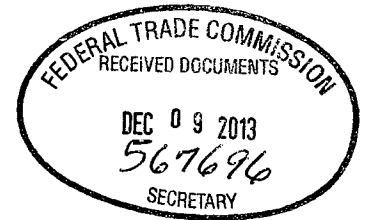


ORIGINAL

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 )  
SAINT-GOBAIN CONTAINERS, INC., )  
a corporation, )  
and )  
COMPAGNIE DE SAINT-GOBAIN )  
a corporation. )  
\_\_\_\_\_)

Docket No. 9356  
PUBLIC

**NON-PARTY ARKANSAS GLASS CONTAINER CORPORATION'S MOTION FOR *IN CAMERA* TREATMENT OF EXHIBIT DESIGNATED BY COMPLAINT COUNSEL**

Non-party Arkansas Glass Container Corp. ("AGCC") respectfully moves for an order pursuant to 16 C.F.R. § 3.45(b) directing *in camera* treatment of the declaration of AGCC's President and Chief Executive Officer that Complaint Counsel has designated for possible introduction into evidence in the administrative trial scheduled to begin on December 19, 2013 in the above-captioned matter. Complaint Counsel and Counsel for all Respondents have indicated that they will not oppose this Motion.

On November 19, 2013, Complaint Counsel notified AGCC of its intent to introduce the above declaration as Plaintiff's Exhibit 5005 in the upcoming trial (hereinafter "Exhibit A").<sup>1</sup> That declaration was initially provided by AGCC on April 10, 2013 in response to compulsory

<sup>1</sup> The Declaration for which AGCC seeks *in camera* treatment is attached as Exhibit A to the Declaration of Anthony Rampley In Support of Non-Party Arkansas Glass Container Corporation's Motion for *In Camera* Treatment of Exhibit Designated by Complaint Counsel, which is attached as Exhibit 1 to this Motion.

third-party discovery in connection with the FTC's investigation of the proposed acquisition of Saint-Gobain Containers, Inc. by Ardagh Group S.A. The declaration contains secret and competitively sensitive information that is fundamental to AGCC's business strategy and current and future operations as a glass container manufacturer. AGCC has taken care to protect the confidentiality of the material in Exhibit A, and public disclosure of that information is likely to result in direct and serious competitive injury to AGCC, while at the same time adding little value to the public's understanding of the issues in this proceeding. Accordingly, pursuant to 16 C.F.R. § 3.45(b), AGCC moves for *in camera* treatment of its confidential business information as identified in the Declaration in Support of this Motion ("Exhibit 1").

**A. AGCC Has Preserved the Confidentiality of the Information At Issue**

AGCC has consistently maintained the confidentiality of the information set forth in Exhibit A. That information was provided to the FTC only under compulsory process in the FTC's investigation of Respondents in this matter. In turn, the FTC informed AGCC by letter dated July 11, 2013 that it though it would provide the material that AGCC submitted to the Respondents' Outside Counsel, it would designate that material as "CONFIDENTIAL—FTC Docket No. 9356," that the material would be accorded protection under the Protective Order in effect in the instant matter, and that AGCC would have the opportunity to seek an order granting *in camera* treatment of this material. Aside from its production in this case, AGCC has not disclosed the information contained in Exhibit A outside of the company. *See* Ex. 1, Declaration of Anthony Rampley in Support of AGCC's Motion for *In Camera* Treatment ("Supporting Declaration"). Thus, AGCC has at all times maintained the secrecy of the confidential business information it seeks to protect in this case.

**B. Disclosure of the Information in Exhibit A Could Result in Serious Competitive Injury to AGCC**

The information that AGCC seeks to protect is fundamental to its overall competitive position, and includes confidential information regarding AGCC's operations, business strategy, production capacity and cost structure. As explained in the Supporting Declaration, ¶¶ 2-3 of Exhibit A contain AGCC's recent (2011-2012) financial data, as well as a detailed breakdown of the percentage and magnitude of revenues derived from various categories of products and the allocation of AGCC's sales across different customer types. Because this information reflects AGCC's financial performance within the last two to three years, it is competitively sensitive, and if disclosed would reveal the current status of AGCC's financial position. More importantly, as explained in the Supporting Declaration, information relating to AGCC's allocation of sales would provide its competitors with insights into the most profitable sectors of its operations and business relationships, and exploitation of that knowledge by AGCC's competitors would cause significant damage to AGCC's competitive position.

