

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Case No. 13-CV-1021 (RMC)

ARDAGH GROUP, S.A.,
COMPAGNIE DE SAINT-GOBAIN, and
SAINT-GOBAIN CONTAINERS, INC.,

Defendants.

STIPULATED JOINT PROPOSED SCHEDULING ORDER

Upon the Court's consideration of argument by plaintiff the Federal Trade Commission (the "Commission") and defendants Ardagh Group S.A. ("Ardagh Group"), Compagnie de Saint-Gobain, and Saint-Gobain Containers, Inc. (collectively, "Defendants," and with the Commission, the "Parties") during the July 9, 2013 telephonic scheduling conference, it is hereby **ORDERED** that:

1. On or before July 16, 2013, the Commission shall produce to Defendants a copy of all non-privileged documents in its investigative file that the Commission is not legally barred from producing due to a confidentiality obligation regarding Ardagh Group's anticipated acquisition of Saint-Gobain Containers, Inc. (the "Proposed Transaction"), including all communications with, and documents received from, non-Parties, as well as any other non-privileged materials that the Commission has collected or prepared in connection with the investigation of the Proposed Transaction or its decision to file either the complaint in the above-captioned action or the administrative complaint filed with the Federal Trade Commission

Office of Administrative Law Judges on July 1, 2013 and captioned *In the Matter of Ardagh Group S.A., et al.* (the “Administrative Action”). The Commission will produce any such documents that it is, as of the undersigned date, legally barred from producing due to a confidentiality obligation within twenty-four hours of such confidentiality obligation expiring, but in no event after July 26, 2013.¹

2. The Parties may commence serving document requests, requests for written discovery (including requests for admission and interrogatories), and third-party subpoenas on July 17, 2013. No document requests or requests for written discovery may be served on any Party after August 16, 2013 except for discovery related to the admissibility of evidence. For any third-party subpoena, the Parties will not request a return date sooner than seven calendar days after service. If both the Commission and one or more Defendants serve subpoenas on the same third party, the Parties will use reasonable efforts to coordinate any negotiations with the subpoenaed third party regarding modifications, if any, to the subpoenas, including the scope of documents to be produced, the form of production, the return date for the subpoena, and the date for any deposition of the third party. Notwithstanding any other provision herein, the Parties may modify deadlines in this paragraph by agreement.

3. The Parties agree to produce all materials received pursuant to a third-party subpoena to the non-serving party within two (2) business days of knowing receipt.

4. The Parties will serve written responses and objections to any document requests, and produce all non-privileged documents responsive to any document requests

¹ The Commission is not required to produce to Defendants any documents or other material originally produced by a Defendant in connection with the Commission’s February 25, 2013 Request for Additional Information and Documentary Materials pursuant to the Hart-Scott-Rodino Antitrust Improvements Act (the “Second Request”).

(subject to any objections), within ten calendar days of any such request.² The Parties will serve responses and objections to a request for written discovery within ten calendar days of any such request. Notwithstanding any other provision herein, the Parties may modify deadlines in this paragraph by agreement.

5. The Commission will be permitted to serve a total of 20 interrogatories on Defendants combined. Of those 20 interrogatories, no more than 10 may be contention interrogatories. Defendants combined shall be permitted to serve a total of 20 interrogatories on the Commission. Of those 20 interrogatories, no more than 10 may be contention interrogatories.

6. The Commission shall be permitted to serve a total of 50 requests for admission on Defendants combined, and Defendants combined shall be permitted to serve a total of 50 requests for admission on the Commission. There will be no limit on the number of requests for admission for the authenticity of documents or admissibility of evidence.

7. Fact depositions will begin on or after July 22, 2013. The Parties continue to negotiate the number of depositions that each party will be permitted, but agree the limit shall be higher than the presumptive limit of ten under Federal Rule of Civil Procedure 30.

The parties shall call the Court for a determination after Aug 2, 2013, failing agreement.

Defendants' position:

Defendants propose the following addition to paragraph 7: "Except upon a showing to the Court of good cause, the Commission shall not take additional testimony from more than two representatives of each Defendant who previously testified in connection with the Commission's Second Request."

