UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION 600 Pennsylvania, Avenue, N.W. Washington, DC 20580 Plaintiff, v. ARDAGH GROUP S.A. 56, rue Charles Martel, Luxembourg L-2135 and COMPAGNIE DE SAINT-GOBAIN "Les Miroirs" 18, avenue d'Alsace 92400 Courbevoie France and SAINT-GOBAIN CONTAINERS, INC. 1509 S. Macedonia Avenue Muncie, Indiana 47307 Defendants.	Civil Action No. 1:13-cv-01021-RMC **COMPLAINT – PUBLIC VERSION**

COMPLAINT FOR PRELIMINARY INJUNCTION PURSUANT TO SECTION 13(b) OF THE FEDERAL TRADE COMMISSION ACT

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), by its designated attorneys, petitions this Court, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b) and Section 16 of the Clayton Act, 15 U.S.C. § 26, for a preliminary injunction enjoining Ardagh Group S.A. ("Ardagh"), Compagnie de Saint-Gobain ("CSG"), and Saint-Gobain Containers, Inc. ("Saint-Gobain") (collectively, "Defendants"), including their domestic and foreign agents, divisions, parents, subsidiaries, affiliates, partnerships, or joint ventures, from taking any steps toward combining or acquiring any stock, assets, or other interest of one another, either directly or indirectly; thereby maintaining the status quo during the pendency of an administrative proceeding that has already been initiated by the Commission pursuant to Section 5 of the FTC Act, 15 U.S.C. § 45, and Section 7 of the Clayton Act, 15 U.S.C. § 18. The ongoing administrative proceeding will determine the legality of the acquisition, subject to judicial review by a federal Court of Appeals, and will provide a forum for all parties to conduct full discovery and present evidence regarding the likely effects of the acquisition.

NATURE OF THE CASE

1. This is an action to stop Defendants from consummating or otherwise taking any steps to complete an anticompetitive acquisition. If Ardagh's proposed $1.7 billion acquisition of Saint-Gobain (the "Acquisition") is consummated, the number of significant companies selling glass containers in the United States would be reduced from three to two, resulting in an effective duopoly. Defendants Ardagh and Saint-Gobain manufacture and sell, among other things, glass containers to beer customers ("Brewers") and spirits customers ("Distillers") who fill the glass containers with beer and spirits products. In turn, Americans consume more than 18 billion beer and spirits products packaged in glass containers each year. Ardagh and Saint-Gobain, along with Owens-Illinois, Inc. ("O-I"), produce the overwhelming majority of those glass containers. Together, these "Three Majors" dominate the $5.1 billion U.S. glass container industry.

2. Absent injunctive relief, Ardagh and O-I will control the lion's share of the markets for glass containers sold to Brewers and Distillers. The merging parties' own business documents suggest that the Acquisition would result in a duopoly controlling more than [redacted] of

the sales of glass containers to Brewers and Distillers in the United States. The post-Acquisition market shares in these relevant markets easily exceed the market concentration levels presumed likely to result in anticompetitive effects under the Federal Trade Commission and U.S. Department of Justice Horizontal Merger Guidelines ("Merger Guidelines") and under the case law.

3. The Acquisition would substantially lessen competition by dramatically increasing the ease and likelihood of coordination between the only two remaining major glass container manufacturers and by eliminating existing head-to-head competition between Ardagh and Saint-Gobain, which will result in higher prices for customers.

4. New entry into the relevant markets will not prevent the Acquisition's anticompetitive effects. Glass container plants are expensive to build, costing at least $150 million. Construction is also time-consuming and subject to significant regulatory hurdles. Expansion by fringe manufacturers is also difficult and unlikely because the remaining firms in the marketplace are substantially smaller than the major manufacturers, with no fringe firm operating more than one dedicated glass container plant. Finally, Defendants cannot show cognizable efficiencies that would outweigh the competitive harm that the Acquisition will cause.

