<u>Dechert</u>	Cira Centre 2929 Arch Street
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BACKGROUND

On July 24, 2013, Crown was served with a sweeping third-party subpoena by Ardagh in the federal action¹ that requested a wide variety of documents regarding all aspects of Crown's can business. On July 26, 2013, FTC served Crown with a nearly identical subpoena. After significant discussions with the parties focused on both the scope of the subpoena and confidentiality protections, Crown agreed to produce a limited number of documents that had previously been provided to FTC staff during its investigation of the Ardagh/Saint-Gobain transaction. Crown agreed to make this production only after the parties: (1) agreed to allow Crown to redact confidential, non-relevant material in the documents; and (2) agreed to additional confidentiality provisions beyond the protective order already entered in the case.² Crown made its document production on August 9, 2013 and designated all produced documents as confidential.

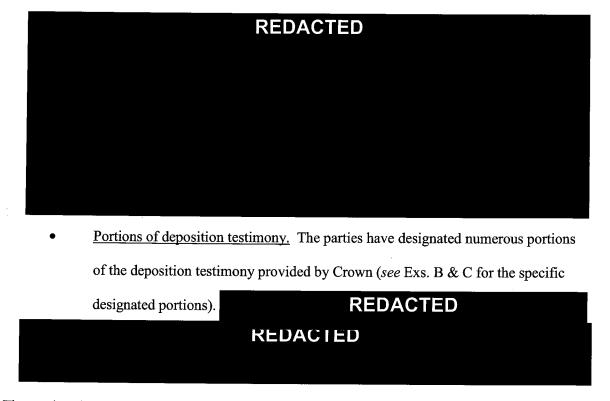
Crown was subsequently subpoenaed again by the parties to participate in a deposition in the federal action. The deposition, which occurred on August 20, 2013, referred to confidential Crown documents and discussed other confidential, highly sensitive aspects of Crown's business. Accordingly, Crown designated the deposition as confidential.

On November 19 and 20, 2013, Crown was notified by the parties that they intended to introduce certain confidential Crown documents and portions of deposition testimony at their

The term "federal action" refers to *FTC v. Ardagh Group, S.A.*, Civ. Action No. 1:13-cv-01021-RMC (D.D.C.). At the time the subpoenas were issued to Crown, the parties to that case were engaged in discovery in preparation for their upcoming preliminary injunction hearing.

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	upcoming FTC administrative trial. Se	ee Exs. A & B. Specifi	cally, the correspond	lence disclosed	
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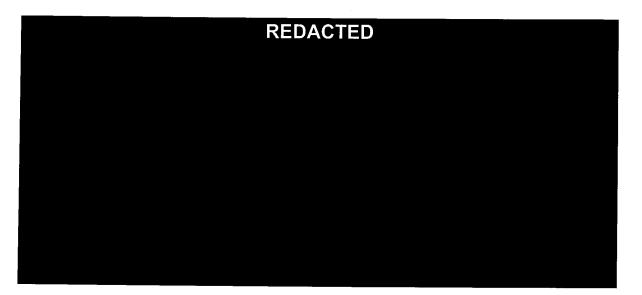
The parties also advised Crown of their right to seek *in camera* treatment of these confidential materials. Accordingly, for the reasons explained below and in the accompanying declaration of Neill Mitchell (Ex. J), Crown requests that the documents and testimony described above be

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<u>ARGUMENT</u>

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In short, the documents and testimony reflect highly confidential Crown material known only to certain individuals at Crown. *Id.*

If Crown's confidential documents and testimony were made available to its competitors, customers, and the general public, Crown would suffer significant competitive injury. Crown's competitors and customers could use Crown's confidential information against it and Crown would lose any business advantage it has to those entities. *Id_99.5 & 6* Competitors could use

the Crown confidential information in competitive bidding situations or to adjust to Crown's competitive strategy. *Id.* Customers could use the Crown confidential information to gain an advantage in pricing or other negotiations. *Id.* Accordingly, Crown would be substantially injured by the disclosure of the confidential documentance detection and

