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** **Saint-Gobain Containers, Inc.,** **a corporation,** **and** **Compagnie de Saint-Gobain,** **a corporation.**	**Docket No. 9356** **PUBLIC**

ANSWER AND DEFENSES OF RESPONDENT ARDAGH GROUP S.A.

Pursuant to Rule 3.12 of the Commission's Rules of Practice for Adjudicative Proceedings, Respondent Ardagh Group S.A. ("Ardagh") answers the Administrative Complaint ("Complaint") filed by the Federal Trade Commission ("FTC") as follows:

INTRODUCTORY STATEMENT

In January 2013, Ardagh Group S.A., a Luxembourg company specializing in metal and glass packaging and manufacturing technology, entered into an agreement with Compagnie de Saint-Gobain, a French company that also makes glass packaging, to purchase Saint-Gobain's glass container operations in the United States. Ardagh and Saint-Gobain operate within a fiercely competitive packaging industry in the United States where glass packaging competes vigorously with, and continuously loses share to, plastic, metal and other forms of packaging. Ardagh entered into this transaction because it believes it can reduce costs and extract other annually recurring significant synergies—valued at least $95 million annually (with a present discounted value well in excess of $1 billion)—which will enable the combined company to better compete with plastic, metal and other forms of packaging.

The Federal Trade Commission, in issuing a complaint challenging the transaction, paints a picture of a three-firm U.S. glass container industry that operates today in a tacitly collusive manner to harm their customers in the beer and spirits industries. The Complaint portrays brewers and distillers to be at the mercy of the three glass container suppliers because they have no packaging alternatives.

That picture is a far cry from the truth. Domestic glass container producers have been under assault from nonglass containers—primarily cans and plastic—for years. From 1992 through 2012, total U.S. glass container shipments have declined 23% as customers switched to other types of containers. This dramatic decline in demand for glass containers has had severe consequences for the industry. As demand contracted, significant excess capacity—combined with the high fixed cost/low marginal cost characteristics of glass container industrial plants—led many producers to chase volume to fill their plants, only to find that the low prices they needed to keep customers from switching to nonglass containers did not cover the glass plants' high ongoing fixed costs. As a result, there was a reduction in capacity as plants closed and firms consolidated in order to stay in business.

The three most significant surviving companies with glass container plants in the United States—what the Complaint calls the "Three Majors"—certainly do *not* look like they have any market power, let alone that they are the well-protected members of the three-firm oligopoly the Complaint alleges. Anchor Glass, which Ardagh acquired last year and which forms the core of Ardagh's glass container business in the United States, went into bankruptcy three times between 1996 and 2006. After Anchor emerged from bankruptcy in 2006, the first effort to sell it in 2010 failed for lack of interested buyers and it was only in 2012 that Anchor found a willing buyer. Moreover, for the last five years the efforts of Saint-Gobain's parent company to sell some or all of its worldwide glass container business also met with a notable lack of buyer interest and resulted, among other things, in a failed partial IPO in 2011. Finally, Owens-Illinois, Inc. (O-I) saw its stock price drop 40% since 2008, while the Dow Jones Industrial Average increased almost 20%. None of this is what one would expect to see if the industry were the tight triopoly facing inelastic demands from captive customers that are unable to turn elsewhere as the Complaint describes.

What the Complaint fails to acknowledge are the substantial competitive constraints Ardagh and Saint-Gobain face today from nonglass competition, import competition, and the bargaining power of large buyers, as well as the limited competition between Ardagh and Saint-Gobain for beer and spirits customers.

Nonglass competition. By ignoring the competition between glass and nonglass packaging, the Complaint flies in the face of well-settled precedent of the federal courts and the Commission itself. In *United States v. Continental Can Co.*, 378 U.S. 441 (1964), the Supreme Court held that a merger between the second largest can producer and the third largest glass producer violated Section 7 of the Clayton Act after finding that glass and metal containers were in the same relevant product market for all end uses—including beer—for which they competed. *Id.* at 455, 449.