Prior to the commencement of this action, the Commission had four months to conduct discovery, including taking the depositions of thirteen representatives of Defendants. Most of these depositions lasted more than eight hours each. The Commission should not be permitted to have a second chance to depose all of

² Defendants are not required to produce documents or other material that were previously produced in connection with the Second Request.

those witnesses. Defendants have not requested an absolute bar on re-deposing Party representatives, but instead have proposed a reasonable limitation that contains a "good cause" exception providing the Parties with flexibility. Defendants' proposal will prevent unnecessary burden and prejudice, which is particularly important in this expedited preliminary injunction proceeding.

The Commission's position:

The Commission does not believe that it should be barred from deposing witnesses appearing on either side's witness list based solely on whether or not those witnesses were questioned by the Commission in an investigational hearing. The investigational hearings were taken months ago by the Commission Staff to understand the Acquisition, the Defendants' businesses, the markets in which they compete, and the harm that might arise if the Acquisition were permitted to close. Investigational hearings are taken to permit the Commission to determine whether or not it has reason to believe it should challenge an acquisition and are not intended to replace depositions. Indeed, the Commission's rules (applicable to the parallel administrative proceeding) explicitly provide: "The fact that a witness testifies at an investigational hearing does not preclude the deposition of that witness." FTC Rules of Practice for Administrative Proceeding, 16 C.F.R. § 3.33(b). Certainly no arbitrary limit should be established before the Parties exchange their proposed witness lists. Under this proposed Scheduling Order, the Commission will produce its preliminary witness list on July 26, 2013, and Defendants will produce their preliminary witness list on August 2, 2013. Therefore, the Commission would be prejudiced if it is limited in its ability to take discovery of party witnesses and particularly if that limit were established before the Parties even exchange their preliminary witness lists.

8. The Parties will consult with each other prior to noticing any deposition to coordinate the time and place of the deposition. The Parties need not separately notice the deposition of a third party noticed by an opposing party. At the request of either the Commission or Defendants, the time and allocation for a third-party deposition shall be divided evenly between them, but the noticing party may use any additional time not used by the opposing party. If the Commission or Defendants do not make such a request, cross examination of the witness will be limited to one hour.

9. The Commission will produce its preliminary expert, and Party and non-Party fact witness lists on or before July 26, 2013. Defendants will produce their preliminary

expert, and Party and non-Party fact witness lists on or before August 2, 2013. The Party and non-Party preliminary witness lists will name the employer of the witness and describe each witness's job responsibilities. For expert witnesses, the Parties shall provide a brief description of the subject matter of the expert(s)' testimony. The preliminary witness lists will include persons that the Parties expect, in good faith, to call to provide live testimony in the Hearing (as defined below) or intend to rely upon, via declaration or deposition transcript, at the Hearing or in any briefs supporting or opposing the Commission's preliminary injunction motion. The Parties will indicate in good faith whether they expect to call the witness to provide live testimony at the hearing or if they will rely on a declaration or deposition transcript. The Parties may add a witness only for good cause, and will explain in writing why that witness was not on the preliminary witness list. Each Party will provide an updated witness list promptly upon any determination to delete a contemplated witnesses. This paragraph shall not apply to rebuttal fact or expert witnesses. Notwithstanding any other provision herein, the Parties may modify deadlines in this paragraph by agreement.

10. The Parties will produce all existing fact witness declarations on or before July 26, 2013. The Parties will produce any counter-declarations to the July 26, 2013 fact witness declarations, or any additional fact witness declarations, on or before August 9, 2013. The Parties will produce any counter-declarations to the August 9, 2013 additional fact witness declarations on or before August 16, 2013.

11. Defendants will serve their answer to the Complaint on or before July 26, 2013.

12. The Parties will exchange final witness lists on or before August 13, 2013. Contemplated witnesses who were not on the Parties' respective preliminary witness lists may be added only if opposing Parties are provided an opportunity to take their depositions.

13. Fact discovery, except for discovery regarding the admissibility of evidence, will end on August 20, 2013. Notwithstanding any other provision herein, the Parties may modify the deadline in this paragraph by agreement.

