Statement of the Federal Trade Commission[1]
In the Matter of Ardagh Group S.A., Saint-Gobain Containers, Inc., and
Compagnie de Saint-Gobain
File No. 131-0087
April 11, 2014

In June 2013, the Commission issued a complaint alleging that Ardagh Group, S.A.'s proposed $1.7 billion acquisition of Saint-Gobain Containers, Inc. would reduce competition in the U.S. markets for glass containers for beer and spirits. Specifically, the Commission alleges that the acquisition would have eliminated head 75 percent of the relevant markets. The

trial that the acquisition would likely
of Section 7 of the Clayton Act. After
matter by divesting six of the nine U.S.
Commission has now accepted the
believes it addresses the competitiv
concerns expressed by brewers and
priced supply of glass containers. We
benefits of the proposed consent.

The 2010 Merger Guidelines
transaction where "(1) the merger w
a moderately or highly concentrated
to coordinated conduct. . . ; and (3)
conclude that the merger may enha

[2] We have reason to believe each of these factors is present here. The transaction would have dramatically increased concentration in already highly-concentrated markets. The glass container markets for beer and spirits are vulnerable to post-acquisition coordination, exhibiting features such as low demand growth, tight capacity, high and stable market shares, and high barriers to entry that typify markets that have experienced coordination. The existing three major glass manufacturers already have access to a wealth of information about the markets and each other, including plant-by-plant production capabilities, profitability, the identities of each other's customers, and details regarding each other's contracts and negotiations with customers. Customers, industry analysts, public statements, and distributors all serve as conduits for market information. The Commission found evidence that companies in this industry understand their shared incentives to keep capacity tight, avoid price wars, and follow a "price over volume" strategy. We believe this transaction would have made it easier for the remaining two dominant manufacturers to coordinate with one another on

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[1] Chairwoman Ramirez and Commissioners Brill and Ohlhausen join in this statement.
[2] U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines § 7.1 (2010) [hereinafter 2010 Horizontal Merger Guidelines], available at http://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf.

price and non-price terms to achieve supracompetitive prices or other anticompetitive outcomes.

As noted in the 2010 Merger Guidelines, the Commission will also likely challenge a transaction producing harmful unilateral effects. For instance, this could occur where the merged firm would no longer have to negotiate against other competitors for customer supply contracts, or where the transaction would eliminate a competitor that otherwise could have expanded output in response to a price increase.[3]

For these reasons, we respectfully disagree with Commissioner Wright's conclusion that there is no reason to believe the transaction violates Section 7 of the Clayton Act. We also disagree with Commissioner Wright's suggestion that the Commission imposed an unduly high evidentiary standard in analyzing the parties' efficiency claims here and believe he overlooks several important points in his analysis. We are mindful of our responsibility to weigh appropriately all evidence relevant to a transaction and, moreover, understand our burden of proof before a trier of fact.

Commissioner Wright expresses concern that competitive effects are estimated whereas efficiencies must be "proven," potentially creating a "dangerous asymmetry" from a consumer welfare perspective.[8] We disagree. Both competitive effects and efficiencies analyses involve some degree of estimation. This is a necessary consequence of the Clayton Act's role as an incipiency statute. In addition, while competitive effects data and information tends to be available from a variety of sources, the data and information feeding efficiencies calculations come almost entirely from the merging parties. Indeed, the 2010 Merger Guidelines observe that "[e]fficiencies are difficult to verify and quantify, in part because much of the information relating to efficiencies is uniquely in the possession of the merging firms."[9] The need for independent verification of this party data animates the requirement that, to be cognizable, efficiencies must be substantiated and verifiable.

Courts have repeatedly emphasized that, "while reliance on the estimation and judgment of experienced executives about costs may be perfectly sensible as a business jr