

ORIGINAL

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
Compagnie de Saint-Gobain, a corporation,
and
Saint-Gobain Containers, Inc.,
a corporation.

PUBLIC

DOCKET NO. 9356

RESPONSES AND OBJECTIONS OF RESPONDENTS COMPAGNIE DE SAINT-GOBAIN AND SAINT-GOBAIN CONTAINERS, INC. TO COMPLAINT COUNSEL'S REQUESTS FOR ADMISSIONS

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.32, Respondents Compagnie de Saint-Gobain and Saint-Gobain Containers, Inc. (together, "Saint-Gobain") hereby object and respond to Complaint Counsel's Requests for Admissions dated September 6, 2013 (the "Requests").

Saint-Gobain has not yet completed discovery in this action and has not yet completed preparation for any hearings or trial. Accordingly, Saint-Gobain reserves the right to supplement, revise, correct, add to or clarify the objections, answers or responses set forth herein. These responses are made without prejudice to, and are not a waiver of, Saint-Gobain's right to rely on other facts or documents at trial. In making these responses, Saint-Gobain expressly reserves its right to assert any and all objections as to the admissibility of such responses into evidence in this action, or in any other proceedings. Saint-Gobain makes these responses and objections without, in any way, implying that it considers the Requests, or responses and objections thereto, to be relevant or material to the subject matter of this action.

Saint-Gobain reserves the right to object on any grounds whatsoever at any time to any demand for further responses to any Request or to any other discovery procedures involving or relating to the subject matter of any Request.

**GENERAL OBJECTIONS AND OBJECTIONS
TO DEFINITIONS AND INSTRUCTIONS**

The following general objections and objections to Definitions and Instructions (the "General Objections") are incorporated by reference into Saint-Gobain's response to each of the Requests, as if set forth fully therein.

1. Saint-Gobain objects generally to the Requests, including the Definitions and Instructions set forth therein, to the extent they seek to impose requirements that are in addition to or different from those set forth in the Code of Federal Regulations or other applicable law. Saint-Gobain shall construe and respond to the Requests in a manner consistent with the Code of Federal Regulations or other applicable law, and not otherwise.

2. Saint-Gobain objects generally to the Requests, including the Definitions and Instructions set forth therein, to the extent that they seek information that is not within Saint-Gobain's possession, custody, control, or knowledge, or is not obtainable through reasonable inquiry and good faith effort.

3. Saint-Gobain objects generally to the Requests, including the Definitions and Instructions set forth therein, to the extent that they require identification and disclosure of information protected by the attorney-client privilege, the work product doctrine, the joint defense or common interest privileges, or any other applicable privilege or protection.

4. Saint-Gobain objects generally to the Requests, including the Definitions and Instructions set forth therein, to the extent they seek information that is publicly available, in the

possession, custody or control of Complaint Counsel or any third person or entity, or is equally accessible by Complaint Counsel.

5. Saint-Gobain objects generally to the Requests, including the Definitions and Instructions set forth therein, to the extent that they are argumentative or call for legal conclusions. Saint-Gobain's responses herein do not provide, and shall not be construed as providing, a legal conclusion or admission concerning any of the terms used in the Requests.

6. Saint-Gobain objects generally to the Requests, including the Definitions and Instructions set forth therein, to the extent they are vague and ambiguous, overly broad, unduly burdensome, lacking in particularity, unreasonable or seek the discovery of information that is neither relevant to the claims or defenses of any party to this action nor reasonably calculated to lead to the discovery of admissible evidence, as well as to the extent that they are unduly burdensome because they impose a significant expense and inconvenience on Saint-Gobain.

7. Saint-Gobain objects generally to the Requests, including the Instructions set forth therein, on the grounds that they are overly broad, unduly burdensome, lacking in particularity, unreasonable or seek the discovery of information that is neither relevant to the claims or defenses of any party to this action nor reasonably calculated to lead to the discovery of admissible evidence, to the extent they purport to seek information outside of the time period specified in Instruction 1 of the Request for Additional Information and Documentary Materials issued to Saint-Gobain by the Commission on February 25, 2013 (the "Second Request") as modified by the April 15, 2013 letter from Monica M. Castillo to Veena Viswanatha.

