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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
)
Ardagh Group S.A.,)
a public limited liability company, and)
)
Compagnie de Saint-Gobain,)
a corporation, and)
)
Saint-Gobain Containers, Inc.,)
a corporation.)
_____)

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Docket No. 9356

THIRD PARTY AMCOR RIGID PLASTICS, INC.’S MOTION FOR *IN CAMERA*
TREATMENT OF INFORMATION PREVIOUSLY DESIGNATED AS
CONFIDENTIAL

Third Party Amcor Rigid Plastics USA, Inc. (“ARP”), by and through its undersigned counsel and pursuant to FTC Rule 3.45, hereby moves for *in camera* treatment of portions the documents produced by ARP in this matter that have been designated by Respondents Ardagh Group S.A., Compagnie de Saint-Gobain, and Saint-Gobain Containers (collectively, “Respondents”), as exhibits to be introduced in the administrative trial in this matter, specifically those labeled as Respondents’ Exhibits DX172 (ARPFTC0003257-95); DX349 (ARPFTC0003358-93); DX173 (ARPFTC0003679-721); DX702 (ARPFTC0003738); DX320 (ARPFTC0007381-89); DX338 (ARPFTC0007551); DX174 (ARPFTC0005728); DX223 (ARPFTC0005813); DX368 (ARPFTC0006480); DX387 (ARPFTC0006525), as indicated on Exhibit A to this motion, as well as excerpts of the deposition of Frederick Piercy designated by Respondents and/or Complaint Counsel, as indicated on Exhibit B to this motion. Confidential copies of the documents and deposition excerpts for which ARP requests *in camera* treatment are attached hereto as Exhibits C-1 to C-11. As explained more fully below, this

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material is entitled to *in camera* treatment pursuant to FTC Rule 3.45 because it contains ARP's closely guarded, confidential business strategy information, confidential and proprietary research and development and trade secret information, as well as other confidential and competitively sensitive business and customer information. Public disclosure of this information prior to the timeframe requested for *in camera* treatment would result in serious competitive injury to ARP.

BACKGROUND

On or about March 11, 2013, ARP received a *subpoena duces tecum* from the Federal Trade Commission ("FTC") in the investigatory phase of this matter, in response to which ARP produced information designated as confidential. On July 11, 2013, ARP received a copy of the July 1, 2013, Protective Order in place in this matter and the Protective Order in place in the parallel federal proceeding, *FTC v. Ardagh Group S.A. et al.*, Civ. No. 13-1021 (D.D.C.), both of which provide for protection of confidential material produced by third parties. On July 17, 2013, counsel for ARP sent a letter to Complaint Counsel and counsel for Respondents emphasizing the confidential and sensitive nature of the information produced by ARP and underscoring ARP's insistence on parties' careful compliance with the Protective Orders in place in this matter and the parallel federal proceeding.

On or about July 23, 2013, under the caption of the parallel federal proceeding, ARP received a *subpoena duces tecum* from Respondents, and on or about July 25, 2013, a substantially similar *subpoena duces tecum* from the FTC, to which ARP also responded with an additional production of information. On or about August 1, 2013, ARP received a *subpoena ad testificandum* from Respondent, and on August 16, 2013, produced Frederick Piercy, Business Director of ARP's Diversified Products Division, for deposition. In the course of the next several weeks, ARP devoted significant time and resources to communicating with counsel for the FTC and Respondents to ensure that ARP's confidentiality designations, as originally applied

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and produced by ARP, at all times appeared on ARP documents used by parties in this matter and the parallel federal proceeding.

On November 19, 2013, ARP received notice from Complaint Counsel that it had designated portions of Mr. Piercy's confidential deposition for introduction in the administrative trial in this matter. On November 19 and 20, ARP received notice from counsel for Respondents that it had designated portions of Mr. Piercy's confidential deposition as well as eleven confidential documents for introduction at trial; on November 26, 2013, counsel for Respondents sent notice of the designation of additional excerpts of Mr. Piercy's deposition.

Consistent with its previous efforts to prevent public disclosure of ARP confidential, competitively sensitive, and proprietary information produced in this matter, ARP now requests at least partial *in camera* treatment for ten of the eleven documents designated by Respondents and for some of the deposition excerpts designated by Respondents and Complaint Counsel.

LEGAL STANDARD

FTC Rule 3.45 provides that material shall be "placed *in camera* only after finding that its public disclosure would likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment." 16 C.F.R. § 3.45(b). A serious injury can be established by showing that the information at issue is "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury." *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). The Commission has held that "[t]he loss of business advantage is a good example of a 'clearly defined, serious injury.'" *Hoechst Marion Roussel, Inc.*, 2000 F.T.C. LEXIS at *6 (quoting *General Foods*, 95 F.T.C. at 355). In addition, the Commission has recognized that with respect to some information, "the competitive sensitivity

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or the proprietary value of the information for which *in camera* treatment is requested will not necessarily diminish, and may actually increase, with the passage of time,” *In re Coca-Cola Co.*, 1990 FTC LEXIS 364, at *7 (Oct. 17, 1990), and that in some instances, indefinite *in camera* treatment is appropriate, particularly where it pertains to proprietary technical material or trade secrets. 16 C.F.R. § 3.45(b)(3); *In re Chicago Bridge & Iron Co. N.V.*, 2002 F.T.C. LEXIS 113, *2 (“Examples of documents meriting indefinite in camera treatment are trade secrets, such as secret formulas, processes, and other secret technical information, and information that is privileged.”).

