



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Dissenting Statement of Commissioner Christine S. Wilson

In the Matter of Anchor Glass Container Corp.

File No. 211-0182

March 14, 2023

Today, the Commission announced that it has accepted, subject to final approval, another consent agreement with a company in the glass container industry. The consent resolves allegations that the use of non-compete agreements in employee contracts constitutes an unfair method of competition that violates Section 5 of the FTC Act. This case against Anchor Glass follows law enforcement actions announced in January 2023 involving two other industry participants, O-I Glass and Ardagh Group.¹ Today's case involves a similar fact pattern and suffers from the same flaws as those earlier cases. For the same reasons that I dissented in those cases,² I dissent here.

Like the January 2023 actions, this case reflects the approach of the new Section 5 Policy Statement.³ It alleges that the use of non-compete agreements has a tendency to harm competition and workers, but fails to provide facts to support the hypothesized outcome. Similar to the Commission's complaints against O-I Glass and Ardagh Group, the complaint against Anchor Glass suffers from several omissions. It does not allege that the company's non-compete provisions are unreasonable based on their temporal length, subject matter, or geographic scope; neither does it allege that the non-compete clauses were enforced. The complaint does not make factual allegations regarding the inability of a competing rival in the glass container industry to enter or expand. While the complaint alleges that the non-compete clauses reduce employee mobility, thereby leading to lower wages, reduced benefits, and less favorable working

¹ See In the Matter of O-I Glass, Inc., FTC File No. 211-0182 (Jan. 4, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2110182o-iglasscomplaint.pdf; In the Matter of Ardagh Group S.A., FTC File No. 211-0182, https://www.ftc.gov/system/files/ftc_gov/pdf/2110182ardaghcomplaint.pdf.

² Dissenting Statement of Commissioner Christine S. Wilson, In the Matter of O-I Glass, Inc. and In the Matter of Ardagh Group S.A., FTC File No. 211-0182 (Jan. 4, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/wilson-dissenting-statement-glass-container-cases.pdf.

³ Fed. Trade Comm'n, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act (Nov. 10, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/p221202sec5enforcementpolicystatement_002.pdf; Christine S. Wilson, Dissenting Statement Regarding the "Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act" (Nov. 10, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyWilsonDissentStmt.pdf.

conditions, the complaint does not identify a relevant market for particular types of labor and fails to allege a market effect on wages or other terms of employment.

For the reasons outlined here and explained in detail in my January 2023 statement, I dissent.