

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

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.)
_____)

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS
[Public Record Version]

The Federal Trade Commission (“Commission”), having heretofore issued its Complaint charging Ardagh Group, S.A. (“Respondent Ardagh” or “Respondent”), ~~Saint Gobain~~ Containers, Inc. (also known as Verallia North America (“VNA”), 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

- f. Other relevant reports, summaries, records documents, or information relating to the Anchor Glass Business as the Hold Separate Monitor may request; and
 - g. Financial summaries or reports, or other information, reports, or summaries relating to the Anchor Glass Business the Hold Separate Monitor may request Respondent Ardagh to locate, collect, organize, and develop for the Hold Separate Monitor
4. The Hold Separate Monitor shall have the authority to employ, at the cost and expense of Respondent Ardagh, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Monitor's duties and responsibilities.
 5. The Hold Separate Monitor shall serve, without bond or other security, at the cost and expense of Respondent Ardagh

9. Thirty (30) days after the Hold Separate Order becomes final and every thirty (30) days thereafter until the Hold Separate Order terminates, and as requested by the Commission or staff, the Hold Separate Monitor shall report in writing to the Commission concerning Respondent Ardagh's efforts to comply with the terms of the Hold Separate Order. Each report shall include, but not be limited to, the Hold Separate Monitor's assessment of the extent to which the Anchor Glass Business's meeting (or exceeding or failing to meet) its projected goals as reflected in business planning documents, budgets, projections, or any other regularly prepared financial statements.
10. Respondent

IV.

IT IS FURTHER ORDERED that:

- A. Effective on the Acquisition Date, Respondent Ardagh shall appoint James Fredlake as the Hold Separate Manager to manage and maintain the operations of the Anchor Glass Business in the regular and ordinary course of business beginning on the Acquisition Date.
- B. Respondent Ardagh shall transfer all rights, powers, and authority necessary to permit the Hold Separate Manager to perform his duties and responsibilities pursuant to this Hold Separate Order to manage the Anchor Glass Business
1. The Hold Separate Manager shall be responsible for managing the operations of the Anchor Glass Business through the Hold Separate Period and shall report directly and exclusively to the Hold Separate Monitor and shall manage the Anchor Glass Business independently of the management of Respondent Ardagh and its other businesses;
 2. The Hold Separate Manager with the approval of the Hold Separate Monitor shall have the authority to employ such persons as are reasonably necessary to assist the Hold Separate Manager in managing the Anchor Glass Business including, without limitation, consultants, accountants, attorneys, and other representatives, assistants, and employees.
 3. Respondent Ardagh shall provide the Hold Separate Manager with reasonable financial incentives to undertake these positions. Such incentives shall include a continuation of all employee benefits, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation, and prevent any diminution, of the viability, marketability, and competitiveness of the Anchor Glass Business, and as may otherwise be necessary to secure the Hold Separate Manager's agreement to achieve the purposes of this Hold Separate Order.
 4. The Hold Separate Manager shall serve, without bond or other security, at the cost and expense of Respondent Ardagh, on reasonable and customary terms commensurate with the person's experience and responsibilities, and with any financial incentives that may be reasonable or necessary as described in this Paragraph IV. Respondent Ardagh shall pay the Hold Separate Manager's costs and expenses (including, but not limited to, those related to consultants, accountants, attorneys, and other representatives and assistants) on a monthly or other reasonable periodic basis.

5. Respondent Ardagh shall indemnify the Hold Separate Manager and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Manager'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 the Manager's gross negligence, willful or wanton acts, or bad faith. For purposes of this Paragraph IV.B.5., the term "Hold Separate Manager" shall include all persons retained by the Hold Separate Manager pursuant to Paragraph IV.B.2. of this Hold Separate Order.
 6. Nothing contained herein shall preclude the Hold Separate Manager from contacting or communicating directly with the staff of the Commission, either at the request of the staff of the Commission or the Hold Separate Monitor, in the discretion of the Hold Separate Manager.
 7. The Hold Separate Manager shall have the authority, in consultation with the Hold Separate Monitor, to staff the Anchor Glass Business with sufficient employees to maintain the viability and competitiveness of the Anchor Glass Business, including:
 - a. Replacing any departing or departed Anchor Glass Business employee with a person who has similar experience and expertise or determine not to replace such departing or departed employee.
 - b. Removing any Anchor Glass Business employee who ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, and replacing or not replacing such employee with another person of similar experience or skills;
 - c. Ensuring that no Anchor Glass Business employees shall be (i) involved in any way in the operations of Ardagh Retained Business, (ii) receive or have access to, or use or continue to use, any confidential information relating to the Ardagh Retained Business, unless allowed or required under the Orders.
 - d. Providing each Anchor Glass Business employee with reasonable financial incentives, including continuation of all salaries, employee benefits, and regularly scheduled raises and bonuses, to continue in his or her position during the Hold Separate Period.
- C. The Hold Separate Manager may be removed for cause by the Hold Separate Monitor in consultation with the Commission staff. If the Hold Separate Manager is removed, resigns, or otherwise ceases to act as Hold Separate Manager, the Hold Separate Monitor shall, within three (3) business days of such action, subject to the prior approval of