5. On June 28, 2013, by a 3-1 vote, the Commission found it had reason to believe that this Acquisition would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by substantially reducing competition leading to higher prices, lower availability, and less innovation. *See* Attachment. The Commission has scheduled a plenary administrative trial on the merits of the Acquisition before an FTC Administrative Law Judge commencing on December 2, 2013. *Id*. at 14. Preliminary injunctive relief is imperative to preserve the status

quo and protect competition during the Commission's on-going administrative proceeding. Such relief is warranted as long as the FTC raises "questions going to the merits so serious, substantial, difficult and doubtful as to make them fair ground for thorough investigation, study, deliberation and determination by the [FTC] in the first instance, and ultimately by the Court of Appeals." Thus, the Court in this matter "is not called upon to reach a final determination on the antitrust issues." Instead, the "one purpose of a proceeding under Section 13(b) is to preserve the *status quo* until the FTC can perform its function." Allowing the Acquisition to proceed would harm consumers and undermine the Commission's ability to remedy the anticompetitive effects of the Acquisition if it is ultimately found unlawful after a full trial on the merits and any subsequent appeals.

JURISDICTION AND VENUE

6. This Court's jurisdiction arises under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and Section 16 of the Clayton Act, 15 U.S.C. § 26, and under 28 U.S.C. §§ 1331, 1337, and 1345. This is a civil action arising under Acts of Congress protecting trade and commerce against restraints and monopolies and is brought by an agency of the United States authorized by an Act of Congress to bring this action.

7. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides in pertinent part:

> Whenever the Commission has reason to believe –
>
> (1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and
>
> (2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public – the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court

> of the United States to enjoin any such act or practice. Upon a proper showing that weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond. . . .

8. Defendants are, and at all relevant times have been, engaged in activities in or affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

9. Defendants transact business in the District of Columbia and are subject to personal jurisdiction therein. Venue therefore is proper in the District of Columbia under 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. §§ 22 and 53(b).

THE PARTIES

10. Plaintiff, the Commission, is an administrative agency of the United States, established, organized, and existing pursuant to the FTC Act, 15 U.S.C. §§ 41 *et seq.*, with its principal offices at 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Commission is vested with authority and responsibility for enforcing, *inter alia,* Section 7 of the Clayton Act and Section 5 of the FTC Act.

11. Defendant Ardagh is a corporation existing and doing business under and by virtue of the laws of Luxembourg, with its office and principal place of business located at 56, rue Charles Martel, Luxembourg. Ardagh is a global leader in glass and metal packaging solutions with global sales of approximately $4.8 billion. Ardagh owns nine glass container plants located in seven U.S. states. In 2012, Ardagh achieved U.S. glass container sales of [redacted]. [redacted] of these sales were made to Brewers and [redacted] million were made to Distillers. Presently, Ardagh is the third-largest glass container manufacturer in the United

States overall, the third-largest glass container manufacturer for Brewers, and the second-largest for Distillers.

12. Defendant Compagnie de Saint-Gobain is a corporation existing and doing business under and by virtue of the laws of France, with its office and principal place of business located at "Les Miroirs," 18 avenue d'Alsace, Courbevoie, France. Compagnie de Saint-Gobain operates a number of industrial manufacturing businesses, including manufacturing glass containers. Its U.S. glass container business, Saint-Gobain, operates under the name "Verallia North America" or "VNA." Saint-Gobain operates 13 glass container plants in 11 U.S. states. In 2012, Saint-Gobain achieved U.S. sales of [redacted]. [redacted] of these sales were made to Brewers and [redacted] were made to Distillers. Presently, Saint-Gobain is the second-largest glass container manufacturer in the United States overall, the second-largest glass container manufacturer to Brewers, and the third-largest to Distillers.

THE ACQUISITION

13. Pursuant to a Share Purchase Agreement entered into between Ardagh and Compagnie de Saint-Gobain on January 17, 2013, Ardagh proposes to acquire all the voting securities of Saint-Gobain for approximately $1.7 billion.

14. Pursuant to the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a, and a timing agreement between Defendants and Commission staff, unless restrained or enjoined by this Court, Defendants may consummate the Acquisition on July 5, 2013. Defendants have indicated they intend to do so as soon as possible.

15. On June 28, 2013, the Commission authorized commencement of this action under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to seek a temporary restraining order and preliminary injunction barring the Acquisition until the resolution of the administrative

proceeding that was commenced by the Commission on the same day, pursuant to Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), and Section 5 of the FTC Act, 15 U.S.C. § 45. The legality of the Acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45, and the appropriate remedy in the event liability is found, will be determined by the Commission through an administrative proceeding and will be subject to judicial review.

16. In authorizing the filing of this complaint in this Court, the Commission has determined that (1) it has reason to believe the Acquisition would violate the Clayton Act and the FTC Act by substantially reducing competition in one or more lines of commerce, and (2) it will promote the public interest for this Court to enjoin the Acquisition pending the resolution of the Commission's administrative proceedings and any appeals, so as to minimize the potential harm to customers and preserve the Commission's ability to grant an adequate remedy if it concludes, after the hearing, that the Acquisition is unlawful.