The factors to be considered when determining whether a sufficient showing has been made in order to merit *in camera* treatment include the following: (1) The extent to which the information is now outside of the applicant’s business. (2) The extent to which the information is known by employees and others involved in the applicant’s business. (3) The extent of measures taken by the applicant to guard the secrecy of the information. (4) The value of the information to the applicant and its competitors. (5) The amount of effort or money expended by the applicant in developing the information. (6) The ease or difficulty with which the information could be properly acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 458 (1977).

Where, as here, the request for *in camera* treatment is made by a nonparty that has cooperated with Respondents’ and the FTC’s discovery requests, such request for *in camera* treatment should be given “special solicitude.” See *In re Crown Cork & Seal Co.*, 71 F.T.C. 1714 (1967) (“[P]etitioner’s plea warrants special solicitude coming as it does from a third-party bystander in no way involved in the proceedings whose records, if *in camera* treatment is denied, will be open to the scrutiny of its competitors.”); *In re Kaiser Aluminum & Chem. Corp.*, 103

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F.T.C. 500 (1984) (requests for *in camera* treatment by third parties should be given special solicitude because, as a matter of policy, such treatment encourages the third party to cooperate with future adjudicative discovery requests).

ARGUMENT

I. ARP ACTIVELY PROTECTS ITS INVESTMENT IN THE CONFIDENTIAL INFORMATION FOR WHICH IT SEEKS *IN CAMERA* TREATMENT.

As set forth in the accompanying Declaration of Michael Curia, Vice President and General Manager of the Diversified Products Division (“Curia Decl.”), ARP actively protects the confidentiality of the information for which it seeks *in camera* treatment in this matter. Examples of those measures include limiting internal distribution of documents containing high-level confidential information to a select group of executives, who receive it on a need-to-know basis and maintaining sensitive documents on a restricted network drive accessible to a limited group of executives and the legal department. With respect to confidential information distributed to ARP customers and commercial partners, ARP protects the confidentiality of such information by putting in place non-disclosure agreements or provisions in other agreements. In light of these measures, it would be nearly impossible for ARP’s competitors or other outside parties to gain access to any of the documents for which ARP seeks *in camera* treatment.

ARP undertakes these measures because its position in the highly competitive area in which it operates would be severely compromised if its competitors had access to information revealing how ARP differentiates itself to customers; that reflects ARP’s current and long-term business strategies and the competitively sensitive terms on which it does business with customers; operations and financial projections that would enable competitors to anticipate ARP’s future conduct; and that contains proprietary trade secrets and valuable research and

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development information. Because ARP has invested significant resources in generating the content of all the strategic documents for which it seeks *in camera* treatment (in addition to developing the methods of business analysis disclosed therein and the specific customer relationships described), as well as in the development of the design and technology innovations disclosed in the documents it seeks to protect, untimely public disclosure of this information would represent a serious, concrete, and irreparable injury to ARP of the kind that Rule 3.45 was designed to prevent.

II. DOCUMENTS CONTAINING ARP'S CONFIDENTIAL INFORMATION OF ONGOING COMPETITIVE VALUE MERIT *IN CAMERA* TREATMENT.

Documents labeled ARPFTC0003257-95, ARPFTC0003679-721 and ARPFTC0006480 are Diversified Products Division quarterly business review presentations compiled for consideration by ARP executives in the 2010-11 timeframe. (Exs. C-1, C-2, C-3, respectively.) As set forth in the accompanying Declaration of Mr. Curia, these documents reflect information that is extremely competitively sensitive to the entire Diversified Products Division of ARP and concern aspects of ARP's business beyond the spirits, wine, and beer business area. These documents include pricing and other terms of specific long-term customer contracts that are in place through as late as 2017, along with ARP marketing and sales plans and projections, production forecasts, and other information that will remain relevant to ARP's ongoing business strategies and current customer relationships for some time. The competitive value of this information to ARP's competitors is extremely high in that it could be used to undermine ARP's position in renegotiating contracts coming off of expiration and in negotiating for new business, as well as generally giving competitors insight into how ARP operates or will operate in the future, whether through disclosure of the information itself or use of that information in conjunction with other intelligence that ARP's competitors are likely to have.

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The Diversified Products Division strategic plan from November 2011, DX174 (Ex. C-4), merits *in camera* treatment because it contains detailed profit margin information by product and customer; identifies acquisition targets; forecasts ARP's performance through 2016; and details about customer contracts that are in place through 2016. Because disclosure of information concerning ARP's present and future customers and business would enable ARP's competitors to interfere with key relationships and otherwise diminish ARP's competitive position, *in camera* treatment is appropriate.

