

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

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright
 Terrell McSweeney

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In the Matter of)	
)	
ARDAGH GROUP, S.A.)	
a public limited liability company,)	
)	
SAINT-GOBAIN CONTAINERS, INC.)	Docket No. 9356
a corporation,)	
)	
and)	
)	
COMPAGNIE DE SAINT-GOBAIN,)	
a corporation.)	
)	
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DECISION AND ORDER

[Public Record Version] , and Compagnie de Saint-Gobain (“CSG”), with a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Respondents having been served with a copy of that Complaint, together with a notice of contemplated relief and having filed their answers denying said charges; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waives and other provisions as required by the Commission’s Rules; and

The Commission having thereafter withdrawn the matter from adjudication in accordance with § 3.25(c) of its Rules; and the Commission having thereafter considered the matter and having thereupon accepted the executed Consent Agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comment filed by an interested party pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings

- C. “Acquirer” means any Person that receives the prior approval of the Commission to acquire the Anchor Glass Business pursuant to this Decision and Order.
- D. “Acquisition” means the proposed acquisition by Respondent Ardagh of VNA as described in the Share Purchase Agreement, dated as of January 17, 2013, between Respondent Ardagh and CSG.
- E. “Acquisition Date” means the date the Acquisition is consummated.
- F. “Anchor Glass Business” means all of Respondent Ardagh’s assets, including Tangible Personal Property and intangible assets, businesses and goodwill, related to the research, development, manufacture, distribution, marketing or sale of Anchor Glass Products including, but not limited to:
1. The Anchor Glass Manufacturing Facilities;
 2. The Anchor Glass Corporate Facility;
 3. The Anchor Glass Molds;
 4. The Anchor Glass Molds Facility;
 5. The Anchor Glass Engineering Facility;
 6. The Anchor Glass Contracts;
 7. Intellectual Property relating to the research, development, manufacture, distribution, marketing or sale of Anchor Glass Products;
 8. The non-exclusive rights to use Respondent Ardagh’s process, method, techniques, and know-how for soda ash reduction in the manufacture of glass containers that is used by Respondent Ardagh in the Ardagh Retained Business;
 9. All inventories relating to Anchor Glass Products, wherever located;
 10. All (a) trade accounts receivable and other rights to payment from customers of the Anchor Glass Business and the full benefit of all security for such accounts or rights to payment, (b) all other accounts or notes receivable in respect of the Anchor Glass Business and the full benefit of all security for such accounts or notes and (c) any claim, remedy, or other right related to any of the foregoing;
 11. All consents, licenses, certificates, registrations, or permits issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement relating to the research, development, manufacture, distribution, marketing or sale of Anchor Glass Products, and all pending applications therefor or renewals thereof;

12. All Business Records relating to the research, development, manufacture, distribution, marketing or sale of Anchor Glass Products; *PROVIDED, HOWEVER*, that where documents or other materials included in the Business Records to be divested contain information: (a) that relates both to the Anchor Glass Business to be divested and to the Ardagh Retained Business or other products or businesses and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Anchor Glass Business to be divested; or (b) for which the relevant party has a legal obligation to retain the original copies, the relevant party shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer, the relevant party shall provide the Acquirer access to original documents under circumstances where copies of the documents are insufficient for evidentiary or regulatory purposes.
- G. “Anchor Glass Contracts” means all agreements and contracts with customers (including, but not limited to, contracts, purchasing agreements, and rebate agreements with customers who will be served from both the Anchor Glass Manufacturing Facilities and facilities retained by Respondent Ardagh, and agreements, contracts, and understandings for transportation, storage, and other services), suppliers, vendors, representatives, agents, licensees and licensors; and all leases, mortgages, notes, bonds, and other binding commitments, whether written or oral, and all rights thereunder and related thereto related to the Anchor Glass Business from the Anchor Glass Manufacturing Facilities;
- H. “Anchor Glass Corporate Facility” means the facility located at 401 E Jackson Street # 2800, Tampa, FL 33602-5216, including, but not limited to, information technology systems, all physical assets and equipment related to the research, development, manufacture, sale, and distribution of products from the Anchor Glass Manufacturing Facilities. *PROVIDED, HOWEVER*, that where documents or other materials included in the Business Records to be divested contain information: (a) that relates both to the Anchor Glass Business to be divested and to the Ardagh Retained Business or other products or businesses and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Anchor Glass Business to be divested; or (b) for which the relevant party has a legal obligation to retain the original copies, the relevant party shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer, the relevant party shall provide the Acquirer access to original documents under circumstances where copies of the documents are insufficient for evidentiary or regulatory purposes.