BACKGROUND – GLASS CONTAINERS

17. Glass container manufacturers produce beverage and food containers in a variety of shapes and sizes for beer, spirits, non-alcoholic beverages, ready-to-drink alcoholic beverages, and various food products. In 2011, sales to Brewers represented approximately 58% of U.S. glass container shipments and sales to Distillers represented approximately 4%.

18. Glass containers have certain attributes that are prized by Brewers and Distillers who package their products in glass. Among other features, glass:

- Protects beer and spirits by guarding against oxygen invasion for a longer shelf life;
- Maintains the true taste of the beer or spirits;

- Is chemically inert and does not leach chemicals into the beer and spirits;
- Is 100% recyclable;
- Promotes a premium or distinctive brand image; and
- Enables Brewers and Distillers to associate the quality appearance of the glass with their product identity.

19. Other categories of glass, such as flat window glass, table glass (*e.g.*, drinking glasses and kitchenware), and specialty pharmaceutical or industrial glass are manufactured differently than glass containers. Defendants do not make or sell these other types of glass.

INDUSTRY DYNAMICS

20. The approximately $5 billion glass container industry in the United States is dominated by the Three Majors: O-I, Saint-Gobain, and Ardagh. Presently, O-I is the largest U.S. producer of glass containers, operating 17 plants in the country, plus two in Canada. Saint-Gobain is the second-largest glass container producer with 13 plants, and Ardagh is the third-largest with 9 plants.

21. Ardagh entered the U.S. glass container industry in 2012 with two acquisitions. First, Ardagh bought Leone Industries, a small, single-plant glass container producer in Bridgeton, New Jersey. Shortly thereafter, it bought Anchor Glass Container Corporation ("Anchor"), the longstanding, third-largest glass container producer in the United States. Ardagh's proposed acquisition of Saint-Gobain would be its third glass container acquisition in the United States in less than two years, and, in its own words, will make Ardagh the largest glass producer in the country.

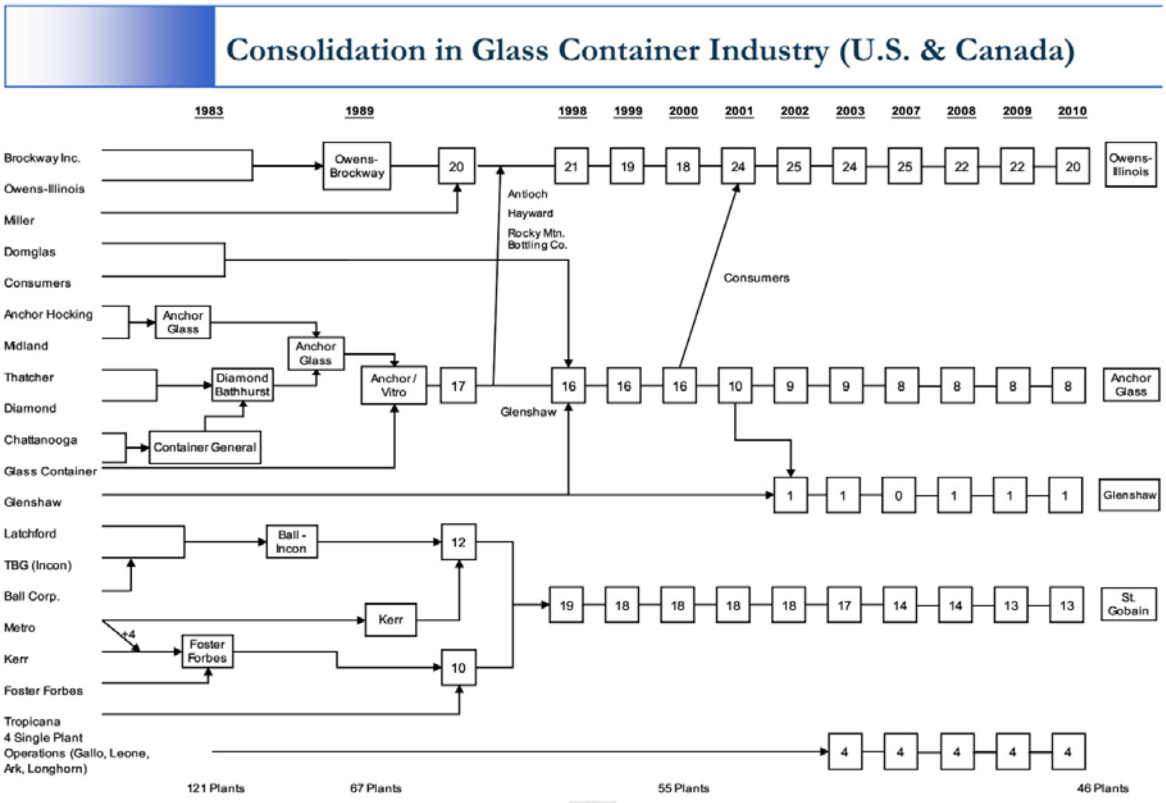
22. Beyond the Three Majors, there is a fringe of glass manufacturers each with only a single-plant dedicated to glass containers in the United States, including the independent glass-