Based on the timeframe within which the information in the document will remain competitively sensitive, and as supported by Mr. Curia's Declaration, ARP requests that Respondents' Exhibits DX172 and DX173 (Exs. C-1, C-2) receive *in camera* treatment for seven years, except that the single page marked as ARPFTC0003697 receive indefinite *in camera* treatment given the continued competitive relevance and sensitivity of the information contained therein (relating to current rates of depreciation, sales margins, variable costs, and other competitively sensitive aspects of ARP's business) and the fact that it is of no discernible value to the public in understanding this matter due to the fact that it incorporates information about business areas beyond spirits, wine, and beer. ARP requests that DX368 (Ex. C-3) and DX174 (Ex. C-4) receive *in camera* treatment for eight years.

III. ARP'S PROPRIETARY DESIGN, RESEARCH, AND DEVELOPMENT INFORMATION MERITS *IN CAMERA* TREATMENT.

Respondents have designated a document, DX387 (Ex. C-5), that describes an extremely confidential and competitively sensitive trade secrets relating to a technical research and development initiative involving Amcor business units and affiliates beyond ARP and the Diversified Products Division. The document includes confidential product drawings, as well as technical specifications and diagrams that are in some cases specific to products manufactured

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for current Amcor customers. None of the technical information is helpful to the public in forming an understanding of the issues at play in this matter. Because Amcor competes through innovation and product differentiation, disclosure of this confidential and proprietary information to Amcor's competitors would cause severe harm to Amcor and ARP, which have made significant investments in the development of the technology described in the document. Due to the highly confidential nature of this document and the presence of proprietary information relating to parties beyond ARP that Amcor is obligated to protect, and the manner in which Amcor and ARP's future research and development initiatives may relate to the information therein, *in camera* treatment on an indefinite basis will protect ARP's business interests as contemplated by FTC Rule 3.45 and the prior decisions of this Court.

Respondents have designated two 2010 market analysis reports, DX338 and DX223 (Exs. C-6 and C-7, respectively), that reflect ARP's assessment of its competitors and competitive environment that remains relevant to ARP's current and future business. The documents also contain ARP's sales volumes and revenues, strategies for growing specific existing customer business, and confidential information about current or recently expired contracts with specific customers. In particular, Slide 6 of DX338 contains information that reflects ARP's high-level investment strategy, and Slides 10 and 11¹ contain information about specific current customers and contracts that remain in force. Disclosure of these documents to ARP's competitors would result in significant competitive injury, and therefore ARP requests *in camera* treatment of two years, with the exception of Slides 6, 10, and 11 of DX338, for which ARP requests *in camera* treatment of ten years.

¹ Although these slides are not numbered, they are sequential to the slide numbered 9.

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IV. ARP'S COMPETITIVELY SENSITIVE INFORMATION REGARDING SPECIFIC CUSTOMERS MERITS *IN CAMERA* TREATMENT.

ARP would suffer competitive injury through disclosure of confidential customer information, both in the form of documents that depict ARP's contracting and negotiating strategies and documents that reveal its sales and marketing strategies. DX320 (Ex. C-8) is a 2009 set of proposals to a current customer of ARP including several pricing models and revealing how ARP composes its responses to requests for quotes. This document also includes pricing and other terms for contracts proposed to through as late as 2020. Disclosure of this document to ARP's competitors would harm ARP's competitive position by revealing its pricing and sales strategies, pricing formulas, and specific pricing information. For these reasons, ARP requests *in camera* treatment for three years as applied to DX320.

Respondents have also designated a spreadsheet of specific customer account information from 2010 for the spirits, wine, and beer business but also including information relating to several ARP business units beyond spirits, wine and beer. The spreadsheet reflects very detailed information by customer location, down to individual bottle types produced, sales volume, and other information. Disclosure of this information could be used by ARP's competitors to target ARP's current customers in which ARP has made significant investments of time and resources or unfairly manipulate negotiations with ARP's potential customers. ARP therefore requests that DX702 (Ex. C-9) receive *in camera* treatment for three years.

Respondents have designated a 2010 slide deck, DX349 (Ex. C-10) that ARP presented to customers in order to differentiate ARP containers and manufacturing processes from ARPs' competitors. ARP requests *in camera* treatment for only a portion of the presentation, which would reveal to ARPs' competitors some of ARP's key competitive messages that continue to guide ARP's sales and marketing strategies. Because ARP would be

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harmful by disclosure of strategic information in which it made significant investment and that remains pertinent to its sales and marketing strategy, *in camera* treatment of two years is appropriate.

V. SELECT DESIGNATED EXCERPTS OF THE DEPOSITION OF FREDERICK PIERCY DISCUSSING COMPETITIVELY SENSITIVE AND CONFIDENTIAL INFORMATION MERIT *IN CAMERA* TREATMENT.

