UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
Department of Justice, Antitrust Division
450 5th Street, N.W., Suite 8700
Washington, D.C. 20530,

Plaintiff,

v.

AMCOR LIMITED
Thurgauerstrasse 34
CH-8050, Zurich,
Switzerland

and

BEMIS COMPANY, INC.
One Neenah Center
Neenah, WI 54957

Defendants.

Civil Action No.:

COMPLAINT

The United States of America ("United States"), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants Amcor Limited ("Amcor") and Bemis Company, Inc. ("Bemis") to enjoin Amcor's proposed acquisition of Bemis. The United States complains and alleges as follows:

I. NATURE OF THE ACTION

1. Pursuant to a Transaction Agreement dated August 6, 2018, Amcor proposes to acquire all of the shares of Bemis for $6.8 billion, making the combined company the largest flexible packaging manufacturer in the world. Hospitals rely on flexible medical packaging to

preserve the sterility of surgical tools, implants such as artificial hips, and a host of other medical devices. Improper packaging threatens the health of patients by allowing contamination from hazardous microbes and raises the cost of healthcare by exposing medical facilities to unnecessary risk.

2. In the United States, Amcor and Bemis are two of only three significant suppliers of three medical packaging products critical to the safe transportation and use of medical devices: heat-seal coated medical-grade Tyvek rollstock ("coated Tyvek"), heat-seal coated medical-grade paper rollstock ("coated paper"), and heat-seal coated medical-grade Tyvek die-cut lidding ("die-cut lids"). Tyvek is a spinbonded material made from high-density polyethylene fibers, while paper is made from cellulose fibers. Both coated Tyvek and coated paper are wound onto a roll ("rollstock") for easy transport and later conversion into finished medical packaging. Pouches and bags made from coated Tyvek, for example, are used to package surgical kits and cardiac catheters, while coated paper pouches and bags are used to package gauze and other wound care products. Coated Tyvek also is a necessary input to die-cut lids when the lids are used by medical device manufacturers to package and transport heavy, expensive, sharp, or bulky devices such as implants or pacemakers.

3. The proposed acquisition will eliminate competition between Amcor and Bemis to supply these products to customers and likely lead to increased prices. As a result, the proposed acquisition likely would substantially lessen competition in the development, production, and sale of coated Tyvek, coated paper, and die-cut lids for medical use in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be enjoined.

II. THE PARTIES

4. Amcor, a global packaging manufacturer, is organized under Australian law and is headquartered in Zurich, Switzerland. In 2018, Amcor had total sales of over $9 billion, including approximately $288 million in sales of flexible packaging for medical use in the United States.

5. Bemis, a global packaging manufacturer, is a Missouri corporation headquartered in Neenah, Wisconsin. In 2018, Bemis had total sales of over $4 billion, including approximately $260.9 million in sales of flexible packaging for medical use in the United States.

III. JURISDICTION AND VENUE

6. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

7. Defendants themselves, or through wholly-owned subsidiaries, produce and sell coated Tyvek, coated paper, and die-cut lids in the flow of interstate commerce. Defendants' activities in the development, production, and sale of these products substantially affect interstate commerce. This Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

8. Defendants have consented to venue and personal jurisdiction in this District. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

IV. INDUSTRY BACKGROUND

9. Medical flexible packaging protects medical devices from dangerous microbes and particulates that can cause medical complications and risk patient safety. Medical devices

used every day in hospitals, medical offices, and labs—ranging from a patient's gown to a syringe or an orthopedic implant—are sterilized after they have been packaged and must remain that way until use. With lives potentially at stake if a sterile barrier fails, flexible packaging manufacturers use complex chemical engineering and substantial manufacturing know-how and expertise to make their packaging products.

10. Of the many materials available to make medical flexible packaging, two—medical grade paper and Tyvek—are each necessary for packaging certain medical devices. Both products can be sold in rollstock form, or as a "converted," or finished, packaging product, such as a die-cut lid, a bag, or a pouch.

11. Unlike any other medical flexible packaging materials, Tyvek and medical grade paper are compatible with all methods of medical device sterilization, including sterilization by ethylene-oxide gas ("EtO"), which requires a "breathable," or porous, package. To limit the risk of contamination, medical devices are sterilized after they are packaged, and the most common way to sterilize a medical device is with EtO. Tyvek and paper allow EtO gas to enter and exit while maintaining a sterile barrier. Other breathable materials have been developed, but no other breathable material is currently used to package medical devices.

12. Tyvek often is preferred by medical device manufacturers over any other flexible packaging material because it is extremely durable. Once packaged and sterilized, medical devices are transported to hospitals, labs, or doctors' offices and stored until use. During transport and storage, medical device manufacturers rely on a device's packaging to withstand rough handling and preserve a sterile barrier. Because Tyvek is the most tear and puncture resistant medical flexible packaging material on the market, it is frequently used to protect bulky, heavy, or expensive devices such as hip implants and other orthopedics.