makers Arkansas Glass, Piramal, Anchor Hocking, Bennu Glass, and Gerresheimer Glass. Of these, only three make glass containers for Distillers and only two make any type of glass containers for Brewers. These sales are extremely limited.

23. Three beverage companies, E. & J. Gallo Winery (through Gallo Glass Company), Anheuser-Busch InBev (through Longhorn Glass Corporation), and MillerCoors (through Rocky Mountain Bottle Company - a joint venture with O-I) operate single-plant glass container manufacturing facilities. Gallo manufactures mostly wine bottles and a small number of glass containers for its own spirits products. Brewers Anheuser-Busch InBev and MillerCoors do not have any external sales of the glass containers that they produce.

24. Two Mexican manufacturers, Vitro and Fevisa, currently export a small amount of glass containers to the United States. The U.S. fringe, self-suppliers, and Mexican firms have a limited impact on competition in the relevant markets, servicing limited regions and portions of demand from Brewers and Distillers.

25. The U.S. glass container industry has changed dramatically over the past thirty years, as manufacturers have consolidated and shed excess capacity. In 1983, there were approximately 121 glass container plants run by 23 different manufacturers, 19 of which operated more than one plant in the United States. During the 1980s and 1990s, a series of mergers reduced the number of competitors. Today, there are only 47 glass container plants, and only the Three Majors operate more than one dedicated glass container plant.



[Note: Anchor Glass is now Ardagh; Glenshaw is now Kelman and is not currently operational].

26. In the years past, mainly before the mid-2000s, when there was excess capacity in the market, the Three Majors competed particularly vigorously against each other. To keep their plants fully loaded, the Three Majors prioritized glass container sales volume over prices. The Defendants refer to this period as one of [redacted] or [redacted] Their efforts to fill excess capacity and the resulting price competition led to lower margins for the Three Majors and lower prices for their customers.

27. Beginning in the mid-2000s, the Three Majors [redacted] The Three Majors began pursuing a "price over volume" strategy (also referred to as "value over volume" or "margin before

volume"). The Three Majors recognized that this shared approach would help keep industry capacity in close balance with demand, help maintain pricing policies, and ensure more profitable returns. As a presentation to Ardagh's top executives explains, [redacted]

28. While rationalizing capacity and announcing a focus on profitability, the Three Majors began demanding cost pass-through provisions in their contracts and implementing surcharges to protect themselves from cost increases. Meanwhile, the Three Majors successfully shielded themselves from increases in raw materials, energy, labor, natural gas, and fuel costs, which were passed on to customers. At the same time, the Three Majors recognized the advantages of keeping industry supply tight, which maximized their own leverage with customers. To avoid excess capacity, they closed down glass container plants and idled furnaces. As demonstrated in this chart prepared in 2012 for Ardagh contemplating this very Acquisition, the combination of these two strategies led to higher margins for glass container manufacturers and higher prices for customers.

[redacted]

29. Despite the Three Majors' recognition of mutually beneficial behavior, glass container buyers continue to pit O-I, Saint-Gobain, and Ardagh against each other to obtain better prices. For example, in 2013, a Saint-Gobain distributor reported that it was a [redacted] when one of its major Brewers switched to Ardagh in response to a [redacted]% price increase, and warned Saint-Gobain to [redacted] Similarly, in August 2011, the CEO of Anchor (now Ardagh Glass North America) wrote that it [redacted] after one of Ardagh's liquor customers obtained a lower price quote from O-I.