- J. “Anchor Glass Engineering Facility” means the Anchor Glass engineering facility located at 1901 N Shabbona St, Streator, IL 61364, including, but not limited to, all real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held by Respondent Ardagh, and all Tangible Personal Property therein, and parts, inventory, and all other assets relating to the Anchor Glass Business. *PROVIDED, HOWEVER*, that parts, inventory, designs, or other assets held for use exclusively by or for the Ardagh Retained Business may be excluded.
- K. “Anchor Glass Manufacturing Facilities” means all real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held by Respondent Ardagh, and all Tangible Personal Property, therein, at the Elmira Facility, Jacksonville Facility, Warner Robins Facility, Henryetta Facility, Lawrenceburg Facility and the Shakopee Facility. *PROVIDED, HOWEVER*, that parts, inventory, designs, or other assets held for use exclusively by or for the Ardagh Retained Business may be excluded.
- L. “Anchor Glass Molds” means all molds, including designs and drawings for molds in

- O. “Ardagh Retained Business” means the assets and businesses of Respondent Ardagh other than the Anchor Glass Business.
- P. “Business Records” means all originals and all copies of any operating, financial or other information, documents, data, computer files (including files stored on a computer’s hard

- b. Is necessary to be included in Respondent Ardagh’s mandatory regulatory filings; *PROVIDED, HOWEVER*, that Respondent Ardagh shall make all reasonable efforts to maintain the confidentiality of such information in the regulatory filings;
- c. Was available, or becomes available, to Respondent Ardagh on a non-confidential basis, but only if, to the knowledge of Respondent Ardagh, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information;
- d. Is information the disclosure of which is consented to by the Acquirer;
- e. Is necessary to be exchanged in the course of consummating the Acquisition or the transaction under the Divestiture Agreement;
- f. Is disclosed in complying with the Order;
- g. Is information the disclosure of which is necessary to allow Respondent Ardagh to comply with the requirements and obligations of the laws of the United States and other countries, and decisions of Government Entities;
or
- h. Is disclosed in obtaining legal advice.

R. “Divestiture Agreement” means any agreement that receives the prior approval of the Commission between Respondent Ardagh (or between a Divestiture Trustee appointed pursuant to Paragraph IV. of this Order) and an Acquirer to purchase all or any of the Anchor Glass Business, and all amendments, exhibits, attachments, agreements, and schedules thereto that have been approved by the Commission.

S. “Divestiture Date” means the date on which Respondent Ardagh (or a Divestiture Trustee) closes on the divestiture of the Anchor Glass Business as required by Paragraph II (or Paragraph IV) of this Order.

T. “Elmira Facility” means the glass manufacturing plant located at 151 E McCanns Blvd, Elmira Heights, NY 14903.

U. “Henryetta Facility” means the glass manufacturing plant located at 601 E Bollinger Rd, Henryetta, OK 74437.

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W. “Intellectual Property” means:

1. Patents, and the rights to obtain and file for Patents, trademarks, and copyrights and registrations thereof and to bring suit against a third party for the past, present or future infringement, misappropriation, dilution, misuse or other violations of any of the foregoing;
2. product manufacturing technology, including process technology, technology for equipment, inspection technology, and research and development of product or process technology;
3. Product and manufacturing copyrights;
4. all plans (including proposed and tentative plans, whether or not adopted or commercialized), research and development, specifications, drawings, and other assets (including the non-exclusive right to use Patents, know-how, and other intellectual property relating to such plans);
5. product trademarks, trade dress, trade secrets, technology, know-

