

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS:

**Lina M. Khan, Chair
Rebecca Kelly Slaughter
Christine S. Wilson
Alvaro M. Bedoya**

In the Matter of

Ardagh Group S.A.,
a corporation,

Ardagh Glass Inc.
a corporation, and

Ardagh Glass Packaging Inc.
a corporation.

Docket No. C-4785

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41, et seq., and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that Ardagh Group S.A., Ardagh Glass Inc., and Ardagh Glass Packaging Inc., corporations (collectively “Ardagh”), hereinafter sometimes referred to as “Respondent,” has violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

NATURE OF THE CASE

1. This action addresses the unfair use by Respondent of post-employment covenants not to compete. The term post-employment covenants not to compete (or “Non-Compete Agreements”), as used in this complaint, refers to contract terms that, following the conclusion of a worker’s employment with one employer, restrict the worker’s freedom to accept employment with competing businesses or otherwise to compete with the employer.

RESPONDENT

2. Respondent Ardagh Group S.A. is a corporation organized, existing, and doing business under, and by virtue of, the laws of Luxembourg, with its executive offices and principal place of business at 56, rue Charles Martel, L-2134, Luxembourg, Luxembourg.
3. Respondent Ardagh Glass Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware with its executive office and principal place of business located at 10194 Crosspoint Blvd., Suite 410, Indianapolis, IN 46256.
4. Respondent Ardagh Glass Packaging Inc. is a corporation organized, existing, and doing business under, and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 10194 Crosspoint Blvd., Suite 410, Indianapolis, IN 46256.

JURISDICTION

5. At all times relevant herein, Ardagh has been, and Ardagh is now, a corporation, as “corporation” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
6. Ardagh has engaged in and continues to engage in commerce and activities affecting commerce in the United States, as the term “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

GLASS CONTAINER INDUSTRY

7. Respondent manufactures and sells glass containers used for food and beverage packaging. The primary customers of such glass containers are companies that sell food, beer, non-alcoholic beverages, and wine and spirits.
8. The glass container industry in the United States is highly concentrated. There are substantial barriers to entry and expansion, including the ability to identify and employ personnel with skills and experience in glass container manufacturing.

RESPONDENT’S NON-COMPETE AGREEMENTS

9. For over a decade, Respondent has required employees across a variety of positions to enter into Non-Compete Agreements with Respondent. These agreements typically required that, for two years following the conclusion of the worker’s employment with Respondent, the worker may not directly or indirectly “perform or provide the same or substantially similar services” to those the worker performed for Ardagh to any business in the United States, Canada, or Mexico that is “involved with or that supports the sale, design, development, manufacture, or production of glass containers” in competition with Ardagh. At the outset of the Commission’s investigation, Ardagh had Non-Compete Agreements in

effect with over 700 current employees, including salaried employees who work with the plants' furnaces and forming equipment and in other glass production, engineering, and quality assurance roles.

10. Respondent's use of Non-Compete Agreements as described herein is unfair and has the tendency or likely effect of harming competition, consumers, and workers, including by: (i) impeding the entry and expansion of rivals in the glass container industry, (ii) reducing employee mobility, and (iii) causing lower wages and salaries, reduced benefits, less favorable working conditions, and personal hardship to employees.
11. Any legitimate objectives of Respondent's conduct as alleged herein could have been achieved through significantly less restrictive means, including, for example, by entering confidentiality agreements that prohibit employees and former employees from disclosing company trade secrets and other confidential information.

VIOLATION CHARGED

12. The allegations in all of the paragraphs above are re-alleged and incorporated by reference as though fully set forth herein.
13. Respondent's conduct constitutes an unfair method of competition with a tendency or likelihood to harm competition, consumers, and employees in the glass container industry, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such conduct, or the effects thereof, will continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-first day of February, 2023, issues its complaint against Respondent.

By the Commission, Commissioner Wilson dissenting.

April Tabor
Secretary

SEAL