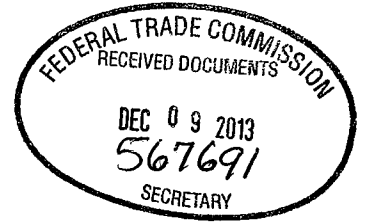


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
)
Ardagh Group S.A.,)
a public limited liability company, and)
)
Compagnie de Saint-Gobain,)
a corporation, and)
)
Saint-Gobain Containers, Inc.,)
a corporation.)
)
)
)

PUBLIC VERSION

DOCKET NO. 9356

**RESPONDENTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
UNOPPOSED MOTION FOR *IN CAMERA* TREATMENT
OF PROPOSED TRIAL EXHIBITS**

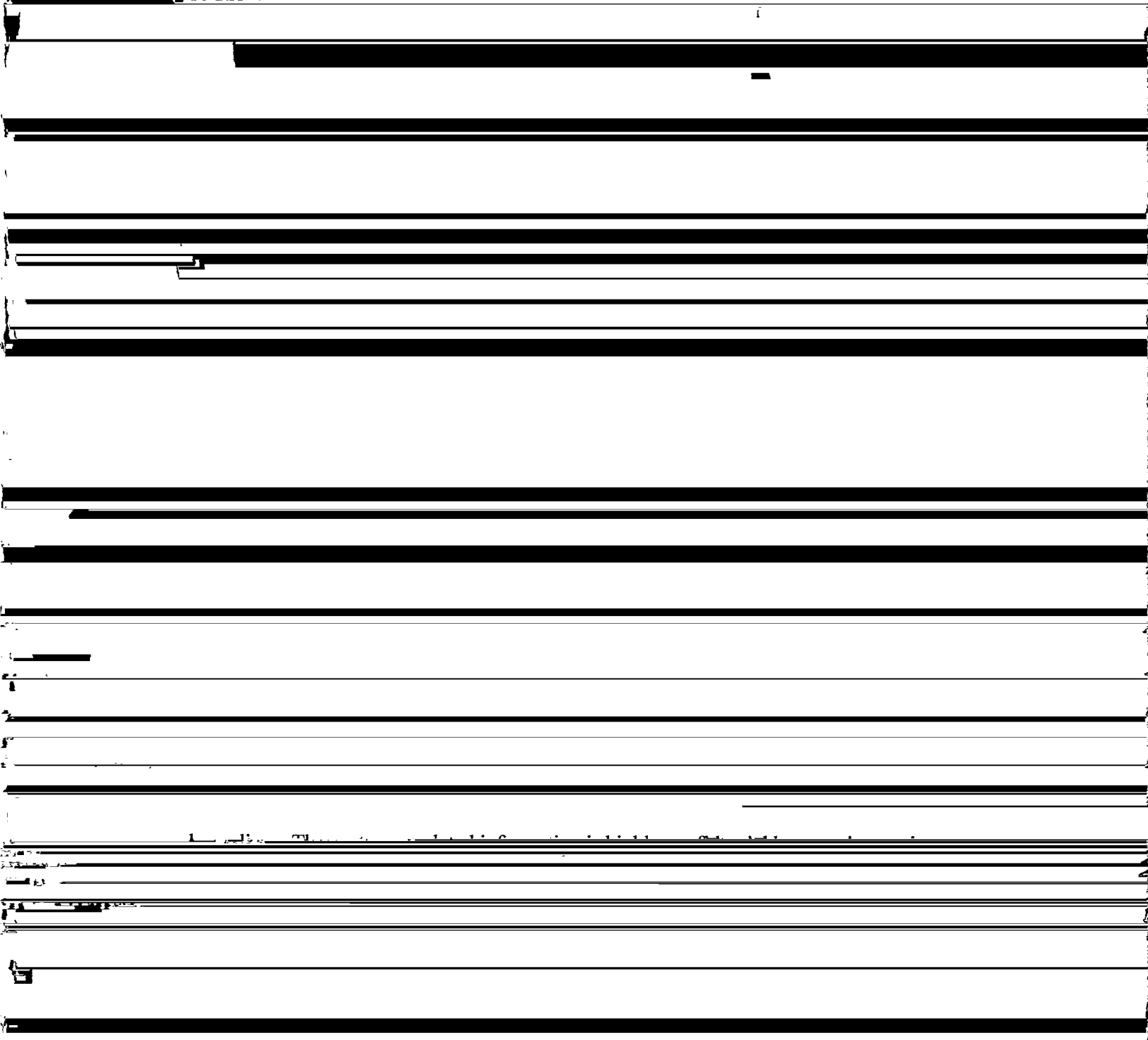
Respondents Ardagh Group S.A., Compagnie de Saint-Gobain, and Saint-Gobain Containers, Inc. respectfully submit this memorandum of law in support of their unopposed motion for *in camera* treatment of certain proposed trial exhibits.