- Y. “Lawrenceburg Facility” means the glass manufacturing plant located at 200 Belleview Dr., Greendale, IN 47025.
- Z. “Patents” means pending patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Acquisition Date, and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.
- AA. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other business entity other than Respondent Ardagh.
- BB. “Shakopee Facility” means the glass manufacturing plant located at 4108 Valley Industrial Blvd N, Shakopee, MN 55379.
- CC. “Tangible Personal Property” means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, rolling stock, and other items of tangible personal property (other than inventories) of every kind owned or leased by Respondent Ardagh, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- DD. “Transitional Assistance” means any transitional services required by the Acquirer for the operation of the divested business including, but not limited to administrative assistance (including, but not limited to, order processing, shipping, accounting, and information transitioning services), technical assistance, and supply agreements.
- EE. “Warner Robins Facility” means the glass manufacturing plant located at 1044 Booth Rd, Warner Robins, GA 31088.

II.

IT IS FURTHER ORDERED that:

- A. Respondent Ardagh shall divest the Anchor Glass Business at no minimum price, absolutely and in good faith, as an on-going business, no later than one-hundred eighty (180) days from the date Respondent Ardagh signs the Agreement Containing Consent Orders, to an Acquirer that receives the prior approval of the Commission and in a manner (including an asset or stock sale) that receives the prior approval of the Commission.
- B. At the request of the Acquirer, pursuant to an agreement that receives the prior approval of the Commission, Respondent Ardagh shall, for a period not to exceed one (1) year

from the date Respondent Ardagh divests the Anchor Glass Business, provide
Transitional Assistance to the Acquirers, pursuant to 2016-16(c)-16(en)-4) t-16(t-16(o)-4) and t-16(h)-4) of the

3. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to the Anchor Glass Business; and
 4. not sell, transfer, encumber, or otherwise impair the Anchor Glass Business (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Anchor Glass Business.
- E. From the date Respondent Ardagh executes the Divestiture Agreement, Respondent Ardagh shall provide a proposed Acquirer with the opportunity to recruit and employ any Anchor Glass Designated Employee in conformance with the following:
1. No later than ten (10) days after a request from a proposed Acquirer, or staff of the Commission, Respondent Ardagh shall provide a proposed Acquirer with the following information for each Anchor Glass Designated Employee, as and to the extent permitted by law:
 - a. name, job title or position, date of hire and effective service date;
 - b. a specific description of the employee's responsibilities;
 - c. the base salary or current wages;
 - d. the most recent bonus paid, aggregate annual compensation for Respondent Ardagh's last fiscal year and current target or guaranteed bonus, if any;
 - e. employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 - f. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly-situated employees; and
 - g. at a proposed Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant Anchor Glass Designated Employee(s).
 2. No later than ten (10) days after a request from a proposed Acquirer, Respondent Ardagh shall provide the proposed Acquirer with:
 - a. an opportunity to meet, personally and outside the presence or hearing of any employee or agent of Respondent Ardagh, with any Anchor Glass Designated Employee;