- d. Maintenance and oversight of all information technology systems and databases, including, but not limited to, all hardware, software, electronic mail, word processing, document retention, enterprise management systems, financial management systems, and customer databases;
 - e. Procurement and renewal of insurance and related services; and
 - f. Technical support for implementation of the batch reformulation project.
4. Notwithstanding the above, the Anchor Glass Business shall have, at the option of the Hold Separate Manager and with the approval of the Hold Separate Monitor following consultation with Commission staff, the right to acquire support services from third parties unaffiliated with Respondent Ardagh.

C. Respondent Ardagh shall not permit:

- 1. Any of its employees, officers, agents, or directors, other than (i) the Hold Separate Monitor; (ii) the Hold Separate Managers; and (iii) any Anchor Glass Business employee to be involved in the operations of the Anchor Glass Business except to the extent otherwise provided in this Hold Separate Order; and
- 2. The Hold Separate Manager or any Anchor Glass Designated Employee to be involved in the operations of the Ardagh Retained Business except for the provision of Hold Separate Services, as provided for in this Hold Separate Order.

D. Respondent Ardagh shall provide the Anchor Glass Business sufficient financial and other resources as are appropriate in the judgment of the Hold Separate Monitor, consistent with his obligations and responsibilities in this Hold Separate Order, to:

- 1. Operate the Anchor Glass Business as least as it is currently operated (including efforts to (g) (4) (i) (v) (a) 42 (4) (e) (4) (e) 2 (e) (6) (2) -4 (ae) -5 (s) -o) -10r G2as and Avu0(g)6(en))

scheduled raises and bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation, and prevent any diminution, of the viability, marketability, and competitiveness of the Anchor Glass Business during the Hold Separate Period, and as may otherwise be necessary to achieve the purposes of this Hold Separate Order

than as required or permitted by the Orders.

PROVIDED, HOWEVER, that nothing in this Paragraph VI shall prevent Respondent Ardagh from using any tangible or intangible property that Respondent Ardagh retains the right to use pursuant to the Orders. *PROVIDED, FURTHER, HOWEVER*, that to the extent that the use of such property involves disclosure of Confidential Business Information to another Person, Respondent Ardagh shall require such Person to maintain the confidentiality of such Confidential Business Information under terms no less restrictive than Respondent Ardagh's obligations under the Orders.

- B. Ardagh Retained Employees shall not receive, have access to, use or continue to use, or disclose any Confidential Business Information pertaining to the Anchor Glass Business. *PROVIDED, HOWEVER*, that Respondent Ardagh is permitted to retain a copy of any Business Records used by, necessary for, or relating to the Ardagh Retained Business necessary for the provision of the Hold Separate Services, or as otherwise permitted pursuant to the Orders, and may use Confidential Business Information, or disclose Confidential Business Information to Ardagh Retained Employees.

2. Limit disclosure or use by Ardagh Retained Employees and Respondent Ardagh's agents to those who require access to such Confidential Business Information for uses permitted by the Orders;
 3. Maintain and make available for inspection and copying by the Hold Separate Monitor and Commission staff records of Ardagh Retained Employees and Respondent Ardagh's agents who have accessed or used Confidential Business Information, a reasonable description of the Confidential Business Information to which they had access or used, and the dates upon which they accessed or used such information;
 4. Require Ardagh Retained Employees and Respondent Ardagh's agents to sign, and maintain and make available for inspection and copying by the Hold Separate Monitor and Commission staff, appropriate written agreements to maintain the confidentiality of such information and to use such information only as permitted by the Orders; and,
 5. Enforce the terms of this Paragraph with respect to any of Ardagh Retained Employees and Respondent Ardagh's agents and take such action as is necessary to cause each such employee or agent to comply with the terms of this Paragraph VI including:
 - a. Training of Ardagh Retained Employees and Respondent Ardagh's agents who are permitted access to and use of Confidential Business Information;
 - b. Appropriate discipline of Ardagh Retained Employees and Respondent Ardagh's agents who fail to comply with processes and procedures established by Respondent Ardagh pursuant to this Paragraph VI or any confidentiality agreement; and
 - c. All other actions that Respondent Ardagh would take to protect its own trade secrets, proprietary, and other non-public information.
- D. Respondent Ardagh shall implement and maintain in operation a system, approved by the Hold Separate Monitor and in consultation with Commission staff, of written procedures covering access and data controls to prevent unauthorized access to, or dissemination or use of, Confidential Business Information of Anchor Glass Business, including, but not limited to, the opportunity by the Hold Separate Monitor to audit Respondent Ardagh's networks and systems to verify compliance with Respondent Ardagh's system and the Orders.
- E. Neither the Hold Separate Manager nor Anchor Glass Designated Employee shall receive or have access to, or use or continue to use, any confidential information relating