In 1988, the district court applied *Continental Can* in denying the Commission's petition for a preliminary injunction to block the merger of O-I and Brockway, Inc., the second and third largest glass container companies in the United States at the time. *FTC v. Owens-Illinois, Inc.*, 681 F. Supp. 27 (D.D.C. 1988) (noting that, "[i]n large part, the instant case is a 1980s revival of the 1960s classic *United States v. Continental Can*"), *vacated as moot*, 850 F.2d 694 (D.C. Cir. 1988) (per curiam). In particular, the district court found that "the largest elastic end use for glass containers is beer; it accounts for over 30% of the United States demand for glass containers, and there is no dispute that glass containers for beer compete directly with cans for packaging." *Id.* at 45. When the O-I/Brockway merger was tried in the administrative proceeding, *the full Commission rejected an all-glass market in every end-use where nonglass usage was at least 5% and at least one significant commercial customer in the end-use used nonglass packaging. Id.* at 298-320. Although glass beer bottles were not alleged to be a relevant market and hence were not at issue in the administrative proceeding, the Commission did find that glass and plastic spirits containers were in the same relevant product market, even though the penetration of plastic was much less than it is today. *Id.* at 306 (finding intermaterial competition throughout all sizes of spirits containers where smallest size had shifted to plastic, 20% of the largest size was bottled in plastic with projections of higher percentages in the future, many producers packaged spirits of one type and size or another in plastic, and "no technical reason why distilled liquors could not be packaged in plastic in all sizes").

The changed circumstances between the *O-I/Brockway* case and today make the finding that nonglass containers must be included in the relevant market even more compelling. Moreover, major recent conversion successes, continuing research efforts to create alternative nonglass containers that customers will substitute for glass containers, and increasing consumer acceptance of nonglass container for a wider range of products belie any argument that the substitution possibilities have been exhausted.

Glass beer bottles constitute 62% of all U.S. glass container shipments, yet over 60% of all beer is packaged in nonglass containers. Anheuser-Busch InBev ("AB"), the largest domestic brewer, has recently dramatically decreased its use of glass containers in the last five years—by 1.7 billion units—and now packages almost 70% of its beer in nonglass containers. MillerCoors, the other domestic "mass" brewer, similarly packages significant volumes in cans. In addition, beginning in 2014, MillerCoors also will begin selling product in 32 and 40 oz plastic bottles, thereby switching at least 187 million units from glass containers to plastic containers. Craft brewers are also rapidly adopting cans: although only 81 craft brewers used cans in 2010, today over 300 craft breweries, or about 25% of all microbreweries and regional craft breweries in the United States, package over 1025 brands of craft beer in cans. Just recently, Boston Beer, by far the largest of the craft brewers, after a decade or more of telling its customers that it would never package beer in cans, has begun selling Samuel Adams Boston Lager in a new custom-designed "Sam Can."

In spirits, which constitute about 4% of all U.S. glass container shipments, customers are also rapidly increasing their purchases of nonglass containers. Over the last five years alone, spirits customers have switched about 10% of their containers from glass to plastic, with approximately 40% of all spirits today packaged in plastic. Today, almost 100% of the smaller sized spirits containers (50 ml and 100 ml), and roughly 30% to 40% of the remaining sizes sold at retail (including the popular 750 ml), are packaged in plastic.[1] Examples of major brands packaged in plastic 750 ml bottles include Smirnoff Vodka, Captain Morgan Spiced Rum, Jim Beam Bourbon, Sobieski Vodka, Bacardi Gold Rum, Southern Comfort, Gordon's Vodka, Canadian Mist Canadian Whisky, Early Times Kentucky Whisky, and Wild Turkey Bourbon.

The glass container companies, through their trade association the Glass Packaging Institute, invest significantly in promoting the image of glass against other packaging materials. If the only glass container customers are those with inelastic demand for glass as the Complaint alleges, there would be no reason to invest in these image-building efforts. Likewise, plastic container companies and metal container companies innovate to take share away from glass containers, while glass container companies innovate in an effort to keep their customers.

When the relevant product markets are appropriately defined to include the nonglass containers that are used in the segment—the over 60% of nonglass beer containers and the over 40% of nonglass spirits containers—the transaction presents no colorable competitive concern.

Import competition. In addition to competition from nonglass containers, U.S. glass container manufacturers face significant competition from imports. In the last five years alone, glass container imports almost doubled and now comprise 18% of total U.S. glass container shipments. Glass beer bottles are imported from Mexico today and there is potential for increased imports from other Mexican glass container plants. In fact, AB just acquired DIFA, a leading Mexican glass manufacturer that historically has provided bottles to the Modelo beer brands. As part of that acquisition, AB has acquired a brand new glass container plant at Piedras Negras, located on the Texas border. Likewise, for spirits customers, there are numerous companies abroad that ship glass containers to spirits customers in the United States. Currently, there are at least 10 other sellers importing glass containers from Mexico, France, Germany, the Caribbean, and China for sale to U.S. spirits customers, in addition to several domestic manufacturers such as Anchor Hocking and Piramal.

Power buyers. The bargaining between a glass container company and its buyers is very asymmetrical. While the glass container plant can only produce glass containers, its customers have a very credible threat of switching to nonglass alternatives or imports. Notably, the customer does not have to switch all of its purchases of glass containers to

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1 Many high-end spirits brands are imported already bottled and are not part of the addressable U.S. container market, although their presence gives a skewed impression that nonglass containers have a weak presence in premium liquors. These high-end brands include Dewars, Chivas Regal, Tanqueray, Grey Goose, Absolut, Glenlivet, and Bombay Sapphire.

nonglass containers to have a significant disciplining effect. Given the high fixed cost/low marginal cost nature of glass container production and the limited demand for glass containers, even a small shift by a customer in its purchasing mix away from glass and in favor of nonglass can impose a very large loss of profits on the glass container manufacturer. In addition, multinational customers, such as AB and many liquor companies (including Diageo, Pernod Ricard, Bacardi, and Brown Forman), can discipline the prices in the United States by threatening to shift some of their demand in Europe and elsewhere away from the supplier's non-U.S. operations.

Lack of close competition between Ardagh and VNA. Apart from competition from nonglass containers and glass container imports and the asymmetrical bargaining power of the customers with whom the parties mostly deal, it is also significant that in most instances Ardagh and Saint-Gobain do not compete closely with one another for either beer or spirits container customers. Beer bottles have a high shipping cost relative to their value and brewers—especially the largest ones—are very sensitive to the distance of the glass container plant to the brewery. For the most part, Ardagh's and Saint-Gobain beer bottle plants are not located close enough to each other to enable them realistically to compete with one another.

Pricing constraints from downstream competition. Finally, even those products that remain in glass containers must compete with products in nonglass containers, and this downstream competition imposes a price constraint upstream on glass container prices. Thus, for example, not only can AB shift production between glass and nonglass packaging directly in response to a change in relative prices, even if it does not its consumers can switch between purchasing AB products in glass and nonglass containers. Similarly, a craft brewer that sells its product only in glass containers must compete for consumers with other craft brewers that sell their products in cans. If consumers change their purchasing in response to changes in relative prices of products packaged in glass and nonglass containers, this in turn will change the purchasing patterns of glass container customers away from purchasing the anticompetitively higher priced containers, thereby undermining the profitability of such a price increase.

Synergies. Finally, Ardagh's acquisition of Saint-Gobain will result in recurring synergies in excess of $95 million annually by 2016, which have a present discounted value well in excess of $1 billion. These quantified synergies include overhead costs savings, reductions in production costs, and manufacturing footprint efficiencies. (Some synergies, including procurement cost savings, have not been quantified.) The synergies depend on Ardagh's trade secrets, process technology, and management approach. None of the efficiencies will occur in the absence of the transaction. Moreover, much of the cost saving in raw materials, energy and freight will be passed on to customers under price adjustment clauses in contracts and the lower manufacturing costs will make glass containers more competitive against nonglass containers and glass container imports.

I. NATURE OF THE CASE

1. Ardagh admits that it produces and sells various types of glass containers, including those used by beer and spirits bottling customers in the United States, and states on information and belief that Saint-Gobain Containers, Inc. ("Saint-Gobain") and Owens-Illinois, Inc. ("O-I"), among others, also produce and sell glass containers in the United States. In all other respects, Ardagh denies the allegations contained in Paragraph 1.

2. Ardagh admits that it proposes to acquire Saint-Gobain. In all other respects, Ardagh denies the allegations contained in Paragraph 2.

3. Ardagh denies the allegations contained in Paragraph 3.

4. Ardagh denies the allegations contained in Paragraph 4, except that glass container plants are expensive to build and that regulatory approvals are required.

II. JURISDICTION

5. The allegations in Paragraph 5 are legal conclusions to which no response is required. To the extent a response is required, Ardagh denies the allegations in Paragraph 5, except admits that the Acquisition, as defined in the Complaint, constitutes an acquisition under Section 7 of the Clayton Act.