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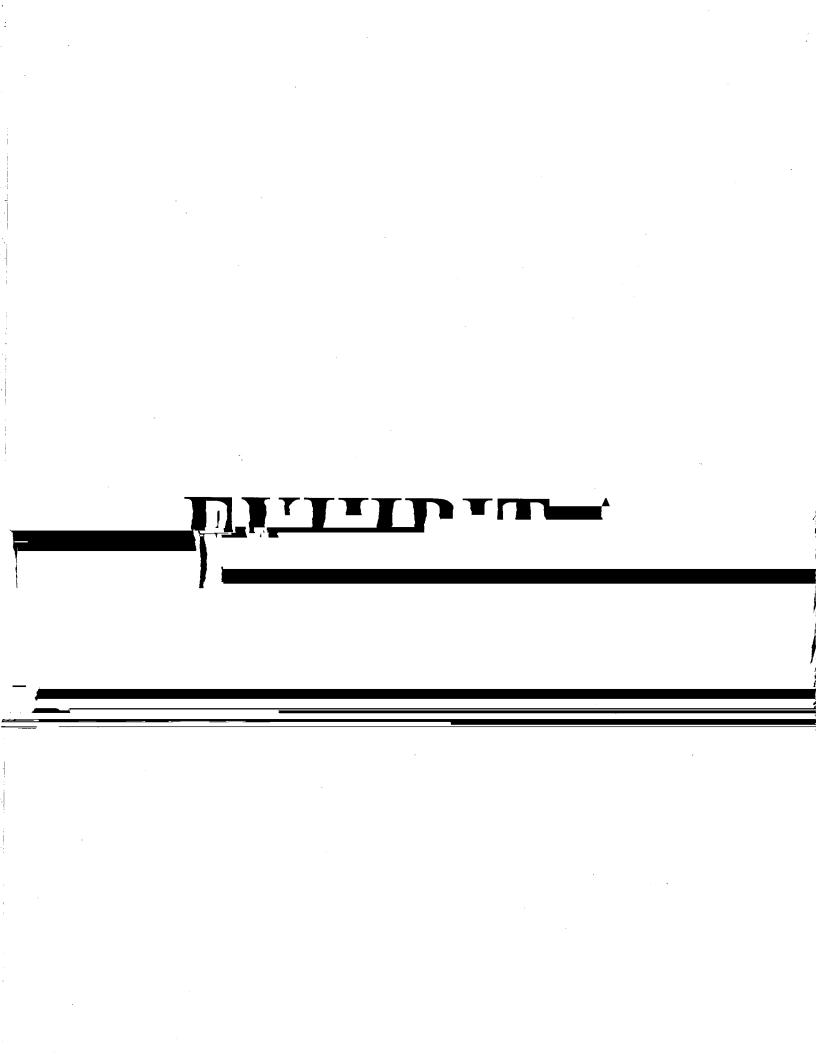
	confidentiality and the protections agreed to in the Stipulated Side Agreement to the Protective
•	Order in the federal litigation. While Crown had (and still has) serious questions about the
	relevance of its materials to the dispute between the parties in this case, Crown was willing to
	produce the material accusated harmon and parties in the case, exerning to
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I hereby certify that on December 9, 2013, I caused the foregoing Unopposed Motion of Non-Party Crown Holdings, Inc. for In Camera Treatment of Proposed Trial Exhibits to be filed by hand on the following: Office of the Secretary Federal Trade Commission 600 Pennsylvania Ave., N.W. Room H-135 Washington, D.C. 20580 I also certify that I delivered via electronic mail and overnight delivery a copy of the foregoing document to: The Honorable D. Michael Chappell Administrative Law Judge Federal Trade Commission (00 D - 1--

IJ

Washington, D.C. 20580

Sebastian Lorigo, Esq. Bureau of Competition Federal Trade Commission





BUREAU OF COMPETITION MERGERS II DIVISION

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

November 19, 2013

Bureau of Competition Federal Trade Commission 601 New Jersey Ave, N.W. Washington, DC 20001 (202) 326-3717 slorigo@FTC.gov

Via Federal Express

Justin Pentz, Esq. Dechert LLP Cira Centre 2929 Arch Street Philadelphia, PA 19104

RE: In the Matter of Ardach Group SA and Saint

	confidentiality protections pursuant to 16 C.F.R §§ 3.45 and 4.10(g). Because counter-			
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		ATTACHMENT A

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ATTACHMENT B

Name: Mitchell, Neill Company: Crown Holdings, Inc. Date & Type: 8/20/2013 Deposition (PX6046)

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10:22 - 13:7
25:15 - 17
25:19 - 21
28:18 - 23
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79:7 - 23
80:16 - 18
80:20 - 81:10
81:12 - 15
103:21 - 105:8
106:24 - 108:7
109:3 - 8
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110:4 - 7
110:9 - 16
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110:25 - 111:7
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118:3 - 122:2
122:5 - 123:9

OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

Δ.