13. Medical device manufacturers require a heat-seal coating to be applied to Tyvek and paper when those materials are used to package certain medical devices or in conjunction with certain medical packaging conversion equipment. Developing a coating formula and perfecting the application of coating to Tyvek or paper is complicated and requires substantial know-how and expertise. Coatings are trade secrets and difficult to engineer and replicate. If a coating is not applied properly, a package's seal can fail, rendering the medical device inside hazardous to use.

14. When a medical device is used in a medical procedure, a number of risks arise that can compromise a device's function or sterility. Heat-seal coatings reduce the risk of contamination because they ensure that Tyvek and paper peel cleanly from the remainder of the package and do not generate particulates when opened. If the package is not easy to open, a medical professional could drop the device, touch it inadvertently, or cause it to touch the outside of the package or something else that is not sterile. Alternatively, if, at the time of opening, the packaging material releases particulates, those particulates can contaminate the device.

15. Coatings also may make certain seals between different materials possible. For example, hip implants are normally packaged in rigid trays with die-cut lids made of Tyvek that are cut to match the shape of the tray. Because of the combined durability of a rigid tray and coated Tyvek, the pairing often is preferred for packaging expensive, heavy, or unusually-shaped medical devices. Sealing Tyvek to a rigid tray, however, is not possible unless the Tyvek is coated. A coating may also make it possible for sealing to occur at a broader range of temperatures, which makes coatings particularly important for medical device manufacturers or converters with older equipment.

16. The Food and Drug Administration has established strict regulatory standards for evaluating, selecting, and using medical packaging materials. Medical device manufacturers have an obligation to ensure that their medical flexible packaging meets these standards, which requires qualification of the conditions in which a product will be manufactured and validation of the packaging's forming, sealing, and assembly processes.

17. Before a packaged medical device goes to market, the medical device manufacturer must qualify the packaging supplier's facilities, raw materials, and manufacturing line. Additionally, the combination of device and packaging must be validated by the medical device manufacturer. The validation process requires numerous tests, including quality testing, sterilization testing, seal-strength testing, real-time aging simulations, and shipping and handling simulations. These safeguards protect patients from hazardous microbes, bacteria, or particulates that can breach the package's sterile barrier during transport, storage, or opening.

18. Qualification and validation of new packaging for a medical device can take years to complete and cost thousands of dollars. Even small changes to an existing package can necessitate requalification or revalidation.

V. RELEVANT MARKETS

A. Product Markets

a. Heat-Seal Coated Medical-Grade Tyvek Rollstock

19. Heat-seal coated medical-grade Tyvek rollstock ("coated Tyvek") is a properly defined relevant product market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

20. There are no substitutes for coated Tyvek for certain packaging applications. Uncoated Tyvek lacks the peelability, sealability, and particulate control of coated Tyvek and

does not adhere to a rigid tray. Medical-grade paper in coated or uncoated form also generally is not a substitute for coated Tyvek because medical-grade paper lacks the same degree of durability that Tyvek delivers.

21. In the event of a small but significant non-transitory price increase for coated Tyvek, customers would not substitute away from coated Tyvek in sufficient volume so as to render the price increase unprofitable.

b. Heat-Seal Coated Medical Grade Paper Rollstock

22. Heat-seal coated medical-grade paper rollstock ("coated paper") is a properly defined relevant product market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

23. There are no substitutes for coated paper for certain packaging applications. Uncoated paper lacks the peelability and particulate control of coated paper. Tyvek rollstock in coated or uncoated form also generally is not a substitute for applications that rely upon coated paper, because the price of Tyvek is so much higher than the price of coated paper that a customer would not switch to Tyvek even considering Tyvek's superior durability.

24. In the event of a small but significant non-transitory price increase for coated paper, customers would not substitute away from coated paper in sufficient volume so as to render the price increase unprofitable.

c. Heat-Seal Coated Tyvek Die-Cut Lids

25. Heat-seal coated Tyvek die-cut lids ("die-cut lids") are a properly defined relevant product market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

26. There are no substitutes for die-cut lids when used for certain applications. Uncoated materials are not substitutes for die-cut lids because coating is necessary for a lid to

adhere to a rigid tray. Similarly, lids made of paper are not a substitute for die-cut lids because paper lids lack the same degree of durability as Tyvek.

27. In the event of a small but significant non-transitory price increase for die-cut lids, customers would not substitute away from die-cut lids in sufficient volume so as to render the price increase unprofitable.