ARP requests *in camera* treatment for some of the designated passages of the confidential transcript of the August 16, 2013, deposition of Fred Piercy (Ex. C-11), as indicated on Exhibit B to this motion. Where an excerpt contains discussion of one of the above-mentioned documents, for the sake of consistency, ARP has requested *in camera* treatment that corresponds to the treatment requested for the document itself. In all other instances, ARP has requested *in camera* treatment that is appropriate to protect Mr. Piercy's testimony relating to highly confidential information concerning ARP's business strategy and operations, specific customer information relevant to ARP's current and future business, as well as ARP's trade secrets, research and development initiatives, and other proprietary initiatives. Exhibit B sets forth those time periods of *in camera* treatment requested by ARP as they pertain to individual deposition excerpts.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the declaration of Mr. Michael Curia filed concurrently with this Motion, Amcor Rigid Plastics USA, Inc. respectfully requests that the documents and deposition excerpts listed in Exhibits A and B and attached as Exhibits C-1 through C-11 receive *in camera* treatment for the periods listed therein.

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Dated: December 9, 2013.

Respectfully submitted,

 /s/ H. Holden Brooks
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Attorneys for Amcor Rigid Plastics USA, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2013, I caused the foregoing Third Party Amcor Rigid Plastics USA, Inc.'s Motion for *In Camera* Treatment of Information Previously Designated Confidential, Declaration of Michael Curia in support of said motion, and a [Proposed] Order Granting Third-Party Amcor Rigid Plastics USA, Inc.'s Motion for *In Camera* Treatment of Information Previously Designated Confidential to be filed electronically using the Federal Trade Commission's E-Filing System and hand delivery with the following:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I also certify that on December 9, 2013, I caused the foregoing Third Party Amcor Rigid Plastics USA, Inc.'s Motion for *In Camera* Treatment of Information Previously Designated Confidential, Declaration of Michael Curia in support of said motion, and a [Proposed] Order Granting Third-Party Amcor Rigid Plastics USA, Inc.'s Motion for *In Camera* Treatment of Information Previously Designated Confidential to delivered by hand the following:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I also certify that I served via email the foregoing Third Party Amcor Rigid Plastics USA, Inc.'s Motion for *In Camera* Treatment of Information Previously Designated Confidential, Declaration of Michael Curia in support of said motion, and a [Proposed] Order Granting Third-Party Amcor Rigid Plastics USA, Inc.'s Motion for *In Camera* Treatment of Information Previously Designated Confidential to the following:

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December 9, 2013

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Attorneys for Amcor Rigid Plastics USA, Inc.

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I have filed under separate cover a paper original of the signed document.

December 9, 2013

/s/ H. Holden Brooks

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**Exhibit A:
Documents for which Amcor Rigid Plastic USA, Inc. Requests *In Camera* Treatment
Docket No. 9356**

Respondents Exhibit No./FTC File No.	Exhibit to Motion for <i>In Camera</i> Treatment No.	Date	Start Bates	End Bates	<i>In Camera</i> Treatment Requested
DX172	C-1	September 9-10, 2010	ARPFTC0003257	ARPFTC0003295	7 years
DX173	C-2	September 6-7, 2011	ARPFTC0003679	ARPFTC0003721	Page identified as ARPFTC0003697: Indefinite Remainder of document: 7 years
DX368 FTCFILE0001 7479- 00017494	C-3	March 2, 2011	ARPFTC0006480		8 years
DX174-001- 057/ FTCFILE0001 6013- 00016069	C-4	November 2011	ARPFTC0005728		8 years
DX387 FTCFILE0001 7590- 00017633	C-5	August 16, 2011	ARPFTC0006525		Indefinite
DX338	C-6	April 19, 2010	ARPFTC0007551		Slide 6: 10 years Slides 10 & 11: 10 years Remainder of document: 2 years
DX223-001- 058/ FTCFILE0001 6346- 00016403	C-7	Prior to September 2010	ARPFTC0005813		2 years
DX320	C-8	March 11, 2009	ARPFTC0007381	ARPFTC0007389	3 years
DX702	C-9	[Parent document is from March 2010]	ARPFTC0003738		3 years
DX349	C-10	September 2010	ARPFTC0003358	ARPFTC0003374	2 years

EXHIBIT B:
Excerpts of the Confidential Deposition of Frederick Piercy for which
Amcor Rigid Plastics USA, Inc. Requests *In Camera* Treatment