Ardagh Group S.A., a public limited liability company, and

Compagnie de Saint-Gobain, a corporation, and

Saint-Gobain Containers, Inc., a corporation.

DOCKET NO. 9356

DECLARATION

I,

, pursuant to 28 U.S.C. § 1746, make the following

statement:

1. I am an employee of Crown Holdings, Inc. I have personal knowledge of the facts set forth

conducted activity; and (c) was made by the regularly conducted activity as a regular practice.

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

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Executed	on:

Name: Title:

EXHIBIT B

SHEARMAN & STERLING LLP

801 PENNSYLVANIA AVENUE, NW | WASHINGTON, DC | 20004-2634 WWW.SHEARMAN.COM | T +1.202.508.8000 | F +1.202.508.8100

mark.lanpher@shearman.com 202.508.8120

November 19, 2013

CONFIDENTIAL

Via Email and U.S. Mail

Paul Friedman Dechert LLP 1900 K Street, N.W. Washington, D.C. 20006

Re: In the Matter of Ardagh Group S.A. et al., Docket No. 9356 (F.T.C.)

Dear Mr. Friedman,

Pursuant to Paragraph 10 of the Protective Order in the above-referenced matter (enclosed), the Scheduling Order in the above-referenced matter, Paragraph 7 of the Stipulated Side Agreement to Protective Order between the parties and Crown Holdings, Inc. entered into on July 31, 2013, and 16 C.F.R. § 3.45 (enclosed), this letter is providing notice to Crown Holdings, Inc. that Respondents Ardagh Group S.A., Compagnie de Saint-Gobain, and Saint-Gobain Containers plan to introduce confidential material produced by Crown Holdings, Inc. into evidence at the Commission's hearing in the above-referenced matter, scheduled to commence on December 19, 2013.

Paul Friedman Page 2

November 19, 2013

Hoechst Marion Roussel, Inc., 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sent 19, 2000). In re Basic Research Inc. 2006 FTC LEXIS 14 (Jap 25, 2006). Motions must

be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. In re North Texas Specialty Physicians 2004 FTC LEXIS 66 (April 23

2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

If you have any questions, please feel free to contact me at 202.508.8120.

Best regards,

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<u>/s/ Mark Lanpher</u> Mark Lanpher

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EXHIBIT C

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	From: Jason Swergold < <u>Jason.Swergold@Shearman.com</u> >
	Date: November 26, 2013 at 2:52:22 PM EST To: "Friedman, Paul" < <u>paul.friedman@dechert.com</u> >
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	Subject: RE: In the Matter of Ardagh Group - Letter to P. Friedman
	Paul,
	Pursuant to the scheduling order in this case, yesterday the parties were required to identify

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	To: 'paul.friedman@dechert.com'
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	Subject: RE: In the Matter of Ardagh Group - Letter to P. Friedman
	Paul,
	This is to advise youthat the Administrative Law Judge has granted a motion filed by
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EXHIBITS D-I Redacted in Full

Public

EXHIBIT J

UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION OFFICE OF THE 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

DOCKET NO. 9356

DECLARATION OF NEILL MITCHELL

 My name is Neill Mitchell. I am over the age of 21, have never been convicted of a felony or a crime involving moral turpitude, and am otherwise competent to make this Declaration. Each and every statement contained in this Declaration is true and correct based on my personal knowledge.

2. I am currently employed by Crown Holdings, Inc. ("Crown") as Vice President of

REDACTED

Marketing and Strategic Development for Crown's beverage can division in the United States

and Canada.

Before this position, I worked for Crown as

Regional Vice President of Sales in the Southwestern United States. I have also worked for Crown as a director of marketing. In total, I have been employed by Crown in various roles for 12 years.

3. I understand that the FTC, Ardagh, and Saint-Gobain have indicated that they

may use certain Crown documents at the administrative trial in this matter_including

CROWN0006927-32, CROWN0006943-49, CROWN0007030-33, CROWN0007034-

documents
4. Each of these documents reflects Crown confidential information that is not

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	obtain this Crown sensitive information elsewhere – would be able to put the confidential
	materiala to another A. 111 1-2-11
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	6. I further understand that certain portions of my deposition have been designated
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