III. RESPONDENTS

6. Ardagh admits that it is a Luxembourg public limited liability corporation (sociėtė anonyme) incorporated and existing under the laws of the Grand Duchy of Luxembourg, having its registered office at 56, rue Charles Martel, L-2134 Luxembourg. Ardagh admits that its 2012 global sales were approximately $4.8 billion and that it owns nine glass container plants located in seven states in the U.S. In all other respects, Ardagh denies the allegations contained in Paragraph 6.

7. On information and belief, Ardagh admits the first four sentences of Paragraph 7. Ardagh is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 7 and therefore denies them.

IV. THE ACQUISITION

8. Ardagh admits the allegations contained in Paragraph 8, except that it denies that the acquisition price is $1.7 billion.

V. BACKGROUND

A. Glass Containers

9. Ardagh admits that certain glass container manufacturers produce glass containers in a variety of shapes and sizes for food and beverage products. In all other respects, Ardagh denies the allegations contained in Paragraph 9.

10. Ardagh admits that glass containers can guard against oxygen invasion, maintain the original flavor of the product packaged by the container, are chemically inert, and are 100% recyclable, and states that nonglass packaging materials have many or all of these same attributes. Ardagh further states that, although the glass container industry promotes glass as conveying a premium or distinctive brand image and as being associated with quality, many Brewers and Distillers have successfully switched to packaging products in nonglass packaging without apparent loss of brand image or damage to consumer perceptions of quality. In all other respects, Ardagh denies the allegations contained in Paragraph 10.

11. Ardagh admits that it does not manufacture flat window glass, table glass, specialty pharmaceutical glass or industrial glass in the United States. In all other respects, Ardagh denies the allegations contained in Paragraph 11.

B. Market Structure

12. Ardagh admits that it has 9 glass container plants in the United States. On information and belief, Ardagh admits that O-I has 17 glass container plants in the U.S. and two in Canada and that Saint-Gobain has 13 glass container plants in the U.S. In all other respects, Ardagh denies the allegations contained in Paragraph 12.

13. Ardagh admits that it entered the U.S. glass container industry in 2012 with its acquisition of Leone Industries and Anchor Glass Container Corporation. Ardgah further admits that its proposed acquisition of Saint-Gobain would be its third acquisition of a glass container manufacturer in the U.S. within two years. In all other respects, Ardagh denies the allegations contained in Paragraph 13.

14. Ardagh admits that there are a number of other glass container manufacturers operating in the U.S., including Arkansas Glass, Piramal, Anchor Hocking, Gallo Glass, Bennu Glass and Gerresheimer Glass. In all other respects, Ardagh denies the allegations contained in Paragraph 14.

15. On information and belief, Ardagh admits that Gallo Glass is a subsidiary of E. & J. Gallo Winery and that Gallo Glass that principally supplies wine and spirits bottles to E. & J. Gallo. Ardagh further admits on information and belief that Rocky Mountain Bottle Company is a joint venture between MillerCoors and O-I that exclusively supplies beer bottles to MillerCoors. On information and belief, Ardagh admits that Anheuser-Busch InBev ("AB InBev") owns and operates the Longhorn Glass plant in

Texas and states on information and belief that AB InBev also recently acquired four glass container plants producing beer bottles in Mexico through its acquisition of Modelo. In all other respects, Ardagh denies the allegations contained in Paragraph 15.

16. On information and belief, Ardagh admits that Vitro and Fevisa are Mexican glass container manufacturers and that both export glass containers to the United States. Ardagh further states on information and belief that imports of glass containers to the U.S. have grown 41% since 2007, and accounted for over 18% of U.S. glass container shipments in 2012. In all other respects, Ardagh denies the allegations contained in Paragraph 16.

VI. INDUSTRY BACKGROUND: MARKET CONSOLIDATION

17. Ardagh admits that the U.S. glass container industry has changed significantly over the last 30 years, and states that plant closures have taken place in response to significant reduction in demand for glass containers as customers have shifted to nonglass packaging. Ardagh denies the allegations in the second sentence of Paragraph 17, except admits that in 1983 there were 23 glass container manufacturers operating in the United States, and states that it is without knowledge or information sufficient to form a belief as to the number of plants operated by each manufacturer. In all other respects, Ardagh denies the allegations in Paragraph 17. To the extent that Paragraph 17 purports to quote from or extract the contents of Ardagh's business documents, Ardagh respectfully refers the Court to those documents for their complete and accurate contents and context. To the extent the Complaint alleges the quoted statement is an admission by Ardagh, this allegation is denied.