Designating Party	Excerpt Page, Line Range	<i>In Camera</i> Treatment Requested
Complaint Counsel & Respondents	17:20–23	5 years
Respondents	17:24–18:2	5 years
Respondents	18:8–13	5 years
Respondents	18:21–19:3	5 years
Respondents	19:10–12	5 years
Respondents	19:23–21:3	5 years
Respondents	23:8–25:10	5 years
Respondents	25:16–25	5 years
Respondents	28:4–9	5 years
Respondents	28:20–29:9	5 years
Respondents	29:11–23	5 years
Respondents	32:7–22	5 years
Respondents	34:2–34:4	5 years
Respondents	36:9–37:19	2 years
Respondents	38:8–39:19	2 years
Respondents	40:1–41:5	2 years
Respondents	41:9–41:25	2 years
Respondents	44:10–21	2 years
Respondents	45:1–9	2 years
Complaint Counsel	45:10–46:11	2 years
Respondents	46:12–47:5	2 years
Respondents	47:9–48:22	2 years
Respondents	48:24–50:2	2 years
Respondents	50:25–51:10	2 years
Respondents	52:9–53:3	2 years
Respondents	54:20–55:11	5 years
Respondents	59:23–61:20	5 years
Respondents	62:1–23	5 years
Respondents	63:4–65:3	5 years
Respondents	65:16–66:16	5 years
Respondents	66:20–69:8	8 years
Respondents	70:9–72:17	8 years
Respondents	73:16–23	5 years
Respondents	74:2	5 years
Complaint Counsel	74:3–9	5 years
Complaint Counsel & Respondents	74:10–13	5 years
Complaint Counsel	74:14	5 years
Complaint Counsel & Respondents	74:15	5 years
Respondents	74:16–75:3	5 years
Complaint Counsel	76:17–77:11	5 years
Respondents	78:5–23	5 years
Respondents	80:18–81:14	5 years
Respondents	81:20–82:7	5 years
Complaint Counsel	86:10–87:1	5 years
Complaint Counsel	87:3–6	5 years
Respondents	88:17–89:24	2 years

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Complaint Counsel	92:25–93:23	5 years
Complaint Counsel	94:18–24	5 years
Respondents	97:11–24	5 years
Complaint Counsel	97:25–98:11	5 years
Respondents	98:12–13	5 years
Complaint Counsel	98:14–18	5 years
Complaint Counsel	99:15–16	5 years
Complaint Counsel & Respondents	99:17–100:3	5 years
Complaint Counsel	100:4–21	5 years
Complaint Counsel	100:24–101:15	5 years
Respondents	101:16–23	5 years
Respondents	102:2–104:8	5 years
Complaint Counsel	105:23–106:8	5 years
Complaint Counsel & Respondents	106:10	5 years
Respondents	108:1–109:8	5 years
Complaint Counsel	109:9–12	5 years
Respondents	112:18–115:14	5 years
Complaint Counsel	119:1–11	5 years
Complaint Counsel	120:10–12	5 years
Respondents	120:16–22	5 years
Complaint Counsel	120:25–121:15	5 years
Complaint Counsel	121:23–123:16	5 years
Complaint Counsel	123:18–124:3	5 years
Respondents	124:4–5	5 years
Respondents	124:8–9	5 years
Respondents	124:11	5 years
Complaint Counsel	126:2–127:9	5 years
Respondents	127:10–14	5 years
Respondents	127:17–18	5 years
Complaint Counsel	128:4	5 years
Complaint Counsel & Respondents	128:5–18	5 years
Respondents	128:19–21	5 years
Complaint Counsel	130:5–131:8	5 years
Complaint Counsel	131:11–21	5 years
Respondents	132:3–13	5 years
Respondents	134:18–135:15	5 years
Complaint Counsel	135:16	5 years
Complaint Counsel & Respondents	135:17–136:9	5 years
Complaint Counsel	136:10–22	5 years
Complaint Counsel & Respondents	136:23–25	5 years
Respondents	137:1–8	5 years
Respondents	137:16–138:13	5 years
Respondents	138:24–139:9	5 years

EXHIBITS C-1 THROUGH C-11

PORTIONS OF DOCUMENTS AND DEPOSITION EXCERPTS DESIGNATED BY
COMPLAINT COUNSEL AND RESPONDENTS FOR WHICH AMCOR RIGID
PLASTICS USA, INC. REQUESTS *IN CAMERA* TREATMENT



**MATERIAL REDACTED PURSUANT TO RULE 3.45(b)
OF THE FEDERAL TRADE COMMISSION RULES OF
PRACTICE, 16 C.F.R. § 3.45(b)**

PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)	
)	
Ardagh Group S.A.,)	
a public limited liability company, and)	PUBLIC
)	
Compagnie de Saint-Gobain,)	
a corporation, and)	Docket No. 9356
)	
Saint-Gobain Containers, Inc.,)	
a corporation.)	
)	

**DECLARATION OF MICHAEL CURIA IN SUPPORT OF THIRD PARTY AMCOR
RIGID PLASTICS USA, INC.’S MOTION FOR *IN CAMERA* TREATMENT OF
INFORMATION PREVIOUSLY DESIGNATED AS CONFIDENTIAL**

I, Michael Curia, based on personal knowledge, information and belief, hereby make the following statement:

1. I am Vice President and General Manager of the Diversified Products Division of Amcor Rigid Plastics, Inc. (“ARP”) and submit this declaration in support of ARP’s Motion for *In Camera* Treatment of Information Previously Designated as Confidential.