I. Introduction

Respondents have produced over two million documents in response to Complaint Counsel's request for documents during its investigation of the proposed merger between Ardagh and Saint-Gobain Containers, as well as during discovery in this action and the related federal action (*FTC v. Ardagh Group S.A.*, et al., 13 CV 1021 (RIP) (D.D.C.)). A subset of these

in a clearly defined, serious competitive injury to Respondents.¹ These exhibits and testimony are listed in Appendix A and Appendix B to Respondents' motion and are grouped into three categories.²

Category 1 ("Contracts and Related Negotiations") includes proposed trial exhibits and deposition testimony related to Respondents' contracts, bids, and negotiations with customers



soda ash, which is an ongoing process and the result of over three years of invested time.

Declaration of Eamon King ("King Decl.") ¶ 8.

Category 3 ("Financial Terms and Current/Future Business Strategy") includes proposed trial exhibits and deposition testimony containing Respondents' sensitive financial data and

applicant's business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by the applicant to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors; (5) the amount of effort or money expended by the applicant in developing the information; and (6) the ease or

difficulty with which the information could be ascertained or duplicated by others.

not shared publicly or disclosed in public filings. Warner Decl. ¶¶ 19, 25, 28; Knight Decl. ¶¶ 18, 23. Further, Respondents do not share – and indeed, closely guard – highly sensitive manufacturing processes that improve plant performance and efficiency. Warner Decl. ¶ 25; Knight Decl. ¶

Second, Respondents limit access to this information internally. Much of the information is restricted to senior level executives and shared only with employees who require the information to perform their job responsibilities. Warner Decl. ¶¶ 8, 13, 18, 27; Knight Decl. ¶¶ 7, 12, 17, 22.

Third Respondents have guarded the secrecy of this information and have disclosed it

King Decl. ¶¶ 10, 12. Another example of highly sensitive information is Respondents' current and future business plans, which would allow a competitor to identify Respondents' business opportunities and understand the companies' plant-level performance. King Decl. ¶¶ 13, 14; Knight Decl. ¶¶ 24, 25. If any of this secret and highly sensitive information is disclosed, it would cause serious competitive injury to Respondents. Warner Decl. ¶¶ 11, 14, 19, 25, 28;

King Decl. ¶¶ 6-10, 12, 14; Knight Decl. ¶ 25

King Decl. ¶¶ 6-10, 12, 14; Knight Decl. ¶ 25

business information. For example, Ardagh's soda ash reduction process has taken over three years and remains an ongoing project for the company. Warner Decl. ¶ 22; King Decl. ¶ 8. This information is not easily acquirable, and would cause serious competitive injury to Ardagh if

witnesses will testify at the hearing about the same sensitive information. Respondents respectfully request that the designated testimony and any live testimony at the hearing related thereto be given the same *in camera* treatment afforded to the proposed trial exhibits.