18. Ardagh admits that the glass container industry has been plagued with excess capacity as customers shifted significant portions of demand from glass containers to nonglass containers. Ardagh further admits that it priced aggressively to retain demand for its production and that at times these efforts resulted in prices that covered its short-run variable costs but not its long-run costs, including the costs of capital. To the extent that Paragraph 18 purports to quote from or extract the contents of Ardagh's or Saint-Gobain's business documents, Ardagh respectfully refers the Court to those documents for their complete and accurate contents and context. To the extent the Complaint alleges any quoted statement is an admission by Ardagh, this allegation is denied. In all other respects, Ardagh denies the allegations in Paragraph 18.

19. Ardagh admits on information and belief that U.S. domestic glass container production capacity declined as customer demand shifted from glass containers to nonglass containers and the reduced demand could no longer support the existing capacity. Ardagh also admits that since emerging from its last bankruptcy in 2006, Anchor has followed a strategy (sometimes referred to as "value over volume") whereby Anchor sought to sell products only at prices that allow it to sustain its business in the long run, rather than pursuing sales volume at prices that would not enable Ardagh to recover its full costs. To the extent that Paragraph 19 purports to quote from or extract the contents of Ardagh's or Saint-Gobain's business documents, Ardagh respectfully refers the Court to those

documents for their complete and accurate contents and context. To the extent the Complaint alleges the quoted statement is an admission by Ardagh, this allegation is denied. In all other respects, Ardagh denies the allegations in Paragraph 19.

20. Ardagh admits that after Anchor's emergence from bankruptcy in 2006 it sought and obtained provisions in multi-year contracts with its significant customers providing for pass-through of cost increases and cost reductions and surcharges for natural gas. These provisions shared the upside and downside risks of significant changes in input costs with multi-year customers, gave customers more transparency into production costs, and better assured customers of sustainable long-run supply. To the extent that Paragraph 20 purports to quote from or extract the contents of Ardagh's business documents, Ardagh respectfully refers the Court to those documents for their complete and accurate contents and context. To the extent the Complaint alleges the quoted statement is an admission by Ardagh, this allegation is denied. In all other respects, Ardagh denies the allegations in Paragraph 20.

21. Ardagh admits that it competes for glass container contracts against Saint-Gobain and O-I, as well as against other U.S. glass container manufacturers, imported glass containers, and nonglass packaging. To the extent that Paragraph 21 purports to quote from or extract the contents of Ardagh's or Saint-Gobain's business documents, Ardagh respectfully refers the Court to those documents for their complete and accurate contents and context. To the extent the Complaint alleges any quoted statement is an admission by Ardagh, this allegation is denied. In all other respects, Ardagh denies the allegations in Paragraph 21.

VII. THE RELEVANT PRODUCT MARKETS

22. Ardagh denies the allegations in Paragraph 22.

23. Ardagh admits that beer and spirits together account for over 60% of U.S. glass container demand. Ardagh denies that spirits are an important driver for U.S. glass container demand, since they represent only approximately 4% of 2012 glass container shipments. Ardagh lacks knowledge or information on the value of glass containers purchased by Brewers annually and does not admit the second sentence of Paragraph 23. Ardagh denies that nonglass packaging is not in the relevant product market and states that increases in the relative value propositions of glass and nonglass containers do cause shifts in Brewers' container purchasing decisions in the long run, making price increases unprofitable for glass container producers. In all other respects, Ardagh denies the allegations in Paragraph 23.

24. Ardagh denies that Brewers and Distillers do not view other packaging materials as interchangeable for glass containers and states that Brewers and Distillers can and do package their products in both glass and nonglass containers without loss of sales volume or brand identity. Ardagh denies that the existence of nonglass packaging has not impacted its pricing behavior and states that its introduction of price-adjustment formulae and surcharges for commodity price movements is consistent with contracting practices for

aluminum and plastic packaging. Ardagh lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 24 and therefore denies them.

25. Ardagh denies the allegations in the first and second sentences of Paragraph 25, except admits that many Brewers sell beer packaged in both glass and nonglass containers. Ardagh admits that it forecasts demand for craft beer as growing, but states that much of the increased consumer demand will be for craft beer in nonglass packaging, with only modest growth in glass volumes. Ardagh denies that it forecasts demand for glass bottles for beer for the two largest Brewers as stable, and states on knowledge and belief that demand for glass bottles from AB InBev has declined substantially in 2013 and is expected to decline further in the future. In all other respects, Ardagh denies the allegations in Paragraph 25.