8. Saint-Gobain objects generally to the Requests, including the Definitions and Instructions set forth therein, to the extent that they contain any explicit or implicit characterization of facts, events, circumstances, or issues. Any response to a Request is not

intended to provide, and shall not constitute or be construed as providing, an admission that any explicit or implicit characterization of facts, events, circumstances, or issues in the Requests are accurate.

9. Saint-Gobain objects generally to the Requests, including the Definitions and Instructions set forth therein, to the extent they seek information that is cumulative or duplicative.

10. Saint-Gobain objects generally to the Requests, including the Definitions and Instructions set forth therein, and in particular the definitions of “Compagnie de Saint-Gobain”, “the Company”, “you” and “your”, and to any definition or Request that incorporates those definitions, to the extent that they incorporate entities that are not a party to this action or defendants that are not affiliated with Compagnie de Saint-Gobain or Saint-Gobain Containers, Inc. Saint-Gobain further objects to those definitions to the extent that they are overly broad, vague, ambiguous, susceptible to multiple interpretations, or otherwise seek information that is not relevant to the issues in this action or calculated to lead to the discovery of admissible evidence. Saint-Gobain shall construe the terms “the Company”, “you” and “your” to refer only to Compagnie de Saint-Gobain and Saint-Gobain Containers, Inc.

RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS FOR ADMISSIONS

Request 1

Admit that all of the top 25 U.S. craft brewers (based on 2012 beer sales volume) package their beer in glass containers.

Response to Request 1

In addition to the General Objections, Saint-Gobain objects to Request 1 on the grounds that the Request seeks information that is not within Saint-Gobain’s possession, custody or control or knowledge. Saint-Gobain further objects to the Request to the extent that it implies

that the 25 U.S. craft brewers with the highest beer sales volume in 2012 do not package their beer in aluminum cans, and to the extent that the Request implies that glass beer containers in the United States constitutes a relevant market.

Request 2

Admit that, in 2006, less than [REDACTED] of the gross output, measured by unit sales, from the Company's plant in Lincoln, IL was spirits bottles.

Response to Request 2

In addition to the General Objections, Saint-Gobain objects to the Request on the grounds that the term "spirits bottles" is vague and ambiguous, overly broad and lacking in particularity.

Subject to and without waiving these objections, Saint-Gobain admits that in 2006, less than [REDACTED] of the gross output, measured by unit sales, from Saint-Gobain's plant in Lincoln, IL was spirits glass bottles.

Request 3

Admit that, in 2007, less than [REDACTED] of the gross output, measured by unit sales, from the Company's plant in Lincoln, IL was spirits bottles.

Response to Request 3

In addition to the General Objections, Saint-Gobain objects to Request 3 on the grounds that the term "spirits bottles" is vague and ambiguous, overly broad and lacking in particularity.

Subject to and without waiving these objections, Saint-Gobain admits that in 2007, less than [REDACTED] of the gross output, measured by unit sales, from Saint-Gobain's plant in Lincoln, IL was spirits glass bottles.

Request 4

Admit that the Company bid to supply (through an informal or formal bid), either directly or through a distributor, [REDACTED] from the Company's plant in Sapulpa, Oklahoma in 2012.

Response to Request 4

Subject to and without waiving the General Objections, Saint-Gobain admits that in 2012 Saint-Gobain bid to supply (through an informal or formal bid), either directly or through a distributor, [REDACTED] with certain volumes of products from Saint-Gobain's plant in Sapulpa, Oklahoma.

Request 5

Admit that the Company bid to supply (through an informal or formal bid), either directly or through a distributor, [REDACTED] from the Company's plant in Burlington, Wisconsin in 2011.

Response to Request 5

Subject to and without waiving the General Objections, Saint-Gobain denies that in 2011, Saint-Gobain bid to supply (through an informal or formal bid), either directly or through a distributor, [REDACTED] from Saint-Gobain's plant in Burlington, Wisconsin.

Request 6

Admit that craft beer bottles and mass beer bottles can be manufactured in the same plant.

Response to Request 6

In addition to the General Objections, Saint-Gobain objects to Request 6 on the grounds that the terms "bottles" and "the same plant" are vague and ambiguous, overly broad and lacking in particularity.

Subject to and without waiving these objections, Saint-Gobain admits that certain craft beer glass bottles and certain mass beer glass bottles can be manufactured in the same glass manufacturing plant.

Request 7

Admit that craft beer bottles and mass beer bottles can be manufactured using the same furnace and same individual setting machine.