14. The Commission will file its brief supporting its motion for a preliminary injunction on or before August 21, 2013.

15. Any obligation of the Parties to exchange Federal Rule of Civil Procedure 26(a)(1) disclosures is hereby adjourned.

16. The Commission will serve its opening expert report(s) on or before August 21, 2013.³

17. Defendants will serve their expert report(s) on or before August 28, 2013.

18. The Commission will serve its rebuttal expert report(s) on or before September 3, 2013.

19. Expert depositions will end on or before September 13, 2013.

20. Defendants will file their opposition to the Commission's motion for a preliminary injunction on or before September 13, 2013.

21. The Commission will file a reply brief in further support of its motion for a preliminary injunction, if any, on or before September 25, 2013.

³ At the time of service of the expert reports, a Party shall provide opposing counsel with: (i) a list of all commercially available computer programs used by the expert in the preparation of the report; (ii) a copy of all data sets used by the expert, in native file format and processed data file format; and (iii) all customized computer programs used by the expert in the preparation of the report or necessary to replicate the findings on which the expert report is based.

22. The Parties will exchange exhibit lists, copies of all contemplated exhibits, and deposition designations on or before September 30, 2013.

23. The Parties will exchange objections to exhibits and counter-deposition designations on or before October 3, 2013.

24. The Commission's oral examinations of Party witnesses in connection with the Second Request will be admissible to the extent they would be if they were depositions in the above-captioned action.

25. Any good faith objection to a document's authenticity or status as a business record must be provided at the same time as other objections to intended trial exhibits. If the opposing side serves a specific good faith written objection to the document's authenticity or its status as a business record, the parties will promptly meet and confer to attempt to resolve any objection. If the objection is not resolved, the Party seeking to introduce the exhibit shall have the opportunity to take discovery regarding admissibility of the exhibit(s) in question. Any objections that are not resolved through this means or the discovery process will be resolved by the Court.

26. The final pretrial conference will be held on TBD, 2013.

27. The evidentiary hearing on the Commission's motion for a preliminary injunction (the "Hearing") will begin on October 11, 2013 at 9:30 a.m. and continue on October 17 and 18, 2013, as necessary. Unless otherwise indicated, proceedings on each day shall commence at 9:30 a.m. or at such other time as the Court may direct.

28. The Parties will file any post-hearing briefing, proposed findings of fact, or proposed conclusions of law on or before October 25, 2013.

29. The Parties will file any response to any other Parties' post-hearing briefing, proposed findings of fact, or proposed conclusions of law on or before October 30, 2013.

30. The service of any document provided for by this order will be effective if completed via email sent to the undersigned counsel. In the event the documents are too voluminous for electronic mail, the parties shall serve the papers by hand or overnight mail.

31. Good cause having been shown in view of the geographic dispersion of potential witnesses in this action, the Parties will be allowed nationwide service of discovery and trial subpoenas pursuant to Fed. R. Civ. P. 45 and 15 U.S.C. § 23, to issue from this Court.

32. All discovery taken in the above-captioned litigation can be used in connection with the Administrative Action and vice versa.

33. Counsel for the Parties are expected to conduct themselves in a civil, polite, and professional manner at all times, particularly during discovery. Counsel are referred to Local Civil Rule 26.2 and are expected to conform fully with its directives. Moreover, counsel are required, under both Federal Rule of Civil Procedure 26(f) and Local Civil Rule 7.1(m), to confer in good faith in an effort to resolve any discovery dispute before bringing it to the Court's attention. In the event that counsel are unable to resolve a dispute, counsel shall contact chambers to arrange for a telephone conference with the Court. Counsel shall not file discovery motions without a prior telephone conference with the Court and opposing counsel.

Dated: New York, New York
July 17, 2013

SHEARMAN & STERLING LLP

FEDERAL TRADE COMMISSION

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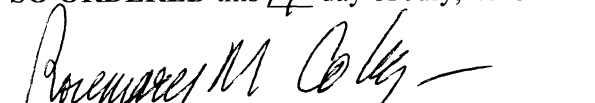
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SO ORDERED this 19 day of July, 2013



HON. ROSEMARY COLLYER
United States District Judge