26. Ardagh denies the allegations in Paragraph 26.

27. Ardagh denies the allegations in the first sentence of Paragraph 27. Ardagh admits that price is just one factor in a Distiller's decision to switch from glass to plastic containers, but states that spirits customers' ability to switch to plastic containers for some or all of their sizes or brands constrains Ardagh's pricing and also spurs it to compete on nonprice dimensions of competition—such as innovation and service—for products remaining in glass. Ardagh denies that any Distillers have completely converted all their products to plastic from glass, since most Distillers have multiple sizes and brands, some of which they may convert and others of which they will leave in glass. Ardagh admits that once a Distiller converts a certain product completely to plastic, that volume rarely reverts to glass, but states that Distillers' ability to selectively move certain sizes and products to plastic provides a significant long-run competitive constraint on glass container manufacturers. In all other respects, Ardagh denies the allegations in Paragraph 27.

28. Ardagh denies that it does not compete head-to-head with nonglass packaging. Ardagh admits that it competes against other glass container manufacturers in particular requests for proposals for the supply of glass containers, but denies that the ability of Brewers and Distillers to switch to nonglass packaging does not also act as a constraint. To the extent that Paragraph 28 purports to quote from or extract the contents of Ardagh's business documents, Ardagh respectfully refers the Court to those documents for their complete and accurate contents and context. To the extent the Complaint alleges the quoted statement is an admission by Ardagh, this allegation is denied. In all other respects, Ardagh denies the allegations in Paragraph 28.

29. To the extent that Paragraph 29 purports to quote from or extract the contents of Ardagh's business documents, Ardagh respectfully refers the Court to those documents for their complete and accurate contents and context. To the extent the Complaint alleges the quoted statement is an admission by Ardagh, this allegation is denied. In all other respects, Ardagh denies the allegations in Paragraph 29.

VIII. THE RELEVANT GEOGRAPHIC MARKET

30. Ardagh admits that the relevant geographic market in which to analyze the competitive effects of the Acquisition is no broader than the United States. Ardagh notes that the Complaint does not allege what the geographic market is, only what it is not, and hence fails to allege an essential element of a prima facie violation of Section 7 of the Clayton Act. In all other respects, Ardagh denies the allegations in Paragraph 30.

IX. MARKET CONCENTRATION AND THE ACQUISITION'S PRESUMPTIVE ILLEGALITY

31. Ardagh denies the first sentence of Paragraph 31. The second and third sentences of Paragraph 31 contain legal conclusions to which no response is required. To the extent a response is required, Ardagh admits the allegations in the second and third sentences of Paragarph 31. With respect to the third sentence of Paragraph 31, Ardagh repeats its responses to Paragraphs 22-30 of the Complaint and denies that glass containers sold to Brewers or glass containers sold to Distillers are relevant product markets in which to assess the competitive effects of the Acquisition. Moreover, the Complaint fails to allege the dimensions of the relevant geographic market. In all other respects, Ardagh denies the allegations in Paragraph 31.

X. ANTICOMPETITIVE EFFECTS

A. The Acquisition Will Likely Lead To Anticompetitive Coordination.

32. Ardagh denies the allegations in Paragraph 32.

33. Ardagh denies the allegations in Paragraph 33.

34. To the extent that Paragraph 34 purports to quote from or extract the contents of Ardagh's or Saint-Gobain's business documents, Ardagh respectfully refers the Court to those documents for their complete and accurate contents and context. To the extent that the Complaint alleges any quoted statements are admissions by Ardagh, this allegation is denied. In all other respects, Ardagh denies the allegations in Paragraph 34, except admits that O-I is publicly traded.

35. Ardagh denies the allegations in Paragraph 35. To the extent that Paragraph 35 purports to quote from or extract the contents of Ardagh's business documents, Ardagh respectfully refers the Court to those documents for their complete and accurate contents and context. To the extent that the Complaint alleges the quoted statements are admissions by Ardagh, this allegation is denied.

36. Ardagh denies the allegations in Paragarph 36. To the extent that Paragraph 35 purports to quote from or extract the contents of Saint-Gobain's business documents, Ardagh respectfully refers the Court to those documents for their complete and accurate contents and context.