Response to Request 7

In addition to the General Objections, Saint-Gobain objects to Request 7 on the grounds that the term "bottles" is vague and ambiguous, overly broad and lacking in particularity.

Subject to and without waiving these objections, Saint-Gobain admits that certain craft beer glass bottles and certain mass beer glass bottles can be manufactured using the same furnace and same individual setting machine.

Request 8

Admit that the Company bid to supply (through an informal or formal bid) [REDACTED] in 2009.

Response to Request 8

Subject to and without waiving the General Objections, Saint-Gobain admits that in 2009, Saint-Gobain bid to supply (through an informal or formal bid) certain of [REDACTED] [REDACTED] bottling facilities with certain volumes of certain products.

Request 9

Admit that the Company bid to supply (through an informal or formal bid) [REDACTED] in 2012.

Response to Request 9

Subject to and without waiving the General Objections, Saint-Gobain admits that in 2012, Saint-Gobain bid to supply (through an informal or formal bid) [REDACTED] [REDACTED] with certain volumes of certain products.

Request 10

Admit that the Company bid to supply (through an informal or formal bid) [REDACTED] in 2013.

Response to Request 10

Subject to and without waiving the General Objections, Saint-Gobain admits that in 2013, Saint-Gobain bid to supply (through an informal or formal bid) certain of [REDACTED] [REDACTED] bottling facilities with certain volumes of certain products.

Request 11

Admit that the Company bid to supply (through an informal or formal bid), either directly or through a distributor, [REDACTED] in 2012.

Response to Request 11

Subject to and without waiving the General Objections, Saint-Gobain admits that in 2012, Saint-Gobain bid to supply (through an informal or formal bid), either directly or through a distributor, certain of [REDACTED] bottling facilities with certain volumes of certain products.

Request 12

Admit that the Company bid to supply (through an informal or formal bid), either directly or through a distributor, [REDACTED] in 2013.

Response to Request 12

Subject to and without waiving the General Objections, Saint-Gobain admits that in 2013, Saint-Gobain bid to supply (through an informal or formal bid), either directly or

through a distributor, certain of [REDACTED] bottling facilities with certain volumes of certain products.

Request 13

Admit that the Company bid to supply (through an informal or formal bid), either directly or through a distributor, [REDACTED] in 2010.

Response to Request 13

Subject to and without waiving the General Objections, Saint-Gobain admits that in 2010, Saint-Gobain bid to supply (through an informal or formal bid), either directly or through a distributor, certain of [REDACTED] bottling facilities with certain volumes of certain products.

Request 14

Admit that the Company bid to supply (through an informal or formal bid), either directly or through a distributor, [REDACTED] in 2012.

Response to Request 14

Subject to and without waiving the General Objections, Saint-Gobain admits that in 2012, Saint-Gobain bid to supply (through an informal or formal bid), either directly or through a distributor, certain of [REDACTED] bottling facilities with certain volumes of certain products.

Request 15

Admit that the Company bid to supply (through an informal or formal bid), either directly or through a distributor, [REDACTED] in 2012.

Response to Request 15

Subject to and without waiving the General Objections, Saint-Gobain admits that in 2012, Saint-Gobain bid to supply (through an informal or formal bid), either directly or through a distributor, Heaven Hill Distilleries, Inc. with certain volumes of certain products.

Request 16

Admit that the Company bid to supply (through an informal or formal bid), either directly or through a distributor, [REDACTED] in 2012.

Response to Request 16

Subject to and without waiving the General Objections, Saint-Gobain admits that in 2012, Saint-Gobain bid to supply (through an informal or formal bid), either directly or through a distributor, certain of [REDACTED] bottling facilities with certain volumes of certain products.

Request 17

Admit that the Company bid to supply (through an informal or formal bid), either directly or through a distributor, [REDACTED] in 2009.

Response to Request 17

Subject to and without waiving the General Objections, Saint-Gobain admits that in 2009, Saint-Gobain bid to supply (through an informal or formal bid), either directly or through a distributor, certain of [REDACTED] bottling facilities with certain volumes of certain products.

Request 18

Admit that the capital investment needed to construct a new glass container manufacturing facility in the U.S. is at least \$150-\$200 million.

Response to Request 18

In addition to the General Objections, Saint-Gobain objects to Request 18 on the grounds that the terms "capital investment" and "a new glass container manufacturing facility" are vague and ambiguous, overly broad and lacking in particularity.