B. Geographic Market

28. The relevant geographic market for each of the relevant product markets is the United States. Producers of the relevant products can target customers based on their locations. Due to shipping costs and unique specifications there is no ability to arbitrage. Therefore, the relevant geographic market for each relevant product market is defined as sales made to customers in the United States.

VI. ANTICOMPETITIVE EFFECTS

29. The proposed acquisition of Bemis by Amcor likely would substantially lessen competition for U.S. customers the three relevant product markets. Amcor, Bemis, and one other company are the three primary competitors in each of these markets. The Defendants' combined share is over 70% in coated Tyvek and coated paper, and over 50% in die-cut lids.

30. Market concentration is a useful indication of how rigorous competition is in a market and whether a transaction is likely to cause competitive effects. Concentration in relevant markets is typically measured by the Herfindahl-Hirschman Index (or "HHI"). Markets in which the HHI is in excess of 2,500 points are considered highly concentrated. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, *Horizontal Merger Guidelines* ¶ 5.3 (revised August 19, 2010) ("Merger Guidelines"), https://www.justice.gov/atr/horizontal-merger-guidelines-08192010.

31. As demonstrated in the table below, which is based on Defendants' 2017 revenues, each of these markets is highly concentrated and would become significantly more concentrated as a result of the proposed acquisition.

Market	Pre-Acquisition HHI	Post-Acquisition HHI	HHI Delta
Coated Tyvek	3300	More than 5800	2500
Coated Paper	3900	8000	4200
Die-Cut Lids	3600	4900	1300

32. The proposed acquisition leads to an increase in the HHI of more than 200 points in each of these product markets, making the acquisition presumptively harmful under the Horizontal Merger Guidelines.

33. The transaction also eliminates head-to-head competition between Amcor and Bemis and threatens the benefits that customers have realized from that competition in the form of lower prices and better service. Due to Amcor and Bemis's collective overall expertise in meeting the needs of customers and other technical and commercial factors, including among other things, price, quality, and the ability to pass each customer's rigorous qualification and validation procedures, Amcor and Bemis are frequently viewed by each other and by customers as two of the three most significant competitors in the market.

34. Amcor and Bemis competed against each other to win business, and they proposed pricing and products to customers that reflected an awareness of that competition. As a result, the ability of each company to raise prices, reduce quality, or limit technical support services to Medical Device Manufacturers has been constrained by the possibility of losing business to the other. For many customers, Amcor and Bemis are their two best substitutes. By eliminating Bemis as a competitor, Amcor likely would gain the incentive and ability to increase

its bid prices, reduce quality, and reduce technical support below what it would have been absent the acquisition.

35. Customers have benefitted from competition between Amcor and Bemis through lower prices and higher quality. The combination of Amcor and Bemis would eliminate this competition and future benefits to customers and likely would result in harmful unilateral price effects.

VII. ENTRY

36. Entry is unlikely to prevent or remedy the acquisition's likely anticompetitive effects. Entry into the development, production, and sale of the foregoing relevant products is costly and unlikely to be timely or sufficient to prevent the harm to competition caused by the elimination of Bemis as an independent supplier.

37. Barriers to entry include the significant technical expertise required to design a coating and production process that satisfies customer requirements. A new supplier would first need to develop and produce a heat-seal coating sufficient to meet the rigorous standards set by potential customers. The supplier would then need to develop a system to apply the coating to meet customers' rigorous standards. In addition, the technical know-how necessary to pass customers' qualification tests is difficult to obtain and is learned through a time-consuming trial-and-error process.

38. Even after a new entrant has developed the necessary capabilities, the entrant's product must be qualified and validated by potential customers, demonstrating that its products can meet rigorous quality and performance standards. These qualification and validation requirements discourage entry by imposing substantial costs on potential suppliers with no

guarantee that their products will be successful in the market. They also take substantial time—in some cases, years—to complete.

VIII. VIOLATIONS ALLEGED

39. The acquisition of Bemis by Amcor is likely to lessen competition substantially in each of the relevant markets set forth above in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

40. The transaction will likely have the following anticompetitive effects, among others:

a. actual and potential competition between Amcor and Bemis in the relevant markets will be eliminated;

b. competition generally in the relevant markets will be substantially lessened; and

c. prices in the relevant markets will likely increase.

41. The United States requests that this Court:

a. adjudge and decree Amcor's acquisition of Bemis to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. enjoin Defendants and all persons acting on their behalf from consummating the proposed acquisition of Bemis by Amcor or from entering into or carrying out any other agreement, plan, or understanding the effect of which would be to combine Amcor with Bemis;

c. award the United States its costs of this action; and

d. grant the United States such other relief as the Court deems just and proper.

Dated: MAY 30, 2019

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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