2. I have occupied my current position since November 2011 and prior to that was Vice President of ARP’s Food and Beverage Division, beginning in March 2010. In my capacity as Vice President and General Manager of the Diversified Products Division of ARP, I am responsible for the overall business strategy of several business units, including the spirits, wine, and beer business unit, and oversee the executive team responsible for implementing that business strategy. As a result, I am familiar with the highly confidential and competitively sensitive information that ARP maintains relating to the production operations, sales and

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marketing, research and development, design and other key aspects of the beer, wine, and spirits business unit.

3. I understand that ARP is moving for *in camera* treatment of certain information that it designated as confidential and submitted in response to subpoenas from the Federal Trade Commission (“FTC”) and Ardagh Group S.A. (“Ardagh”) in the above-captioned matter as well as in a parallel federal proceeding and during the initial investigation of the underlying transaction between Ardagh and Compagnie de Saint-Gobain. I understand that certain of the documents for which ARP seeks *in camera* treatment are from my own files or files of individuals who report to me, and that ARP is also moving for *in camera* treatment of excerpts of the August 2013 deposition of Fred Piercy, who is among my reports and with whom I work closely. I understand that these documents and the deposition excerpts are listed in Exhibits A and B to the motion for *in camera* treatment with an indication of the requested duration of *in camera* treatment.

4. As a matter of course, ARP takes substantial measures to protect the confidentiality of its research and development, strategy- and customer-related information, and other commercially sensitive information, including that for which it seeks *in camera* treatment in this matter. ARP limits internal distribution of documents containing high-level confidential information to a select group of executives, who receive it on a need-to-know basis, and takes other reasonable steps to prevent disclosure. These steps include maintaining sensitive strategy documents on a restricted network drive accessible by a limited group of executives and the legal department and ensuring that any confidential information disclosed to customers and commercial partners is protected by non-disclosure agreements or provisions. In light of these measures, it would be nearly impossible for ARP’s competitors or other outside parties to gain

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access to any of the documents for which ARP seeks *in camera* treatment. ARP undertakes these measures because its position in the market would be severely compromised if its competitors had access to information about ARP's proprietary design innovations and production techniques, long-term market perspectives and strategies, financial information including profitability, and customer-specific information including pricing and other contract terms.

5. Three documents listed in Exhibit A of the motion are highly confidential quarterly business review presentations from 2010-11 reflecting information that is extremely competitively sensitive to the entire Diversified Products Division of ARP. Documents labeled ARPFTC0003257-95, ARPFTC0003679-721 and ARPFTC0006480 contain detailed information, including pricing and other terms of specific long-term customer contracts through as late as 2017; ARP marketing and sales plans and projections; production forecasts; and other information that will remain relevant to ARP's ongoing business strategies and current customer relationships. Certain portions of these documents contain extraordinarily confidential information that could be used by ARP's competitors to determine current rates of depreciation, sales margins, variable costs, and other competitively sensitive aspects of ARP's business. An additional document, the Diversified Products Division strategic plan from November 2011, ARPFTC0005728, contains detailed profit margin information by product and customer; identifies acquisition targets; and forecasts of performance through 2016; and detailed information about customer contracts that are in place through 2016. ARP has devoted significant resources and time to composing these review and plan documents and to devising and executing the strategies they reflect. These documents are extremely valuable to ARP's efforts to remain competitive in all of the diversified products division business units, including

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spirits, wine, and beer. Disclosure of these key strategic documents would result in significant competitive injury to ARP and would hamper its ability to pursue its current business strategies in light of the fact that they have been exposed to ARP's competitors. *In camera* treatment for these documents for the periods indicated in Exhibit A is sufficiently long to cover the expiration of contracts and initiatives discussed therein, and to "age" information such that it cannot be used by ARP's competitors to understand key competitive aspects of ARP's current and future business.

6. The document bates labeled ARPFTC0006525 from August 2011 contains extremely confidential and competitively sensitive information regarding a particular Amcor research and development initiative involving Amcor business units and affiliates beyond ARP and the Diversified Products Division. The document includes confidential product drawings and diagrams that are specific to products manufactured for current Amcor customers. Disclosure of this confidential and proprietary information to Amcor's competitors would cause severe harm to Amcor and ARP, which has made significant investments in the development of the products described as a means of competing through innovation. Due to the highly confidential nature of this document and the presence of proprietary information relating to parties beyond ARP that Amcor is obligated to protect, and the manner in which Amcor and ARP's future research and development initiatives may relate to the information therein, *in camera* treatment on a permanent basis will protect ARP's business interests.

7. The document labeled ARPFTC0007381-89 is a 2009 set of proposals to a current customer of ARP proposing various pricing models and containing detailed information about how ARP composes its responses to requests for quotes and specific pricing and other key contract terms offered through as late as 2020. Disclosure of this document to ARP's

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competitors would harm ARP's competitive position by revealing its pricing and sales strategies, pricing formulas, and specific pricing information. Due to the high level of competitive sensitivity of this document and the duration of the proposed contractual arrangements, *in camera* treatment for three years will protect ARP's business interests.