THE RELEVANT PRODUCT MARKETS

30. The relevant product markets in which to analyze the Acquisition's effects are: (1) the manufacture and sale of glass containers to Brewers; and (2) the manufacture and sale of glass containers to Distillers. This is appropriate because, as described in the Merger Guidelines, prices are individually negotiated in this industry and customers cannot engage in arbitrage.

31. Together, beer and spirits are an important driver for U.S. glass container demand and represent more than 60% of the glass container usage in this country. Brewers purchase over $2 billion in glass containers annually to meet consumer demand for beer in glass bottles. Non-glass packaging materials, such as aluminum cans or plastic containers, are not in this relevant product market because not enough Brewers would switch to such products to make a small but significant and non-transitory increase in the price ("SSNIP") of glass containers to Brewers unprofitable for a hypothetical monopolist.

32. Brewers and Distillers do not view other packaging materials as interchangeable for glass containers because of commercial constraints, such as consumer preferences and brand identity. The existence of other packaging materials has not prevented the Three Majors from shifting cost increases to Brewers and Distillers and raising prices in recent years. Indeed, glass container prices have increased substantially more than plastic containers and aluminum cans.

33. Aluminum cans are already significantly less expensive than size-equivalent glass containers, yet Brewers continue to purchase glass containers. Many Brewers sell beer in both aluminum cans and glass bottles, and view these two forms of packaging as complementary to each other, not as substitutes. Despite the presence of aluminum cans, Defendants forecast demand for glass bottles for beer as stable for the two largest Brewers and growing for craft Brewers.

34. Distillers purchase over $500 million in glass containers to package and promote their spirits products. Non-glass packaging materials, such as plastic containers, are not in this relevant product market because not enough spirits customers would switch to non-glass packaging materials to make a SSNIP in glass containers to spirits customers unprofitable for a hypothetical monopolist.

35. Distillers who package their products in glass containers rely on competition among glass container manufacturers, not plastic suppliers, to obtain favorable pricing. In instances where spirits manufacturers decide to package their products in plastic – mainly in the sub-premium brands, small container sizes, and bulk sizes – there is little that glass manufacturers can do to prevent these customers from switching to plastic containers. In other words, a customer's decision to convert spirits products from glass packaging to plastic packaging are not typically driven by price competition. Moreover, once a customer converts to plastic, they very rarely return to packaging in glass.

36. Head-to-head competition between glass containers and other types of packaging is rare. Brewers and Distillers compete glass container manufacturers against each other to obtain favorable pricing and commercial terms. While other packaging materials can functionally be used to package beer and spirits, these other packaging materials, primarily aluminum cans for beer and plastic for spirits, lack a close price relationship with glass containers. Quite simply, other types of packaging do not constrain Ardagh and Saint-Gobain to the same degree as glass container competition. Indeed, as Ardagh itself described in its bond offering memorandum raising money to acquire Anchor: "We are subject to intense competition from other glass container producers against whom we compete on the basis of price, quality, customer service, reliability of delivery and marketing." Ardagh distinguished this direct competition with its glass-making rivals by describing that it competes "indirectly" with other forms of rigid packaging, such as plastic and metal. The absence of plastic and metal competition is particularly acute in the relevant product markets.

37. The Defendants' own assessment of competition shows why products other than glass containers are not in the relevant markets. In their business documents, Saint-Gobain and

Ardagh routinely identify each other and O-I as their most consistent and direct competitive constraints. Defendants' own documents focus on competition from each other and O-I when analyzing sales to Brewers and Distillers. Defendants identify their competition as the other glass container manufacturers and discuss business strategies for glass container sales. Ardagh and Saint-Gobain calculate their sales volumes and revenues relative to each other and O-I. For example, in a recent presentation to [redacted], Ardagh explained its "North American Glass Expansion" would make Ardagh the "#1 Player [with a] 49% Market Share."

THE RELEVANT GEOGRAPHIC MARKET

38. The relevant geographic market in which to analyze the competitive effects of this Acquisition is no broader than the United States. All Three Majors have manufacturing plants throughout the United States that enable them to compete on a nationwide basis. There are limited imports of glass containers to the United States, because of high freight costs, logistical and supply chain risks, and customer perceptions of inferior quality. Imports are thus unlikely to defeat a small but significant and non-transitory increase in price by a hypothetical monopolist of glass containers manufactured and sold to Brewers and Distillers in the United States.

