The glass containers that dagh and D-I manufacture and sell are purchased primarily by companies that sell food, beer, radioeholic beverages, and wine and spirits. The glass container industry in the United States is highly concentrated characterized by saturatial barriers to entry and expansion. Among these barritess difficult to identify and employ personnel with skills and experience in glass container manufacturing.

Each of the Manufacturer shas imposed No-Compete Restrictions n employees across a variety of positions These restriction sypically required that, for either one or two year following the conclusion of the worker'0 (e)4 (ve)ve. dentw32 (a)nd3rriea s contain-2 (us)--25.13(he)]

The Commission's recent Section 5 Policy Statement describes the most recent Cautily general principles concerning whether conduct is an unfair method of compatition violates Section 5 by

## tailored.13

As described belowhe factual allegations in the complaints would support concluding that each Responent's use of the challenged Nonmpete Restriction is an unfair method of competition under Section 5.

First, each Respondent's use of **Non**mpete Restriction**is** a method of competition. The challenged Nonompete Restrictions

Compete Restrictions y contrast, create a legal impediment that restricts workers from leaving their employment even if they find more attractive employment terms elsewhere. For this reason, NorCompete Restrictions ave long been considered proper subjects for scrutiny under the nation's antitrust laws.

Third, the factual allegations in the complaints support a finding that each Respondent's challenged conductasthetendency or likely effect of negatively affecting competitin the U.S. glass container industry. Specifically, the complaints allege that (i) each of the Respondents requiredemployees across a variety of positions, including salaried employees who work with the glass container plants' furnace and forming equipment and in other glass production engineering, and quality assurance roles, to refrain from working for competing glass manufacturing companies for at least one year after the conclusion the ployment, (ii) the ability to identify and employ personnel with skill and experience in glass container manufacturing is a substantial barrier to entry and expansion, and (iii) the challenged restrictions have a tendency or likely effect of impegiithe entry and expansion of rivals.

Fourth, the factual allegations in the complaints support a finding that each Respondent's challenged conductas the endency or likely effect of negatively affecting competitive conditions affecting workers in the U.S. glass container industryell-functioning labor markets, workers compete to attract employeems employers compete to attract workers. For example, workers may attract potential employers by offevals ntlsta2 (I)-2 (I)-2 (I)-2 (I)-2 (I)-3 (I)-

who value those offerings more and will, for example, tend to stay at those jobs longer as a result. Competition for labor allows for job mobility and benefits workers by allowing them to accept new employment, create or join new businesses, negotiate better terms in their current jobs, and generally pursue career advancement as they see fit.

By preventing workers and employers from freely choosing their preferred jobs and candidates, respectively, Normpete Restrictionsend to impede and undermine competition in labor markets<sup>23</sup>. Research suggests that Normpete Restrictions easurably reduce worker mobility, <sup>24</sup> lower workers' earnings,

j-(ij-@a(suleatol)32 (o)12b Tw [(R) 1.04 3224.0785.72 Tm ( )Tj -0.4 T-2 (i)-2 (on )]TJ -20.74 -1[(2)0.5 (3)]TJ EMC /P << in (y, ),c (t)-2 (a)4s-1(n)-4 >>Bftan (.)]TkTd [(i)-7.0785.c (on )sn laTc >>,1ne cprrulr4 (s)-pde a ion id9 ( )]Tn lmTd [(i)-2 (ny-(ul)-gTw34 (l)-2T)-2 i-4 >>culefon mmoRestrictionar(s)]TJ 0 Tc 0 Tw 8.64 0 Td ( )Tj -0 notable impediment to their ability to achieve any legitimate business objectives

## IV. Proposed Orders