales and attract certain customers who would not purchase their products in a different package type. Moreover, beverage producers have made substantial investments in infrastructure that are used to fill Specialty Cans and that cannot be used to fill PET bottles or glass bottles.

The relevant geographic market in which to analyze Specialty Cans is the United States. A national market is appropriate because each Specialty Can type is produced at only a small number of locations nationwide, and Specialty Cans are shipped over much longer distances than Standard Cans, often over 1,000 miles. Specialty Cans of particular shapes and sizes are produced at only a few locations in the United States because their volumes are only a small fraction of the volume of Standard Cans, and it is not cost-effective to spread such small volumes across a large number of plants.

Ball and Rexam are the two largest suppliers of Specialty Cans in the United States with shares of approximately 56% and 21%, respectively, across all Specialty Can sizes. Absent the proposed remedy, the Acquisition would increase HHIs for Specialty Cans by 2,284 points to 6,267 in the United States. As a result, there is a presumption that the proposed merger of Ball and Rexam would substantially lessen competition in the national market for Specialty Cans.

V. Effects of the Acquisition

Absent relief, the Acquisition would likely cause significant competitive harm in the markets for the manufacture and sale of Standard Cans and Specialty Cans to beverage producers. The Acquisition would eliminate substantial direct competition between Ball and Rexam for the sale of Standard Cans and Specialty Cans. In individual contract negotiations with Ball and Rexam, beverage producers have been able to secure better prices and other terms by switching, or threatening to switch, their business from one supplier to the other. In some of these negotiations, no other suppliers besides Ball and Rexam have submitted a bid, and beverage producers have therefore depended on the competition between Ball and Rexam to obtain a contract with favorable terms. The Acquisition would also increase the ease and likelihood of anticompetitive coordination between the only two remaining independent beverage can suppliers, Ball and Crown Holdings, Inc. Thus, the Acquisition would likely result in higher prices and a reduction in quality, selection, service, and innovation.

[2] 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines § 5.3.

VI. Entry

Entry in the manufacture of Standard Cans and Specialty Cans would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the likely competitive harm from the Acquisition. Considerable entry barriers exist in the manufacture of Standard Cans and Specialty Cans, including, but not limited to, substantial capital costs needed to construct a new aluminum can plant and significant volume requirements necessary to run a plant efficiently. For Standard Cans, a consistent decline in demand has created a further disincentive to entry, which has led to a steady removal of capacity for over 20 years. With respect to Specialty Cans, a new entrant would be at a significant disadvantage if it were to construct new Specialty Can lines compared to incumbent suppliers (led by Ball and Rexam) that can convert Standard Can lines to Specialty Can production at lower cost.

The threat of vertical integration by beverage producers is also unlikely to deter or counteract the competitive harm from the Acquisition. A single beverage can plant requires an annual production volume in the billions of cans to run profitably, which would preclude all but the very largest beverage producers from contemplating vertical integration. Moreover, it is difficult for even the largest beverage producers to make a credible threat of vertical integration because their filling plants are spread throughout the United States in a way that they could never fully supply internally. As a result, even a large, vertically integrated beverage producer would have to continue buying at least some beverage cans from existing suppliers, but at a higher price since it would receive a smaller volume discount, which would further disincentivize vertical integration. Coupled with the significant capital