Paragraphs 4-6 of Exhibit A contain detailed analysis of AGCC's production capacity and its costs associated with different modes and quantities of production, and reveal AGCC's strategic calculations with regard to different levels of output. AGCC personnel have invested significant time and business resources in deriving the cost-benefit calculations disclosed in these paragraphs. Disclosure of such knowledge would likely result in serious injury to AGCC, because its competitors could exploit limitations with regard to AGCC's productive capabilities.

Paragraphs 7-8 reveal AGCC's strategic decisions with regard to entrance into certain types of contracts and volume orders. Similarly, Paragraph 9 reveals AGCC's future strategy with regard to the expansion of its production capacity. These considerations go to the heart of AGCC's business model and the sustainability of its operations. AGCC personnel have devoted considerable resources to reaching the strategic conclusions reflected in these paragraphs, and

public disclosure of that information would allow competitors of AGCC to exploit that information and inflict significant harm to AGCC's competitive position.

**C. The Commission Has Consistently Accorded *In Camera* Treatment to Information Like That At Issue Here**

As described above and in the Supporting Declaration, Exhibit A contains detailed information about AGCC's cost structure, productive capacity, business strategy, future investment decisions, and recent financial data, including actual performance. The Commission has consistently found that information substantially identical to the information in Exhibit A warrants *in camera* protection. *E.g., In the Matter of Polypore Int'l, Inc.*, Docket No. 9327, 2009 WL 2052296, at \*1 (F.T.C. July 7, 2009) (finding that "business plans and strategies," "contract negotiations," "costing data," and "sales and financial information" were among documents deserving *in camera* protection for a period of three to five years); *In the Matter of Rambus Inc.*, Docket No. 9302, 2003 WL 21501545, at \*1 (F.T.C. June 18, 2003) (granting *in camera* treatment for 5 years to documents that contained "non-public information regarding [third party] Micron's production costs and processes"); *In the Matter of E.I. DuPont de Nemours & Co.*, 97 F.T.C. 116 (1981) (*in camera* protection for documents that reflected "secret and material investment, earnings, profit, operative return and cost information" about the respondent's business).

**D. The Likelihood of Serious Competitive Harm to AGCC Outweighs the Public Interest in Disclosure of Exhibit A**

Material should be afforded *in camera* protection where its public disclosure would result in "clearly defined, serious injury," and "the showing of serious injury does not necessarily require a specific demonstration of the manner in which other firms would use material to the disadvantage of the firm whose information is at issue." *In the Matter of E.I.*

*DuPont de Nemours & Co.*, 97 F.T.C. 116 (1981) (citing *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184 (1961)). As described above and in the Supporting Declaration, the information in Exhibit A is both secret and highly material to AGCC's business, "the two elements of the serious injury analysis." *Id.* In addition, requests for *in camera* status from third parties "deserve special solicitude." *In the Matter of Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984); *In the Matter of The Coca-Cola Co.*, Docket No. 9207, 1990 WL 10081418, at \*1 (F.T.C. Oct. 17, 1990) (granting *in camera* protection to documents that revealed third parties' market research and strategy planning data, even though much of the information was more than three years old). AGCC would likely suffer serious harm if the sensitive information relating to its business strategies and production capabilities reflected in Exhibit A are made public, where it can be exploited by AGCC's competitors. When balanced against the countervailing public interest in disclosure in this case, the significance of the potential injury to AGCC clearly weighs in favor of *in camera* treatment. *In the Matter of Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984) (granting *in camera* treatment and finding that public interest in disclosure did not outweigh the likelihood of serious competitive disclosure, because a public understanding of the proceedings did not depend on access to data submitted by third party firms at issue). In this case, the public's ability to understand the rationale of any decision resulting from this proceeding will almost certainly not depend on the particularized information about AGCC's cost structure, production capacity, and business strategies reflected in Exhibit A, because such information does not materially impact the structure of competition in the market in which the respondents compete. Instead, the information reveals only the manner in which AGCC does business and the strategic decisions it has pursued.

**E. Protection for Exhibit A Should Extend for Five Years**

The importance of the information at issue to AGCC's business warrants substantial protection. AGCC's confidential strategies with regard to what business to compete for have been an important component of the success of its business model, and are expected to be for years to come. As described above, information relating to AGCC's production capacity and plans with regard to any future expansion will likewise be of significant value to its business over the years to come, and premature disclosure would risk exploitation of that information by competitors. As the cases cited above demonstrate, the FTC has routinely granted protection lasting five years to similar information, and AGCC respectfully requests that the material in Exhibit A be protected for a similar duration here.

#### CONCLUSION

Exhibit A satisfies the standard for *in camera* protection under 16 C.F.R. §3.45 and relevant FTC rulings. Accordingly, this Court should designate this material for *in camera* treatment.

