

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGE



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In the Matter of)
)
)
Ardagh Group S.A,)
a public limited liability company,)
)
and)
)
Saint-Gobain Containers, Inc.,)
a corporation,)
)
and)
)
Compagnie de Saint-Gobain,)
a corporation.)
_____)

Docket No. 9356

PUBLIC

**SUPPLEMENTARY MEMORANDUM IN SUPPORT OF APPLICATION OF
RESPONDENT ARDAGH GROUP S.A.
UNDER RULE 3.25(a) FOR SETTLEMENT CONFERENCE**

On September 26, 2013, Respondent Ardagh Group S.A. (“Ardagh”) filed an application requesting this Court to convene an in-person settlement conference in order to facilitate settlement discussions. On September 27, 2013, Complaint Counsel responded that, while they had no objection to a conference, they did not think it would materially increase the likelihood of a settlement because Ardagh “appears to be wedded” to a solution that Complaint Counsel believes is unlikely to resolve the Commission’s concerns.

Complaint Counsel’s response illustrates why supervision of the settlement negotiations under Rule 3.25(a) would be productive.

First, Ardagh is ready and willing to negotiate a consent settlement that satisfies the Commission’s concerns as expressed in the administrative complaint, provided that the settlement does not go beyond what is necessary and thereby impose an unwarranted loss on the company. The fact that the parties have exchanged multiple offers but cannot bridge the gap militates in favor of Court supervision, not against it. Indeed, if it would assist the process, one or more senior company executives with negotiating authority can be present at any conference the Court convenes.

Second, time is of the essence. The evidentiary hearing on the FTC's motion for a preliminary injunction before Judge Rothstein in the District Court for the District of Columbia is scheduled to start on October 17, while the evidentiary hearing on the merits in this Court is scheduled to begin on December 2.

Out of an abundance of caution Ardagh decided take steps to restructure its transaction and sell the four plants in its latest settlement proposal as a standalone business to a single buyer, so that if necessary it can litigate the merits of the restructured transaction.¹

Several interested bidders have come forward, and under the direction of Ardagh's investment bankers, these bidders are receiving due diligence, plant tours, and management presentations. Ardagh expects to have a detailed signed term sheet with one of the bidders soon and a definitive purchase agreement shortly thereafter. However, if there are objective reasons to change the package of plants to be sold, a change can still be made. Because of the ongoing sale process, if the parties can reach agreement on the plants to be sold, a transaction for those plants can be put in place quickly.

A settlement conference now would be both timely and likely to facilitate a settlement. Ardagh renews its request that this Court exercise its discretion under Rule 3.25(a) to convene an in-person settlement conference at the Court's earliest convenience.

Dated: September 30, 2013

Respectfully submitted,

s/ Wayne Dale Collins

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¹ In addition, Ardagh is also providing Ardagh and VNA craft beer customers the option to extend their existing supply contracts to December 31, 2023. Both the sale of the plants and craft beer options will be conditioned on the completion of the acquisition of the remaining VNA plants.

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CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2013, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I also certify that I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
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Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

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CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that a paper copy with an original signature is being filed with the Secretary of the Commission today.

September 30, 2013

By: *s/ Heather Kafele*
Attorney