ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
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In the Matter of Ardagh Group S.A and Saint-Gobain Containers, Inc.
and Compagnie de Saint-Gobain
Docket No. 9356

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") with Ardagh Group S.A. ("Ardagh"). The purpose of the Consent Agreement is to remedy the anticompetitive effects of Ardagh's proposed acquisition of Saint-Gobain Containers, Inc. ("Saint-Gobain") from Compagnie de Saint-Gobain. Under the terms of the Consent Agreement, Ardagh must divest six of its nine United States glass container manufacturing plants to an acquirer approved by the Commission. The Consent Agreement provides the acquirer the manufacturing plants and other tangible and intangible assets it needs to effectively compete in the markets for the manufacture and sale of glass containers to both beer brewers and spirits distillers in the United States. Ardagh must complete the divestiture within six months of the date it signs the Consent Agreement.

On January 17, 2013, Ardagh agreed to acquire Saint-Gobain from its French parent company, Compagnie de Saint-Gobain, for approximately $1.7 billion. This acquisition would concentrate most of the $5 billion U.S. glass container industry in two major competitors – Owens-Illinois, Inc. ("O-I") and the combined Ardagh/Saint-Gobain. These two major competitors would also control the vast majority of glass containers sold to beer brewers and spirits distillers in the United States. On June 28, 2013, the Commission issued an administrative complaint alleging that the acquisition, if consummated, may substantially lessen competition in the markets for the manufacture and sale of glass containers to brewers and distillers in the United States in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become a part of the public record. After 30 days, the Commission will review the Consent Agreement and comments received, and decide whether it should withdraw, modify, or make the Consent Agreement final.

II. The Parties

Ardagh, headquartered in Luxembourg, is a global leader in glass and metal packaging. Ardagh entered the United States glass container industry through two 2012 acquisitions – first acquiring a single-plant glass container manufacturer, Leone Industries, and then an eight-plant manufacturer, Anchor Glass Container Corporation ("Anchor"). Through the Anchor acquisition, Ardagh became the third-largest glass container manufacturer in the country, supplying glass containers for beer, spirits, non-alcoholic beverages, and food. Ardagh's nine glass container manufacturing plants are located in seven U.S. states.

Saint-Gobain is a wholly-owned U.S. subsidiary of Compagnie de Saint-Gobain, a French company which, among other businesses, manufactures and sells glass containers throughout the world. In the United States, Saint-Gobain is the second-largest glass container manufacturer, supplying beer, spirits, wine, non-alcoholic beverages, and food containers. Saint-Gobain operates 13 glass container manufacturing plants located in 11 U.S. states. Saint-Gobain, operates under the name “Verallia North America” or “VNA.”

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The United States is the appropriate geographic market in which to evaluate the likely competitive effects of the acquisition. Ardagh and Saint-Gobain each maintain geographically diverse networks of plants that manufacture and sell glass containers to brewers and distillers throughout the country. Most U.S. brewers and distillers have similar competitive glass container alternatives from which to choose, regardless of their geographic location. The relevant geographic market is no broader than the United States because product weight and logistics constraints limit brewers' and distillers' ability to purchase significant volumes of glass containers from outside the country.

IV. Effects of the Acquisition

Absent relief, the acquisition would result in an effective duopoly likely to cause significant competitive harm in the markets for the manufacture and sale of glass containers to brewers and distillers. The glass container industry is a highly consolidated, stable industry, with low growth rates and high barriers to entry. The acquisition would increase the ease and likelihood of anticompetitive coordination between the only two remaining major suppliers. The acquisition would also eliminate direct competition between Ardagh and Saint-Gobain. Thus, the acquisition would likely result in higher prices and a reduction in services and other benefits to brewers and distillers.

V. Entry

Entry into the markets for the manufacture and sale of glass containers to brewers and distillers would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the likely competitive harm from the acquisition. The glass container industry in the United States enjoys significant barriers to entry and expansion including the high cost of building glass manufacturing plants, high fixed operating costs, the need for substantial technological and manufacturing expertise, and long-term customer contracts. For these reasons, entry by a new market participant or expansion by an existing one, would not deter the likely anticompetitive effects from the acquisition.

VI. The Consent Agreement

The proposed Consent Agreement remedies the competitive concerns raised by the acquisition by requiring Ardagh to divest six of its nine glass container manufacturing plants in the United States to an acquirer within six months of executing the Consent Agreement. In addition, the Consent Agreement requires Ardagh to transfer all customer contracts currently serviced at those six plants to an acquirer through an agreement approved by the Commission.

Under the proposed Consent Agreement, Ardagh will divest six of the manufacturing plants that it acquired when it purchased Anchor in 2012, along with Anchor's corporate headquarters, mold and engineering facilities. The six plants produce glass containers for brewers and distillers and are located in: Elmira, NY; Jacksonville, FL; Warner Robins, GA; Henryetta, OK; Lawrenceburg, IN; and Shakopee, MN. Anchor's corporate headquarters, mold and engineering facilities are located in Tampa, FL, Zanesville, OH, and Streator, IL, respectively. Other assets that Ardagh will divest include customer contracts, molds, intellectual property, inventory, accounts receivable, government licenses and permits, and business records. In addition, the Consent Agreement limits Ardagh's use of, and access to, confidential business information pertaining to the divestiture assets.

Through the proposed Consent Agreement, the acquirer of these assets will be the third-largest glass container manufacturer in the United States. These assets replicate the amount of glass containers for beer and spirits that the third largest supplier offers today. The acquirer will own plants that span a broad geographic footprint, offer a well-balanced product mix, and have flexible manufacturing capabilities. Its presence will preserve the three-way competition that currently exists in the relevant markets and moderate the