DATED: December 9, 2013

Respectfully Submitted,



Chong S. Park  
Nathaniel Brower  
STEPTOE & JOHNSON, LLP  
1330 Connecticut Ave, NW  
Washington, DC 20036  
Attorneys for Third Party Arkansas Glass  
Container Corp.

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

_____	)	
In the Matter of	)	
	)	Docket No. 9356
ARDAGH GROUP S.A.,	)	
A public limited liability company,	)	PUBLIC
	)	
and	)	
	)	
SAINT-GOBAIN CONTAINERS, INC.,	)	
A corporation,	)	
	)	
and	)	
	)	
COMPAGNIE DE SAINT-GOBAIN	)	
a corporation.	)	
_____	)	

**[PROPOSED] ORDER**

Upon consideration of Non-Party Arkansas Glass Container Corporation's ("AGCC") Motion for *In Camera* Treatment of Exhibit Designated by Complaint Counsel, **IT IS HEREBY ORDERED** that the material designated as Plaintiff's Exhibit 5005 be afforded *in camera* treatment, to expire on December 9, 2018.

The declaration testimony in Plaintiff's Exhibit 5005 concerns confidential business strategy, production capacity, and financial data regarding third party AGCC's current and future operations, and meets the standards for *in camera* treatment under 16 C.F.R. § 3.45. Disclosure of this testimony to AGCC's competitors could result in competitive injury to it in the marketplace, and the public interest in this testimony is outweighed by the likelihood of serious competitive harm to AGCC.

*In camera* treatment shall expire in five years, because the information pertains to AGCC's immediate and future plans for operation, and thus the threat of competitive injury to AGCC from disclosure will continue throughout the duration of that period.

---

The Honorable D. Michael Chappell  
Administrative Law Judge



CERTIFICATE OF SERVICE

I certify that on December 9, 2013, I filed the foregoing document and accompanying exhibits by U.S. Mail, including a non-public electronic copy of the proposed *in camera* exhibit on compact disc, and an electronic copy of this document including a public, redacted version of the proposed *in camera* exhibit using the FTC's E-filing System, which will send notification of such filing to:

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

I also certify that a copy of the foregoing document, including a public, redacted version of the proposed *in camera* exhibit, has been delivered via electronic mail on December 9, 2013, and that a paper copy that includes a non-public version of the proposed *in camera* exhibit and an electronic copy on compact disc of that exhibit has been delivered by overnight U.S. Mail for delivery on Tuesday, December 10, 2013 to:

The Honorable D. Michael Chappell (oalj@ftc.gov)  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Room H-110  
Washington, DC 20580

I further certify that a paper copy of the foregoing document has been delivered via Federal Express to the lead attorney for each of the below-named parties, and via electronic mail to each of the following:

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U.S. Federal Trade Commission  
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Washington, DC

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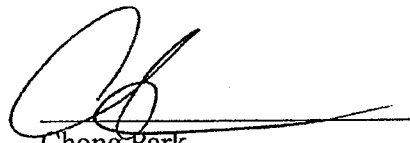
*Counsel for Third-Party Fevisa S.A. de C.V.*

  
/s/ Chong S. Park  
Chong Park

**COPY CERTIFICATION**

I certify that the electronic version of Non-Party Arkansas Glass Container Corporation's Motion for *In Camera* Treatment Of Exhibit Designated by Complaint Counsel filed electronically with the Secretary of the Commission is a true and accurate copy of the paper original and that a paper copy with original signature has been filed with the Secretary of the Commission on this day. Due to inclement weather in the State of Arkansas, which caused the postponement of deliveries by Federal Express, counsel did not obtain delivery of a hand-signed, paper original of the Declaration in Support of this Motion signed by Mr. Rampley in time for filing on December 9. We have therefore included a scanned copy of that paper original in this filing, but will supplement our filing to include the paper original as soon as it arrives in counsel's office.

Dated December 9, 2013

  
Chong Park  
STEPTOE & JOHNSON, LLP  
1330 Connecticut Ave, NW  
Washington, DC 20036

PUBLIC

# EXHIBIT 1

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

In the Matter of	)	
	)	
ARDAGH GROUP S.A.,	)	Docket No. 9356
A public limited liability company,	)	
	)	PUBLIC
and	)	
	)	
SAINT-GOBAIN CONTAINERS, INC.,	)	
A corporation,	)	
	)	
and	)	
	)	
COMPAGNIE DE SAINT-GOBAIN	)	
a corporation.	)	
	)	