- b. an opportunity to inspect the personnel files and other documentation relating to any such employee, to the extent permissible under applicable laws; and
 - c. to make offers of employment to any Anchor Glass Designated Employee.
 - 3. Respondent Ardagh shall (i) not interfere, directly or indirectly, with the hiring or employing by a proposed Acquirer of any Anchor Glass Designated Employee, (ii) not offer any incentive to any Anchor Glass Designated Employee to decline employment with a proposed Acquirer, (iii) not make any counteroffer to any Anchor Glass Designated Employee who receives a written offer of employment from a proposed Acquirer; *PROVIDED, HOWEVER*, that nothing in this Order shall be construed to require Respondent Ardagh to terminate the employment of any employee or prevent Respondent Ardagh from continuing the employment of any employee; and (iv) remove any impediments within the control of Respondent Ardagh that may deter any Anchor Glass Designated Employee from accepting employment with a proposed Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondent Ardagh that would affect the ability of such employee to be employed by a proposed Acquirer.
- F. For a period of two (2) years after the Divestiture Date, Respondent Ardagh shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Person employed by an Acquirer of the Anchor Glass Business, to terminate his or her employment relationship with an Acquirer; *PROVIDED, HOWEVER*, Respondent Ardagh may:
 - 1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, so long as these actions are not targeted specifically at any Anchor Glass Designated Employees; and
 - 2. Hire employees of the Anchor Glass Business who apply for employment with Respondent Ardagh, so long as such individuals were not solicited by Respondent Ardagh in violation of this paragraph; *PROVIDED, FURTHER, HOWEVER*, that this sub-Paragraph shall not prohibit Respondent Ardagh from making offers of employment to or employing any employee of the Anchor Glass Business if an Acquirer has notified Respondent Ardagh in writing that an Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the individual's employment has been terminated by an Acquirer.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondent Ardagh has not divested the Anchor Glass Business and otherwise fully complied with the obligations as required by Paragraph II.A of this Order, the Commission may appoint a Divestiture Trustee to divest the Anchor Glass Business in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Hold Separate Monitor pursuant to the relevant provisions of the Hold Separate Order.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent Ardagh shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent Ardagh to comply with this Order.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Ardagh, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent Ardagh has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent Ardagh of the identity of any proposed Divestiture Trustee, Respondent Ardagh shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondent Ardagh shall execute an agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or transfer required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondent Ardagh shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to enter into Transitional Assistance agreements

2.

Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent Ardagh, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent Ardagh shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee. For purposes of this Paragraph IV.E.6., the term "Divestiture Trustee" shall include all persons retained by the Divestiture Trustee pursuant to Paragraph IV.E.5. of this Order.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
8. The Divestiture Trustee shall report in writing to Respondent Ardagh and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
9. Respondent Ardagh may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
10. The Commission may require, among other things, the Divestiture Trustee and each of the Divestiture TrusteeD

orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

V.

IT IS FURTHER ORDERED that:

- A. The Divestiture Agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of an Acquirer or to reduce any obligations of the Respondent Ardagh under such agreement.
- B. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof.
- C. Respondent Ardagh shall comply with all provisions of the Divestiture Agreement, and any breach by Respondent Ardagh of any term of such agreement shall constitute a violation of this Order. If any term of the Divestiture Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondent Ardagh cannot fully comply with both terms, the Order Term shall determine Respondent Ardagh’s obligations under this Order. Any failure by the Respondent Ardagh to comply with any term of such Divestiture Agreement shall constitute a failure to comply with this Order.

VI.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent Ardagh signs the Consent Agreement in this matter, the Commission may appoint a Monitor to assure that Respondent Ardagh expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order;
- B. The Commission shall select the Monitor, subject to the consent of Respondent Ardagh, which consent shall not be unreasonably withheld. If Respondent Ardagh has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent Ardagh of the identity of any proposed Monitor, Respondent Ardagh shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than ten (10) days after appointment of the Monitor, Respondent Ardagh shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent Ardagh’s compliance with the relevant terms of the Order in a manner consistent with the purposes of the Order.

D. If a Monitor is appointed pursuant to this Paragraph VI, Respondent Ardagh shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

1. The Monitor shall have the power and authority to monitor Respondent Ardagh's compliance with the terms of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission including, but not limited to:
 - a. Assuring that Respondent Ardagh expeditiously complies with all of its obligations and perform all of its responsibilities as required by the Decision and Order in this matter;
 - b. Monitoring any transition services agreements;
 - c. Assuring that Confidential Business Information is not received or used by Respondent Ardagh or the Acquirer, except as allowed in the Order in this matter.
2. The Monitor shall have the power and authority to monitor Respondent Ardagh's compliance with the divestiture and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission.
3. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.

E.

H. Respondent Ardagh shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph

VII.

IT IS FURTHER ORDERED that for a period of ten (10

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IT IS FURTHER ORDERED

NON-PUBLIC APPENDIX A

**HSO EXCLUDED EMPLOYEES BUT
SUBJECT TO INTERVIEW AND HIRE UNDER DECISION AND ORDER**

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