MARKET CONCENTRATION AND THE ACQUISITION'S PRESUMPTIVE ILLEGALITY

39. Ardagh's post-Acquisition market share in the sale of glass containers to Brewers will be [redacted] %, based on sales. In the market for glass containers to Distillers, the post-Acquisition market share will be [redacted] %.

40. The glass container industry in the United States will be highly concentrated after the Acquisition. The Merger Guidelines measure concentration using the Herfindahl-Hirschman Index ("HHI"). Under that test, a merger is presumed likely to create or enhance market power (and is presumptively illegal) when the post-merger HHI exceeds 2,500 and the merger increases

the HHI by more than 200 points. Here, both markets' post-merger HHI well exceeds 2,500, and the Acquisition increases concentration in the sale of glass containers sold to Brewers by 781 points, and 1,069.3 for the sale of glass containers to Distillers.

ANTICOMPETITIVE EFFECTS – THE ACQUISITION WOULD LIKELY LEAD TO ANTICOMPETITIVE COORDINATION

41. The glass container markets for beer and spirits have many features that increase the likelihood of post-Acquisition coordination, including low demand growth, tight capacity, stable market shares, and high barriers to entry. The Three Majors already obtain a wealth of information about the markets and each other, including plant-by-plant production capabilities, profitability, the identities of each other's customers, and details regarding each other's contracts and negotiations with customers. Customers, industry analysts, public statements, and distributors all serve as conduits for market information.

42. After the Acquisition, with only two major glass container manufacturers left, it will become substantially easier for the remaining two majors to coordinate with one another on price and non-price terms to achieve supracompetitive prices or other anticompetitive outcomes.

43. All Three Majors recognize their mutual interdependence and aligned incentives today. They have reduced capacity, either by closing plants or idling furnaces, to rationalize industry supply so as not to exceed customer demand. The Three Majors share an "[redacted] and have embraced a "price over volume" or "margin over volume" strategy of cutting capacity, boosting price, and shifting input cost volatility to the customers. Indeed, Saint-Gobain repeatedly referred to its strategy of "margin over volume" as its [redacted] O-I is the only one of the Three Majors that is publicly traded and Ardagh and Saint-Gobain closely follow O-I's financial reports and public strategy statements.

44. Not only do the Three Majors pay close attention to each other's public statements but their executives often obtain non-public information through third parties. For example, in 2009, Anchor requested a call with a key industry analyst. After the call, in which Anchor's CEO, CFO, and a board member participated, the industry analyst wrote back, "I will let you know what I hear back from St. Gobain when I hear from them." Three days later, Anchor's CEO responded:

> We hope that our view confirms your thoughts regarding the industry leader's efforts on enhanced performance. We continue to desire to play the role as the rational #3 glass provider in NA, support customers where there is a strong geographic alignment logistically, and focus our assets to support improved value rather than just volume.
>
> We believe our curtailment efforts on capacity and balancing capacity/demand/inventory are very consistent with what has been pursued by the leader as well.

The industry analyst later responded with information he had learned from discussions with O-I:

> I was chatting with OI recently and they are optimistic about the outlook for a recovery in glass volumes, but probably not until 2010 . . . In the US, they anticipate achieving some price success with their 2 big customers at the end of this year, but they seemed (in my opinion) to have backed off a bit of the bullishness they had a few quarters ago regarding timing and absolute level of increase. They do feel that supply/demand is being well managed in the US, but given the volume trends thus far in 2009 they seem a little concerned (in my view) on whether they will be able to get the big step up in price they (and investors) wanted . . . Reading between the lines a little, it seems to me they are a little concerned about losing some volume to competitors.

45. This merger to duopoly would greatly increase the likelihood and risk of coordination. For example, prior to quoting on craft Brewer business, Saint-Gobain advised its sales committee to [redacted]

ANTICOMPETITIVE EFFECTS – THE ACQUSITION WILL ELIMINATE DIRECT COMPETITION BETWEEN ARDAGH AND SAINT-GOBAIN

46. In addition, the Acquisition would eliminate head-to-head competition between the second- and third-largest U.S. glass container manufacturers in the relevant product markets. Brewers and Distillers have reaped substantial benefits from Defendants' rivalry, which would be immediately extinguished by the Acquisition.