IV. Expiration Date

Respondents seek *in camera* treatment of differing lengths for the highly sensitive information identified in Appendix A and Appendix B

A. Twenty Year In Camera Treatment

Respondents respectfully request *in camera* treatment of twenty years for proposed trial exhibits and deposition testimony related to Contracts and Related Negotiations. Respondents' customer contracts are multi-year contracts, and the sensitive nature of the information will not diminish during the life of the contract. Warner Decl. ¶ 10; Knight Decl. ¶ 9.

[Redacted - In Camera Treatment Requested]

Respondents'

supplier contracts are also multi-year contracts, and the terms of these agreements remain

sensitive throughout because they are indicative of Respondents' production input costs during

information shall state “why the need for confidentiality of the material, or portion thereof at issue is not likely to decrease over time”).

B. Five Year *In Camera* Treatment

For materials relating to Plant Capabilities and Operations, Respondents request that *in camera* treatment be extended for a period of five years. *In re* *Microsoft*, 2004 WL 2458853, at *2 (F.T.C. Oct. 12, 2004) (granting *in camera* treatment for period of ten years to proprietary information regarding respondents’ “...”).

2004 WL 2458853, at *2 (F.T.C. Oct. 12, 2004) (granting *in camera* treatment for period of ten years to proprietary information regarding respondents’ “...”).

CRAVATH, SWAINE & MOORE LLP,

by

/s/ Yonatan Even

Christine A. Varney
Sandra C. Goldstein
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Members of the Firm

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*Counsel for Respondents Compagnie
de Saint-Gobain and Saint-Gobain
Containers, Inc.*

I, Jason M. Swergold, an associate at Shearman & Sterling LLP, hereby certify that on December 9, 2013, I caused the foregoing document to be filed using the FTC's E-Filing System, which will send notifications 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 hand delivery 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:

Edward D. Hassi
Catharine M. Moscatelli
Brendan J. McNamara
Sebastian Lorigo
Victoria Lippincott
Meredith Robinson
Devon Kelly
James Abell
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vlippincott@ftc.gov

Complaint Counsel

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.

December 9, 2013

By: /s/ Jason M. Swergold
Jason M. Swergold

Heather L. Kafele
SHEARMAN & STERLING LLP
801 Pennsylvania Avenue N.W.
Washington, DC 20004
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hkafele@shearman.com

*Counsel for Respondent Ardagh Group
S.A.*

CRAVATH, SWAINE & MOORE LLP,

by

/s/ Yonatan Even

Christine A. Varney
Sandra C. Goldstein
Yonatan Even
Members of the Firm

Attorney for Defendants
Worldwide Plaza

(212) 474-1000
cvarney@cravath.com

*Counsel for Respondent Compagnie
de Saint-Gobain and Saint-Gobain
Containers, Inc.*

UNITED STATES OF AMERICA

OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)
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PUBLIC VERSION

DOCKET NO. 9356

[PROPOSED] ORDER GRANTING RESPONDENTS' UNOPPOSED MOTION FOR *IN CAMERA* TREATMENT OF PROPOSED TRIAL EXHIBITS

Upon consideration of Respondents' Unopposed Motion For *In Camera* Treatment of Proposed Trial Exhibits, it is hereby ordered that the Motion is **GRANTED** and *in camera* treatment will be given to the exhibits and testimony listed in Appendix A and Appendix B to Respondents' Motion for the time period indicated therein.

Dated: December __, 2013

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

In the Matter of)

Ardagh Group S.A.,)
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a corporation, and)

Saint-Gobain Containers, Inc.,)
a corporation.)

PUBLIC

DOCKET NO. 9356

DECLARATION OF DAVID W. KNIGHT

I, David W. Knight, declare that I am the author of the foregoing declaration.

follows:

[REDACTED - IN CAMERA TREATMENT
REQUESTED]

OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of _____)

Ardagh Group S.A.,)

a public limited liability company)

Compagnie de Saint-Gobain,)
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UNITED STATES OF AMERICA
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)
)

Public

DOCKET NO. 9356

DECLARATION OF JIM WARNER

I, Jim Warner, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

[REDACTED - IN CAMERA TREATMENT
REQUESTED]