**DECLARATION OF ANTHONY RAMPLEY IN SUPPORT OF NON-PARTY  
ARKANSAS GLASS CONTAINER CORPORATION'S MOTION FOR *IN CAMERA*  
TREATMENT OF EXHIBIT DESIGNATED BY COMPLAINT COUNSEL**

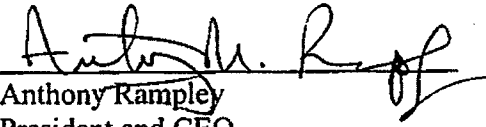
I, Anthony Rampley, declare as follows:

1. I am the President and Chief Executive Officer of Arkansas Glass Container Corporation ("AGCC"). I joined the company in 1986 and have been President and CEO since 1990. In that capacity, my responsibilities include oversight of all of AGCC's operations, including its business strategies and production.
2. AGCC is not a party to the captioned matter.
3. The material for which AGCC seeks *in camera* treatment is in ¶¶ 2-9 of my prior declaration obtained during compulsory discovery in the FTC's investigation of the proposed acquisition of Respondent Saint-Gobain Containers, Inc. by Respondent Ardagh Group S.A.
4. On April 10, 2013, I executed the declaration for which AGCC seeks *in camera* treatment, and have reviewed that information in connection with AGCC's instant Motion. As President and CEO of AGCC, I am familiar with the type of information contained in that declaration. I am also generally familiar with the confidentiality protection afforded this type of information by AGCC. Based upon my knowledge of AGCC's business and with the confidentiality protection that AGCC affords information of this type, it is my belief that public disclosure

of this information could cause serious injury to AGCC.

5. Paragraphs 2-3 of Exhibit A contain information regarding AGCC's actual financial performance in 2011 and 2012, as well as the allocation of AGCC's sales revenues across different categories of products and customers. This information was provided to the FTC only under the compulsory process, and was only shared with the Respondents upon the FTC's representation that the material would be designated confidential. Apart from that production, this information has not been shared with anyone outside of AGCC to the best of my knowledge, and within AGCC is known only to a small number of personnel who require such information to perform their duties for the company. Disclosure of the information in ¶¶ 2-3 is likely to result in serious competitive injury to AGCC. Competitors could use information regarding AGCC's customer base and comparative focus on manufacturing certain types of containers to their own competitive advantage, to the detriment of AGCC.
6. Paragraphs 4-6 of Exhibit A contain information about AGCC's production capacity, costs associated with different levels of production, and strategic calculations with regard thereto. AGCC has devoted substantial business resources to the tracking of such costs and formulation of relevant strategies. Public disclosure of this information could likely result in serious competitive harm to AGCC, because AGCC's competitors would be able to use that information to exploit limitations on AGCC's capabilities.
7. Paragraphs 7-8 of Exhibit A reveal AGCC's strategic decisions with regard to certain types of contracts and volume orders. Paragraph 9 reveals AGCC's future strategy with regard to the expansion of its production capacity. These strategic determinations are a fundamental aspect of AGCC's business model, and AGCC developed its model as a result of many years of experience and business analysis aimed at determining the most advantageous strategy for AGCC's operations. Disclosure of this information could likely result in serious competitive injury to AGCC, because AGCC's competitors could use the information to exploit their own advantages with regard to AGCC's production capacity or to target customers or contracts in a manner that weakens AGCC's competitive position.
8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 6<sup>th</sup> day of <sup>December</sup> ~~November~~, 2013, in JONES BORO, AL.

  
Anthony Rampley  
President and CEO  
Arkansas Glass Container Corporation

**EXHIBIT A**  
**PUBLIC VERSION**



DECLARATION OF ANTHONY RAMPLEY

CRAIGHEAD COUNTY     )  
  )  
STATE OF ARKANSAS     )

I, Anthony Rampley, declare and state as follows:

1. I am the President and Chief Executive Officer of Arkansas Glass Container Corporation ("AGCC"). I joined the company in 1986 and have been President and CEO since 1990. The company has been in operation for 65 years.
2. REDACTED
3. REDACTED
4. REDACTED
5. REDACTED
6. REDACTED

REDACTED

7. REDACTED

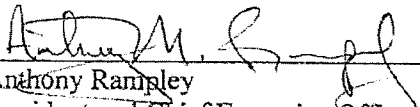
8. REDACTED

9. REDACTED

10. I submit this declaration in connection with the Federal Trade Commission's investigation of the proposed acquisition of Saint-Gobain Containers, Inc. by Ardagh Group S.A. and in response to the subpoenas and the civil investigative demand issued to AGCC by the Federal Trade Commission.

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

Executed on April 10, 2013

  
\_\_\_\_\_  
Anthony Rampley  
President and Chief Executive Officer