47. Direct competition between Ardagh and Saint-Gobain has led to lower prices for customers. For example, in 2012, Anchor lowered its prices to [redacted] in response to competition from Saint-Gobain. Another craft brewer, [redacted] was able to obtain more favorable pricing by competing Saint-Gobain and Anchor off each other. A spirits customer, [redacted], also used the threat of switching from Saint-Gobain to Anchor to get better prices on its glass bottles.

48. Defendants' ordinary-course business documents confirm that they understand competition from each other to constrain price increases. For example, in a 2011 email, the Vice President of Sales for Anchor wrote about price increases through its glass distributor for beer customers [redacted] In a 2012 email, the other Vice President of Sales for Anchor wrote about Saint-Gobain's pricing at another beer customer: [redacted]

49. Ardagh and Saint-Gobain have also competed directly to offer customers more innovative products and better service. For example, in 2012, a customer invited Ardagh and Saint-Gobain to submit prototypes for an innovative glass beer bottle. Both firms submitted proposals before Saint-Gobain won the business. At another Brewer, competition from Saint-Gobain prompted Ardagh to offer lighter weight glass bottles.

50. The Acquisition is also likely to lead to output reductions. [redacted] In an industry where capacity is tight, and utilization rates are nearly at maximum capacity, such plant closures or idling furnaces are likely to result in overall output reductions.

ENTRY BARRIERS

51. Effective entry or expansion into the relevant markets would neither be timely, likely, or sufficient to counteract the Acquisition's likely anticompetitive effects. The barriers facing potential entrants include the large capital investment necessary to build a glass plant, the need to obtain environmental permits, the high fixed costs of operating a glass plant, existing long-term contracts that foreclose much of the market, the need for specific manufacturing knowledge that is not easily transferred from other industries, and the molding technologies and extensive mold libraries already in place at existing manufacturers.

EFFICIENCIES

52. Extraordinarily great merger-specific efficiencies would be necessary to justify the Acquisition in light of its vast potential to harm competition. Nearly all of Ardagh's alleged efficiencies are either speculative, unverifiable, or not merger-specific. Defendants cannot show cognizable efficiencies that would outweigh the competitive harm that the Acquisition will cause.

LIKELIHOOD OF SUCCESS ON THE MERITS,
BALANCE OF EQUITES, AND NEED FOR RELIEF

53. In deciding whether to grant relief, the Court must balance the likelihood of the Commission's ultimate success on the merits against the *public* equities, using a sliding scale.

The principal equity in cases brought under Section 13(b) is the public's interest in effective enforcement of the antitrust laws. Equities affecting only the defendants cannot tip the scale.

54. The Commission's administrative complaint raises questions about the lawfulness of Defendants' Acquisition under the Clayton Act and the FTC Act that are serious, substantial, difficult, and doubtful enough to make them fair ground for thorough investigation, study, deliberation, and determination by the Commission during the administrative proceeding in the first instance, subject to appellate review.

55. The Commission has reason to believe that the Acquisition would violate Section 7 of the Clayton Act and that the merger agreement violates Section 5 of the FTC Act. In particular, the Complaint Counsel for the Commission is likely to succeed in demonstrating, among other things, that:

a. The Acquisition would have anticompetitive effects in both the market of glass containers sold to Brewers and the market of glass containers sold to Distillers;

b. Substantial and effective entry into the markets of glass containers sold to Brewers and to Distillers is difficult, and would not be likely, timely, or sufficient to offset the anticompetitive effects of the Acquisition; and

c. Any efficiencies that Defendants may assert will result from the Acquisition are speculative, not merger-specific, and are, in any event, insufficient as a matter of law to justify the Acquisition.

56. Should the Commission rule, after the full administrative trial, that the Acquisition is unlawful, reestablishing the status quo ante of vigorous competition between

Ardagh and Saint-Gobain would be difficult, if not impossible, if the Acquisition has already occurred. Moreover, in the absence of relief from this Court, substantial harm to competition would likely occur in the interim, even if suitable divestiture remedies could be devised.

57. Accordingly, the equitable relief requested here is in the public interest.

WHEREFORE, the Commission respectfully requests that the Court:

1. Preliminarily enjoin the Defendants from taking any further steps to consummate the Acquisition, or any other acquisition of stock, assets, or other interests, either directly or indirectly;
2. Retain jurisdiction and maintain the status quo until the administrative proceeding that the Commission has initiated is concluded; and
3. Award such other and further relief as the Court may determine is appropriate, just, and proper.

Dated: July 2, 2013

Respectfully submitted,

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