

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

FEDERAL TRADE COMMISSION
600 Pennsylvania, Avenue, N.W.
Washington, DC 20580

Plaintiff,

v.

Civil Action No. _____

ARDAGH GROUP S.A.
56, rue Charles Martel,
Luxembourg
L-2135

and

COMPAGNIE DE SAINT-GOBAIN
"Les Miroirs" 18, avenue d'Alsace
92400 Courbevoie
France

and

SAINT-GOBAIN CONTAINERS, INC.
1509 S. Macedonia Avenue
Muncie, Indiana 47307

Defendants.

**PLAINTIFF'S MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF ITS REQUEST FOR A PRELIMINARY INJUNCTION AND REQUEST
FOR SCHEDULING CONFERENCE**

I. Motion for Preliminary Injunction and Statement of Supporting Points and Authorities.

Plaintiff, the Federal Trade Commission (the "Commission"), by its designated attorneys, moves this Court pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), for a preliminary injunction enjoining defendant Ardagh Group S.A. ("Ardagh"),

including its domestic and foreign agents, divisions, subsidiaries, affiliates, partnerships, and joint ventures, from acquiring any stock, assets, or other interest, directly or indirectly, of defendant Saint-Gobain Containers, Inc. (“Saint-Gobain”) from defendant Compagnie De Saint-Gobain.

Ardagh’s proposed acquisition of Saint-Gobain would combine the second- and third-largest glass container manufacturers in the United States, resulting in an effective duopoly. This proposed acquisition will likely cause anticompetitive effects in at least two relevant antitrust product markets: the manufacture and sale of glass containers to (1) beer brewers (“Brewers”) and (2) spirits distillers (“Distillers”). The Commission has determined that it has “reason to believe” that the proposed acquisition of Saint-Gobain by Ardagh would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45. In these circumstances, Section 13(b) of the FTC Act authorizes the Commission to seek a preliminary injunction halting the proposed merger until the Commission “has had an opportunity to adjudicate the merger’s legality in an administrative proceeding.” *FTC v. CCC Holdings, Inc.*, 605 F. Supp. 2d 26, 35 (D.D.C. 2009) (citing 15 U.S.C. § 53(b)). The Commission voted to authorize the administrative complaint in this matter on June 28, 2013 and the trial of this case on the merits before an administrative law judge is scheduled to begin on December 2, 2013.

Because Defendants have threatened to close their proposed acquisition before the completion of the administrative trial, the Commission needs a preliminary injunction from this Court to preserve its ability to obtain adequate relief and to prevent harm to consumers. A preliminary injunction would be in the public interest based on a weighing of the equities and the

Commission's likelihood of success on the merits. *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 714 (D.C. Cir. 2001).

II. Request for Scheduling Conference.

Defendants have agreed not to consummate the proposed acquisition until two business days after this Court rules on the Commission's motion for preliminary injunction. A stipulation reflecting this agreement is attached to this motion.

The parties have conferred regarding a proposed scheduling order and briefing schedule for this matter and request a brief telephonic scheduling conference with the Court in order to facilitate those discussions.

The Commission respectfully requests the opportunity to present oral argument in support of its preliminary injunction motion.

Notice of this motion has been given to Defendants' attorneys by the undersigned attorney prior to the filing of the present action and Defendants' attorneys have indicated that they oppose the motion for a preliminary injunction, but join in the request for a scheduling conference.

A proposed preliminary injunction Order and Order memorializing the stipulation is attached.

Dated: July 2, 2013

Counsel:

NORMAN A. ARMSTRONG, JR. (D.C. Bar 459621)
Deputy Director
Federal Trade Commission
Bureau of Competition

JONATHAN NUECHTERLEIN (D.C. Bar 442470)
General Counsel
Federal Trade Commission

CATHARINE M. MOSCATELLI
Assistant Director (D.C. Bar 418510)

BRENDAN J. MCNAMARA
Deputy Assistant Director

ANGELIKE A. MINA
SEAN D. HUGHTO (D.C. Bar 421224)
STEVEN L. WILENSKY (D.C. Bar 430398)
MONICA M. CASTILLO
ANGEL PRADO
JAMES ABELL (D.C. Bar 990773)
MEREDITH ROBINSON (D.C. Bar 498245)
JOSHUA GOODMAN
MICHAEL FRANCHAK
STEVEN DAHM
DANIELLE SIMS (D.C. Bar 982506)
KRISTIAN ROGERS
AMANDA HAMILTON (D.C. Bar 499646)
SEBASTIAN LORIGO
VICTORIA LIPPINCOTT

Attorneys

Federal Trade Commission
Bureau of Competition
Mergers II Division

Respectfully submitted,



EDWARD D. HASSI
Chief Litigation Counsel
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Ave., NW
Washington, DC 20580
Telephone: (202) 326-2470
Facsimile: (202) 326-2884
Email: ehassi@ftc.gov

Attorney for Plaintiff

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

FEDERAL TRADE COMMISSION,
600 Pennsylvania Avenue N.W.
Washington D.C. 20580

Plaintiff,

v.

Civil Case No. ____-CV-____ (____)

ARDAGH GROUP S.A.,
56, rue Charles Martel,
Luxembourg
L-2135

and

COMPAGNIE DE SAINT-GOBAIN
"Les Miroirs" 18, avenue d'Alsace
92400 Courbevoie
France

and

SAINT-GOBAIN CONTAINERS, INC.
1509 S. Macedonia Avenue
Muncie, Indiana 47307

Defendants.

STIPULATION AND [PROPOSED] ORDER

WHEREAS, plaintiff, the Federal Trade Commission (the "Commission"), filed the instant action on July 2, 2013, seeking, among other relief, a preliminary injunction enjoining Defendant Ardagh Group S.A ("Ardagh Group") from acquiring Defendant Saint-Gobain Containers, Inc. from Defendant Compagnie de Saint-Gobain (the "acquisition");

WHEREAS, absent this Stipulation, Defendant Ardagh Group would be free to consummate the proposed acquisition after 11:59 p.m., Eastern Daylight Time, on July 5, 2013; and

WHEREAS, the parties have agreed that Defendant Ardagh Group will not consummate the proposed acquisition until two business days after the Court rules on the Commission's motion for a preliminary injunction seeking to enjoin the acquisition.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED AMONG THE PARTIES:

1. Defendant Ardagh Group shall not consummate any acquisition of any stock, assets, or other interest, of Defendants Compagnie de Saint-Gobain or Saint-Gobain Containers, Inc. until two business days after the Court rules on the Commission's motion for a preliminary injunction, pursuant to Section 13(b) of the Federal Trade Commission Act.
2. Defendant Ardagh Group shall take any and all necessary steps to prevent any of its domestic or foreign agents, divisions, subsidiaries, affiliates, partnerships, or joint ventures from making any such acquisition.
3. This Stipulation and Order is without prejudice to any rights or defenses that any Defendant may have, and any Party may seek to amend this Stipulation and Order at any time upon proper notice.

Dated: July 2, 2013

Respectfully submitted,

By: 

Edward Hassi, Esq.
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
202-326-2470

Counsel for Plaintiff Federal Trade
Commission

By: 

Richard Schwed, Esq.
Shearman & Sterling LLP
599 Lexington Avenue
New York, NY, 10022
212-848-4000

Counsel for Defendant Ardagh Group S.A.

By: 

Richard J. Stark, Esq.
Yonatan Even, Esq. (*pro hac vice* admission forthcoming)
Cravath, Swaine & Moore LLP
325 Eighth Avenue, Worldwide Plaza
New York, NY, 10019

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

ENTERED, this ____ day of _____.

United States District Judge