B. The Acquisition Will Eliminate Direct Competition Between Ardagh and Saint-Gobain

37. Ardagh denies the allegations in Paragraph 37 of the Complaint and states that there is very limited head-to-head competition between Ardagh and Saint-Gobain for Brewer or Distiller customers because of differences in the geographic location of Ardagh and Saint-Gobain plants with capabilities to serve different customer groups and capacity constraints.

38. Ardagh denies the allegations in Paragraph 38 of the Complaint.

39. Ardagh denies the allegations in Paragraph 39. To the extent that Paragraph 39 purports to quote from or extract the contents of Ardagh's or Saint-Gobain's business documents, Ardagh respectfully refers the Court to those documents for their complete and accurate contents and context. To the extent the Complaint alleges any quoted statements are admissions by Ardagh, this allegation is denied.

40. Ardagh admits that it competes against all competitors, including all glass container manufacturers and manufacturers of nonglass packaging, to offer customers more innovative products and better service. In all other respects, Ardagh denies the allegations in Paragraph 40.

41. Ardagh denies the allegations in Paragraph 41 of the Complaint. In particular, with respect to the synergy estimates for the Acquisition, Ardagh denies that any savings are due to any anticompetitive plant closures and states that its estimates include projected increases in efficiency that will increase output. To the extent that Paragraph 41 purports to refer to the contents of Ardagh's business documents, Ardagh respectfully refers the Court to those documents for their complete and accurate contents and context.

XI. ENTRY BARRIERS

42. Ardagh denies the allegations contained in Paragraph 42.

XII. EFFICIENCIES

43. Ardagh denies the allegations in Paragraph 43. Ardagh's business documents and testimony of its executives demonstrate significant efficiencies that will be derived from the Acquisition. These efficiencies are merger-specific and supported by Ardagh's extensive experience in making 12 significant acquisitions of rigid packaging manufacturing businesses in Europe and the U.S. since 1999.

VIOLATIONS

Count I: Illegal Agreement

44. Except as where specifically admitted above, the allegations contained in Paragraphs 1-43 of the Complaint are denied.

45. The allegations in Paragraph 45 are legal conclusions to which no response is required. To the extent a response is required, Ardagh -Gobain denies the allegations contained in Paragraph 45.

Count II: Illegal Acquisition

46. Except as where specifically admitted above, the allegations contained in Paragraphs 1-43 of the Complaint are denied.

47. The allegations in Paragraph 47 are legal conclusions to which no response is required. To the extent a response is required, Ardagh -Gobain denies the allegations contained in Paragraph 47.

AFFIRMATIVE AND OTHER DEFENSES

The inclusion of any ground within this section does not constitute an admission that Respondents bear the burden of proof on each or any of the matters, nor does it excuse the Commission from establishing each element of its purported claim for relief.

First Affirmative Defense

The Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

The alleged relevant product market definitions fail as a matter of law.

Third Affirmative Defense

The Complaint fails to allege a relevant geographic market.

Fourth Affirmative Defense

The Acquisition will result in substantial merger-specific efficiencies and other procompetitive benefits that will benefit consumers and is procompetitive.

Fifth Affirmative Defense

The contemplated relief would not be in the public interest because it would, among other things, harm consumers.

Sixth Affirmative Defense

Ardagh has not knowingly or intentionally waived any applicable affirmative defenses. Ardagh presently lacks sufficient knowledge or information on which to form a belief as to whether it may have available additional, as yet unstated, affirmative defenses, and reserves the right to assert such additional defenses as they become known.

WHEREFORE, having fully answered the Complaint, Ardagh respectfully requests that the Commission: (i) deny the Commission's contemplated relief; (ii) dismiss the complaint in its entirety with prejudice; (iii) award Ardagh its costs of suit, including expert's fees and reasonable attorneys' fees, as may be allowed by law; and (iv) award such other or further relief as the Commission may deem just and proper.

Dated: July 22, 2013

Respectfully Submitted,

s/ Wayne Dale Collins

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Attorneys for Respondent Ardagh Group S.A.

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2013, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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

I also certify that I delivered via electronic mail and U.S. Mail 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:

James E. Abell
Monica Castillo
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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 possess a paper original of the signed document that is available for review by the parties and the adjudicator.

July 22, 2013 By: *s/ Heather Kafele*
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