to the Ardagh Retained Business, Saint Gobain Containers, Inc., or Compagnie de Saint Gobain, except and only for the time such information is necessary to maintain and operate the Anchor Glass Business to provide Hold Separate Services, or as otherwise permitted pursuant to the Orders

- G. Respondent Ardagh shall enforce the terms of this Paragraph to any Person other than a proposed Acquirer of the Anchor Glass Business and take such action as is necessary to cause each such Person to comply with the terms of this Paragraph, including training of employees and all other actions that Respondent Ardagh take to protect its own trade secrets and proprietary information.

VII.

IT IS FURTHER ORDERED that:

- A. Respondent Ardagh shall cooperate with and assist any proposed Acquirer of the Anchor Glass Business to evaluate independently and retain any of the Anchor Glass Designated Employees such cooperation to include at least to implement the provisions of the Decision and Order relating to employee interviewing and hiring
- B. During the Hold Separate Period, Respondent Ardagh shall waive any corporate policy, rules, and regulations, and waive any written or oral agreement or understanding, that might prevent or limit any Hold Separate Monitor, Hold Separate Manager, or Anchor Glass Designated Employee from performing any services, engaging in any activities, or other conduct reasonably related to achieving the purposes of the Orders.

VIII.

IT IS FURTHER ORDERED that, within thirty (30) days after this Hold Separate Order becomes final and every thirty (30) days thereafter until this Hold Separate Order terminates, Respondent Ardagh shall submit to the Commission, with a copy to the Hold Separate Monitor, a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with all provisions of this Hold Separate Order. Respondent Ardagh shall include in its reports, among other things that are required from time to time:

- A. A description in reasonable detail of any claim (whether Respondent Ardagh agrees or disagrees with the claim) by any person (including, but not limited to, any of Respondent Ardagh's employees or agents) that Respondent Ardagh has failed to comply fully with the Order, and the name, address, phone number, and email address of such person; and
- B. A description in reasonable detail of any information in Respondent Ardagh's possession, custody, or control (including, but not limited to, information obtained from Respondent Ardagh's monitoring of the compliance of its employees and agents with processes, procedures, and agreements intended to secure Respondent Ardagh's compliance with its

obligations under the Order relevant to any failure by Respondent Ardagh its employees, or its agents to comply fully with Respondent Ardagh obligations under the Orders and

- C. A full description of the efforts being made to comply with the Decision and Order's divestiture obligation including a description of all substantive contacts or negotiations relating to the divestiture and approval, and the identities of all parties contacted. Respondent Ardagh shall include in its compliance reports copies, other than of privileged materials, of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture

IX.

IT IS FURTHER ORDERED that Respondent Ardagh shall notify the Commission at least thirty (30) days prior to

- A. any proposed dissolution of Respondent Ardagh
- B. any proposed acquisition, merger consolidation of Respondent Ardagh or
- C. any other change in the Respondent Ardagh including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

X.

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 with reasonable notice to Respondent Ardagh with respect to any matter contained in this Order, Respondent Ardagh shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, (accounts, correspondence, etc.)

XI.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate at the end of the Hold Separate Period.

By the Commission, Commissioner Wright dissenting

Donald S. Clark
Secretary

SEAL:
ISSUED: April 8, 2014

APPENDIX A
HOLD SEPARATE MONITOR AGREEMENT

NON-PUBLIC APPENDIX A- 1
HOLD SEPARATE MONITOR COMPENSATION

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX B

HOLD SEPARATE SERVICES

[Redacted From the Public Record Version, But Incorporated By Reference]