8. The document labeled ARPFTC0003738 is a spreadsheet of specific customer account information from 2010 for several ARP business units, containing detailed bottle type, sales volume, and production information by individual customer and customer location. Revealing the identities of ARP's customers to ARP's competitors, along with the customers' locations and recent production and sales volumes, would be harmful to ARP's competitive position and would threaten the customer relationships in which ARP has made significant investments. Due to the high level of competitive sensitivity of this document, *in camera* treatment for three years will protect ARP's business interests.

9. Two documents labeled ARPFTC0005813 and ARPFTC0007551 are 2010 market analysis reports composed by ARP with specific strategic information, including ARP's assessment of its current competitors, ARP's sales volumes and revenues, strategies for growing specific existing customer business, and confidential information about current or recently expired contracts. Disclosure of these documents to ARP's competitors would result in significant competitive injury to ARP in that these documents reveal ARP's approach to the market and its broad strategies to compete, in addition to specific, confidential, competitively sensitive information about individual customers with whom ARP continues to do business, as well current or recent contract terms with specific customers. *In camera* treatment for these documents for the periods indicated in Exhibit A is sufficiently long to cover the expiration of contracts and initiatives discussed therein, and to "age" information such that it cannot be used

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by ARP's competitors to understand key competitive aspects of ARP's current and future business.

10. The document labeled in part ARPFTC0003358-74 is a 2010 slide deck that ARP presented externally for the sole purpose of facilitating commercial relationships with specific customers. The document is the product of significant investment of time and resources by ARP in order to sell potential customers on the benefits of ARP and to differentiate ARP containers from competitors. Because the portion of that presentation for which ARP seeks *in camera* treatment reveals key competitive tools of ARP, and reflects ARP's ongoing sales and marketing strategies, ARP would be harmed by its disclosure. *In camera* treatment for two years of the slides for which ARP is requesting protection will protect ARP's business interests.

11. The confidential transcript of the August 16, 2013, deposition of Fred Piercy addresses most of the above-mentioned documents and therefore the passages that correspond to the documents being described should receive similar *in camera* treatment to the documents as required to protect ARP's business interests. I understand that Exhibit B to the motion sets forth those time periods as they pertain to individual deposition excerpts. I understand that the other excerpts of Mr. Piercy's deposition concern ARP's design and production capabilities as they relate to ARP's ability to differentiate itself in the market; specific confidential customer information, including details of specific contracts between ARP and its customers; ARP's competitive strategies; ARP's confidential sales and marketing perspective and initiatives; and confidential information about production capacity and profitability. I have reviewed the time periods for *in camera* treatment requested in Exhibit B for these excerpts and they reflect the appropriate periods of *in camera* treatment of this information for purposes of protecting ARP's business interests.

I declare, under penalty of perjury, that the above statements are true and correct.

Executed this day, December 6, 2013.

A handwritten signature in black ink, appearing to read "Michael Curia", written over a horizontal line.

Michael Curia

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)	
)	
Ardagh Group S.A.,)	
a public limited liability company, and)	PUBLIC
)	
Compagnie de Saint-Gobain,)	
a corporation, and)	Docket No. 9356
)	
Saint-Gobain Containers, Inc.,)	
a corporation.)	
)	

[PROPOSED] ORDER GRANTING THIRD PARTY AMCOR RIGID PLASTICS USA, INC.'S MOTION FOR *IN CAMERA* TREATMENT OF INFORMATION PREVIOUSLY DESIGNATED AS CONFIDENTIAL

Upon consideration of Third Party Amcor Rigid Plastics USA, Inc.'s Motion for *In Camera* Treatment of Information Previously Designated Confidential, and for good cause shown,

IT IS HEREBY ORDERED, that Amcor Rigid Plastics USA, Inc.'s Motion for *In Camera* Treatment of Information Previously Designated Confidential is GRANTED;

IT IS FURTHER ORDERED that pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F. § 3.45(b), the documents listed below shall be subject to *in camera* treatment and will be kept confidential and not placed on the public records of this proceeding for the period of time indicated:

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Respondents Exhibit No./FTC File No.	Exhibit to Motion for <i>In Camera</i> Treatment No.	Date	Start Bates	End Bates	<i>In Camera</i> Treatment
DX172	C-1	September 9-10, 2010	ARPFTC0003257	ARPFTC0003295	7 years
DX173	C-2	September 6-7, 2011	ARPFTC0003679	ARPFTC0003721	Page identified as ARPFTC0003697: Indefinite Remainder of document: 7 years
DX368 FTCFILE0001 7479- 00017494	C-3	March 2, 2011	ARPFTC0006480		8 years
DX174-001- 057/ FTCFILE0001 6013- 00016069	C-4	November 2011	ARPFTC0005728		8 years
DX387 FTCFILE0001 7590- 00017633	C-5	August 16, 2011	ARPFTC0006525		Indefinite
DX338	C-6	April 19, 2010	ARPFTC0007551		Slide 6: 10 years Slides 10 & 11: 10 years Remainder of document: 2 years
DX223-001- 058/ FTCFILE0001 6346- 00016403	C-7	Prior to September 2010	ARPFTC0005813		2 years
DX320	C-8	March 11, 2009	ARPFTC0007381	ARPFTC0007389	3 years
DX702	C-9	[Parent document is from March 2010]	ARPFTC0003738		3 years
DX349	C-10	September 2010	ARPFTC0003358	ARPFTC0003374	2 years

