

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

DissentingStatement of Commissioner Christine S. Wilson

In the Matter of O-I Glass, Inc. and In the Matter of Ardagh Group S.A. File No. 211-0182

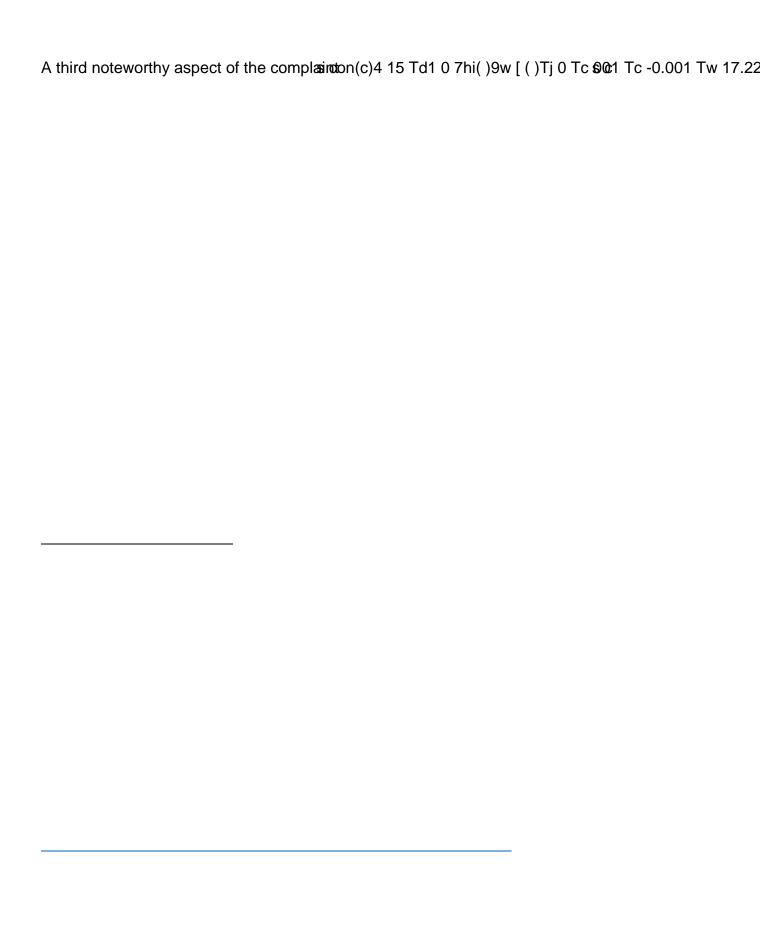
January 4, 2023

Today, the Commission announced that it has accepted, subject to final approval, consent agreements withwo companies in the glass container industry. The consents resolve allegations that the use of nonempete agreements in employee contracts constitutes an unfair method of competition that violates Section 5 of the FTC Act. These cases, which allegals and violations of Section 5, are among the first to employ the approach that the recently issued Section 5 Policy Statement and section 5. For the reasons explained below, I dissent.

Context is important. Under current leadership, the Commission has demanded significant volumes of information from parties under investigation, routal requested information is related totraditional competition analysis addition, this Commission has declared its willingness to take losing cases to could he faced with the expense of complying with expansive demands for documents and other material, and the possibility of an enforcement

¹ Fed.TradeCommin, Policy Statement Regarding the Scathe Federal Trade Commission (Notov. 10, 2022),	ope of Unfair Methods of Competition Under Section 5 of
² SeeChristine S. Wilson, Comm'r, Fed. Trade Comm'n,	 ,

action regardless of the merits, parties under investigation rational	lу



The allegations imply	that, conversely, ma	ny employees that	were subject compe	e

of those lists reveals that senior executives and employees involved in research and development are not included. Although not acknowledged in the Analysis to Aid Public Comment, the Commission here implicitly as credited least sombusiness justifications for nonempete clauses.

Concerns for Due Process

I am concerned whether the respondents had notice that their conduct would be viewed as unlawful. As noted above, the allegations here depart from a centuries-long line of precedent regarding the appropriate analysis of the legality of non-compete provisions, and conflict with a Seventh Circuit holding specific to Section 5 of the FTC Act. The allegations are premised on the Section 5 Policy Statement issued in November 2022, which also represents a radical departure from precedent. But complaints in these matters challengeduct of Ol-Glass and Ardagh that predates the November 2022 Section 5 Policy Statement. The Second Circuit explained in Ethythat "the Commission owes a ductio6d.F/ A ma6S2 (i)-65-2 (l)-2 (e)4 (ga)4uTw [(r)ovemov4 (ga)0 1 Tf 0 Tc 7.27 0 Td 0 Tc 0 Tw 5.42 0 Td [(bus)-1 (i (s)-1 (i)-2)-2 (i)-2 (T)1 (matter)