Subject to and without waiving the General Objections, Saint-Gobain denies that a new glass container manufacturing plant in the U.S. costs at least \$150-200 million to construct, and further states that the cost of constructing a new glass manufacturing plant in the

U.S. depends on a number of factors, including the number of tanks and the number of glass forming machines within that plant.

PUBLIC

September 16, 2013

CRAVATH, SWAINE & MOORE LLP,

By



Christine A. Varney
Sandra C. Goldstein
Yonatan Even
Members of the Firm

Attorney for Defendants
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000
yeven@cravath.com

Counsel for Respondents Compagnie de Saint-Gobain and Saint-Gobain Containers, Inc.

CERTIFICATION

I, David W. Knight, declare as follows:

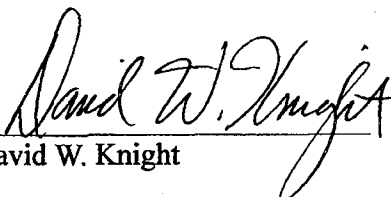
1. I am Senior Vice President, General Counsel & Secretary at Saint-Gobain Containers, Inc. and I have been authorized to make this verification on behalf of Saint-Gobain Containers, Inc. and Compagnie de Saint-Gobain.

2. I have read the foregoing document entitled Responses and Objections of Respondents Compagnie de Saint-Gobain and Saint-Gobain Containers, Inc. to Complaint Counsel's Requests for Admissions and know the contents thereof.

3. I am informed and believe that the information contained therein is accurate and true.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on September 16, 2013


David W. Knight

CERTIFICATE OF SERVICE

I certify that I filed by hand an original, two copies and a CD of the foregoing document with:

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

I also certify that I delivered by hand a copy of the foregoing document to:

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

I further certify that I delivered via electronic mail a copy of the foregoing document to:

Edward Hassi
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Ave., NW
Washington, DC 20580
(202) 326-2470
ehassi@ftc.gov

Counsel for Complaint Counsel Federal Trade Commission

Alan Goudiss
Dale Collins
Richard Schwed
Lisl Dunlop
Shearman & Sterling LLP
599 Lexington Avenue
New York, NY 10022
(202) 848-4906
agoudiss@shearman.com
wcollins@shearman.com
rschwed@shearman.com
ldunlop@shearman.com

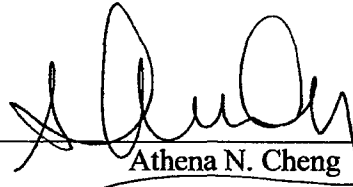
Counsel for Respondent Ardagh Group S.A

September 16, 2013

PUBLIC

CRAVATH, SWAINE & MOORE LLP,

By



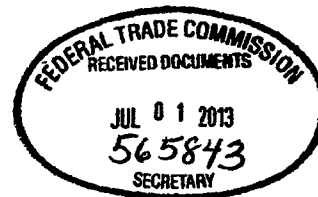
Athena N. Cheng

Attorney for Defendants
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000
acheng@cravath.com

Counsel for Respondents Compagnie de Saint-Gobain and Saint-Gobain Containers, Inc.

ORIGINAL

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**



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

DOCKET NO. 9356

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

DM Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: July 1, 2013

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9356" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9356" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

CERTIFICATE OF SERVICE

I hereby certify that I filed electronically using the FTC's E-File System a copy of the foregoing document with:

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

I also certify that a copy of the foregoing document has been delivered via electronic mail, and by overnight courier (Federal Express) for delivery on Monday, September 23, 2013 to:

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

I further certify that I delivered via electronic mail a copy of the foregoing document to:

Edward Hassi
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Ave., NW
Washington, DC 20580
(202) 326-2470
ehassi@ftc.gov

Counsel for Complaint Counsel Federal Trade Commission

Alan Goudiss
Dale Collins
Richard Schwed
Lisl Dunlop
Shearman & Sterling LLP
599 Lexington Avenue
New York, NY 10022
(202) 848-4906
agoudiss@shearman.com
wcollins@shearman.com
rschwed@shearman.com
ldunlop@shearman.com

Counsel for Respondent Ardagh Group S.A

PUBLIC

CERTIFICATE OF 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 possess a paper original of the signed document that is available for review by the parties and the adjudicator.

September 20, 2013

s/ Yonatan Even

Yonatan Even