IT IS FURTHER ORDERED that pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), the excerpts of the deposition of Frederick

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Piercy, identified below, shall be subject to *in camera* treatment and will be kept confidential and not placed on the public records of this proceeding for the period of time indicated:

Designating Party	Excerpt Page, Line Range	<i>In Camera</i> Treatment
Complaint Counsel & Respondents	17:20–23	5 years
Respondents	17:24–18:2	5 years
Respondents	18:8–13	5 years
Respondents	18:21–19:3	5 years
Respondents	19:10–12	5 years
Respondents	19:23–21:3	5 years
Respondents	23:8–25:10	5 years
Respondents	25:16–25	5 years
Respondents	28:4–9	5 years
Respondents	28:20–29:9	5 years
Respondents	29:11–23	5 years
Respondents	32:7–22	5 years
Respondents	34:2–34:4	5 years
Respondents	36:9–37:19	2 years
Respondents	38:8–39:19	2 years
Respondents	40:1–41:5	2 years
Respondents	41:9–41:25	2 years
Respondents	44:10–21	2 years
Respondents	45:1–9	2 years
Complaint Counsel	45:10–46:11	2 years
Respondents	46:12–47:5	2 years
Respondents	47:9–48:22	2 years
Respondents	48:24–50:2	2 years
Respondents	50:25–51:10	2 years
Respondents	52:9–53:3	2 years
Respondents	54:20–55:11	5 years
Respondents	59:23–61:20	5 years
Respondents	62:1–23	5 years
Respondents	63:4–65:3	5 years
Respondents	65:16–66:16	5 years
Respondents	66:20–69:8	8 years
Respondents	70:9–72:17	8 years
Respondents	73:16–23	5 years
Respondents	74:2	5 years
Complaint Counsel	74:3–9	5 years
Complaint Counsel & Respondents	74:10–13	5 years
Complaint Counsel	74:14	5 years
Complaint Counsel & Respondents	74:15	5 years
Respondents	74:16–75:3	5 years
Complaint Counsel	76:17–77:11	5 years
Respondents	78:5–23	5 years
Respondents	80:18–81:14	5 years
Respondents	81:20–82:7	5 years
Complaint Counsel	86:10–87:1	5 years
Complaint Counsel	87:3–6	5 years
Respondents	88:17–89:24	2 years
Complaint Counsel	92:25–93:23	5 years

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Complaint Counsel	94:18–24	5 years
Respondents	97:11–24	5 years
Complaint Counsel	97:25–98:11	5 years
Respondents	98:12–13	5 years
Complaint Counsel	98:14–18	5 years
Complaint Counsel	99:15–16	5 years
Complaint Counsel & Respondents	99:17–100:3	5 years
Complaint Counsel	100:4–21	5 years
Complaint Counsel	100:24–101:15	5 years
Respondents	101:16–23	5 years
Respondents	102:2–104:8	5 years
Complaint Counsel	105:23–106:8	5 years
Complaint Counsel & Respondents	106:10	5 years
Respondents	108:1–109:8	5 years
Complaint Counsel	109:9–12	5 years
Respondents	112:18–115:14	5 years
Complaint Counsel	119:1–11	5 years
Complaint Counsel	120:10–12	5 years
Respondents	120:16–22	5 years
Complaint Counsel	120:25–121:15	5 years
Complaint Counsel	121:23–123:16	5 years
Complaint Counsel	123:18–124:3	5 years
Respondents	124:4–5	5 years
Respondents	124:8–9	5 years
Respondents	124:11	5 years
Complaint Counsel	126:2–127:9	5 years
Respondents	127:10–14	5 years
Respondents	127:17–18	5 years
Complaint Counsel	128:4	5 years
Complaint Counsel & Respondents	128:5–18	5 years
Respondents	128:19–21	5 years
Complaint Counsel	130:5–131:8	5 years
Complaint Counsel	131:11–21	5 years
Respondents	132:3–13	5 years
Respondents	134:18–135:15	5 years
Complaint Counsel	135:16	5 years
Complaint Counsel & Respondents	135:17–136:9	5 years
Complaint Counsel	136:10–22	5 years
Complaint Counsel & Respondents	136:23–25	5 years
Respondents	137:1–8	5 years
Respondents	137:16–138:13	5 years
Respondents	138:24–139:9	5 years

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Dated: _____

The Honorable D. Michael Chappell
Administrative Law Judge