

**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.)

DECISION AND ORDER
 Docket No.

DECISION

The Federal Trade Commission initiated an investigation of certain acts and practices of Respondent Ardagh Group S.A., Respondent Ardagh Glass Inc., and Respondent Ardagh Glass Packaging Inc. (collectively, “Respondents”). The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Order (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Act, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint. The Commission duly considered any comments

received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings:

1. 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.
2. Respondent Ardagh Glass Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its executive offices and principal place of business at 10194 Crosspoint Blvd #410, Indianapolis, IN 46256.
3. Respondent Ardagh Glass Packaging Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its executive offices and principal place of business at 10194 Crosspoint Blvd #410, Indianapolis, IN 46256.
4. The Commission has jurisdiction of the subject matter of this proceeding and over Respondents, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Ardagh Group” means Ardagh Group S.A., its directors, officers, employees, agents, representatives, successors, and assigns; the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Ardagh Group S.A., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “AGI” or “Respondent AGI” means Ardagh Glass Inc., its directors, officers, employees, agents, representatives, successors, and assigns; the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Ardagh Glass Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “AGPI” or “Respondent AGPI” means Ardagh Glass Packaging Inc., its directors, officers, employees, agents, representatives, successors, and assigns; the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Ardagh Glass Packaging Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Commission” means the Federal Trade Commission.

- E. “Agreement” means any agreement, contract, understanding, or provision or term thereof, whether express or implied, written or unwritten.
- F. “Employee” means a Person employed by, previously employed by, or in the process of being employed by, Respondents in the United States as specified in Appendix A.
- G. “Noncompete Agreement” means an Agreement between Respondents and an Employee that restricts or restrains the right or ability of the Employee to seek or accept employment with any Person, to operate a business, or otherwise to compete with Respondents for any period of time after the conclusion of the Employee’s employment with Respondents.
- H. “Person” means both natural and artificial persons, including corporations, partnerships, and unincorporated entities.

II. Injunction

IT IS FURTHER ORDERED that Respondents, in connection with their activities in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, shall cease and desist from, directly or indirectly, entering or attempting to enter into, maintaining or attempting to maintain, enforcing or attempting to enforce, or threatening to enforce a Noncompete Agreement or communicating to an Employee or any prospective or current employer of that Employee that the Employee is subject to, a Noncompete Agreement.

III. Notice to Employees

IT IS FURTHER ORDERED that Respondents shall:

- A. No later than 30 days from the date this Order is issued, deliver to each Employee that is, or as of November 23, 2021, was, party to a Noncompete Agreement a letter in the form of Appendix B and a copy of this Order. Respondents shall deliver Appendix B to each Employee by name, either:
 - 1. By U.S. Mail, return receipt requested; or
 - 2. Via email transmittal with a proof of a read-receipt.
- B. No later than 30 days from the date this Order is issued, and continuing for the duration of this Order, post a clear and conspicuous notice in the documentation, electronic or otherwise, provided to each new Employee upon hire that states:

“IMPORTANT: Your employment with Ardagh in this position is not and will not be subject to a noncompete provision. This means that once you stop working for Ardagh:

- You may seek or accept a job with any company or person – even if they compete with Ardagh.
- You may run your own business – even if it competes with Ardagh.
- You may compete with Ardagh at any time following your employment with Ardagh.
- We can still enter or enforce other agreements, such as agreements that prevent current or former employees from using or disclosing Ardagh’s confidential business information and trade secrets – for example, if the employee goes to work for someone else.”

IV. Compliance Obligations

IT IS FURTHER ORDERED that Respondents shall:

- A. No later than 30 days after the date on which this Order is issued: (1) take all steps necessary to void and nullify all existing Noncompete Agreements and notify Commission staff in writing that all existing Noncompete Agreements are voided and nullified, once completed; and (2) not require any Employee who is party to an existing Noncompete Agreement to pay back any remuneration or otherwise to be penalized as a result of the voided and nullified Noncompete Agreement.
- B. No later than 30 days after the date on which this Order is issued, provide a copy of this Order and the Complaint to each of Respondents’ directors, officers, and employees with responsibility for hiring or recruitment of Employees in the United States.
- C. For a period of 10 years from the date this Order is issued, provide a copy of this Order and the Complaint to any Person who becomes a director, officer, or employee of Respondents with responsibility for hiring or recruitment of Employees in the United States, and provide such copies within 30 days of the commencement of such Person’s employment or term as a director or officer.
- D. Require each Person to whom a copy of this Order is furnished pursuant to Paragraph IV.B and IV.C above to sign and submit to Respondents within 30 days of the receipt thereof a statement that (1) represents that the undersigned has read the Order, and (2) acknowledges that the undersigned has been advised and understands that non-compliance with the Order may subject Respondents to penalties for violation of the Order.
- E. For a period of 5 years after taking each action obligated by Paragraphs IV.A-D of this Order, Respondents shall retain documents and records sufficient to record Respondents’ compliance with said obligations.

V. Compliance Reports

IT IS FURTHER ORDERED that Respondents AGI and AGPI shall file verified written reports (“Compliance Reports”) in accordance with the following:

- A. Respondents AGI and AGPI shall submit:
 1. Interim Compliance Reports 30 days after the date this Order is issued, and then 150 days thereafter for the first year;
 2. Annual Compliance Reports one year after the date this Order is issued, and annually for the next 9 years on the anniversary of that date; and
 3. Additional Compliance Reports from any Respondent as the Commission or its staff may request.
- B. Each Compliance Report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with this Order. Conclusory statements that Respondents have complied with their obligations under the Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, (1) a full description of the measures Respondents have implemented and plan to implement to comply with each paragraph of this Order, including a list of all persons who received the notice required by Section IV of this Order, together with proof of service of the notice (which service may be satisfied by sending the notice via email, as described in Paragraph III.A) and (2) upon the Commission’s request, a copy of any employment agreement (apart from a collective bargaining agreement) that Respondents AGI or AGPI enter or implement after execution of the Consent Agreement.
- D. For a period of 5 years after filing a Compliance Report, Respondents shall retain all material written communications with each party identified in each Compliance Report as required by Paragraph IV.B and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondents’ obligations under this Order during the period covered by such Compliance Report. Respondents shall provide copies of these documents to Commission staff upon request.
- E. Respondents shall verify each Compliance Report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall file their Compliance Reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov; as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a).

VI. Change in Respondents

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least 30 days prior to:

- A. The dissolution of Ardagh Group S.A., Ardagh Glass Inc., or Ardagh Glass Packaging, Inc.;

- B. The acquisition, merger, or consolidation of Ardagh Group S.A., Ardagh Glass Inc., or Ardagh Glass Packaging, Inc.; or
- C. Any other change in Respondents, including assignment and the creation, sale, or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII. Access

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon 5 days' notice to Respondents, that Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of Respondents related to compliance with this Order, which copying services shall be provided by Respondents at their expense; and
- B. To interview directors, officers, or employees of Respondents, who may have counsel present, regarding such matters.

VIII. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and to prevent Respondents from entering into, attempting to enter into, maintaining or attempting to maintain, enforcing or attempting to enforce, or threatening to enforce a Noncompete Agreement.

IX. Term

IT IS FURTHER ORDERED that this Order shall terminate 20 years from the date it is issued.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: