ORIGINAL

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

ARDAGH GROUP, S.A.
a public limited liability company,

SAINT-GOBAIN CONTAINERS, INC.
a corporation,

and

COMPAGNIE DE SAINT-GOBAIN,
a corporation.

PUBLIC VERSION

Docket No. D-9356

APPLICATION FOR APPROVAL OF DIVESTITURE OF ANCHOR GLASS BUSINESS TO GLASS CONTAINER ACQUISITION LLC

Pursuant to Section 2.41(f) of the Federal Trade Commission ("Commission") Rules of Practice and Paragraph II of the Decision and Order ("D&O") accepted for public comment by the Commission on April 8, 2014, in the above-captioned matter, Respondent Ardagh Group S.A. ("Ardagh") respectfully submits this Application for Approval of Divestiture of the Anchor Glass Business ("Application") to Glass Container Acquisition LLC ("GCA"), an affiliate of KPS Capital Partners L.P. ("KPS").

I. Background

On January 17, 2013, Ardagh entered into an agreement with Compagnie de Saint-Gobain (together with Ardagh, "Respondents") to purchase Saint-Gobain Containers, Inc., Saint-Gobain's U.S. glass container operations. On July 1, 2013, the Commission issued an administrative

Complaint against the Respondents, alleging that the acquisition would have anticompetitive effects in alleged markets for glass bottles for beer and glass bottles for spirits. On March 18, 2014, the Commission entered an Order Withdrawing Matter from Adjudication for the Purpose of Considering a Consent Proposal. On March 24, 2014, Respondents executed an Agreement Containing Consent Orders ("Consent Agreement") that included an Order to Hold Separate and Maintain Assets ("Hold Separate Order") and a D&O, which, if approved, would require Ardagh to divest the Anchor Glass Business (as defined in the D&O) to an acquirer approved by the Commission. On April 8, 2014, the Commission accepted the D&O for public comment. On April 11, 2014, Ardagh closed its acquisition of Saint-Gobain Containers, Inc.

This Application seeks approval of the proposed divestiture of the Anchor Glass Business to GCA. Ardagh wishes to complete the proposed divestiture of the Anchor Glass Business as soon as possible. Prompt consummation of the proposed divestiture will further the purposes of the D&O and is in the interest of the Commission and the public interest.

II. Request for Confidential Treatment

This Application contains confidential and competitively sensitive information relating to Ardagh, the divestiture of the Anchor Glass Business, and the proposed Acquirer. Pursuant to Sections 6(f) and 21(c) of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f) and 57b-2(c), and Sections 2.41(f), 4.9 and 4.10 the Commission's Rules of Practice and Procedure, 16 C.F.R. §§ 2.41(f), 4.9 and 4.10, Ardagh requests that nonpublic, commercially or competitively sensitive information contained in this Application be treated by the Commission as strictly confidential and not be made available to the public. The disclosure of this information would prejudice Ardagh and GCA, cause harm to the ongoing competitiveness of the Anchor Glass Business, and impair Ardagh's ability to comply with its obligations under the D&O. Ardagh requests that the Commission inform it immediately if the Commission cannot treat the confidential information contained in this Application as confidential in order to provide Ardagh an opportunity to seek relief.

For the convenience of maintaining the public record, Ardagh is submitting two versions of this Application. The confidential version contains the information necessary to enable the Commission to assess the Application. The public version has been redacted to exclude confidential and proprietary information.

III. The Proposed Divestiture

On April 12, 2014, Ardagh agreed to sell the Anchor Glass Business to GCA pursuant to a Stock Purchase Agreement among Ardagh Containers Holdings Limited, Anchor Glass Container Corporation, GCA and Ardagh (the "SPA"). A copy of the SPA, including all schedules and exhibits, is attached as Confidential Exhibit A.

As consideration, GCA will pay Ardagh **REDACTED** at closing, subject to certain purchase price adjustments, including adjustments for (i) certain employee benefits liabilities, (ii) closing indebtedness, (iii) company transaction expenses, (iv) closing cash and (v) working capital overages (if any) or shortages (if any). The mechanism for determining the adjustments to the purchase price is contained in Article II of the SPA.

As provided in Section IV below, the proposed Acquirer, GCA, owned and controlled by an affiliate of KPS, will have the necessary operational, managerial, financial and professional resources to ensure that the Anchor Glass Business will continue to be operated as a competitive glass container manufacturing business in the United States. The proposed divestiture conveys all of the Anchor Glass Business's assets, including: a headquarters in Tampa, Florida and a complete senior management team, six glass manufacturing facilities located in Florida, Georgia, Indiana, Minnesota, New York and Oklahoma, an engineering and spare parts facility in Illinois, a mold manufacturing facility in Ohio and approximately 2,000 employees. Consequently, the proposed divestiture will accomplish the purposes of the D&O by creating an independent, viable, and effective competitor in the relevant markets, and thus will remedy any lessening of competition resulting from Ardagh's acquisition of Saint-Gobain Container, Inc. as alleged in the Commission's Complaint.

IV. The Proposed Acquirer is Well-Qualified to Own and Operate the Anchor Glass Business

A. Introduction to KPS Capital Partners, LP

KPS is the manager of the KPS Special Situations Funds, a family of investment funds with over $6.0 billion of assets under management. KPS seeks to realize significant capital appreciation by making controlling equity investments in companies across a diverse range of manufacturing industries. The KPS investment strategy is based primarily upon partnering with top management teams and improving the operations of businesses. Thereafter, upon achieving stability and profitability, KPS focuses on growing its businesses, both organically and through strategic acquisitions.

Since 1991, KPS has worked exclusively on acquiring and improving industrial businesses. KPS has completed over 50 transactions through four investment funds. KPS acquires very few new businesses each year, and every investment that KPS makes is subject to thorough due diligence and reflects its deep interest in preserving the firm's strong reputation and long-term track record of success. Each of the businesses KPS acquires faces a unique set of challenges and opportunities, and KPS develops business plans that are both responsive to those challenges and sufficiently flexible to adapt to ever-changing market conditions and new opportunities. KPS's strategy has resulted in every KPS Fund being a top performer relative to other funds in its vintage year.

KPS current portfolio companies have aggregate annual revenues of nearly $7.0 billion, operate 93 manufacturing facilities in 26 countries, with approximately 37,000 employees, directly and through joint ventures worldwide. The KPS investment strategy and portfolio companies are described in detail at www.kpsfund.com.

B. KPS Has Completed a Comprehensive Due Diligence Investigation of the Anchor Glass Business

Over the past six months, KPS has completed a comprehensive due diligence investigation of the Anchor Glass Business. KPS has spent a considerable amount of time and committed a significant amount of internal and external resources to evaluating the Anchor Glass Business. In connection with its due diligence investigation of the Anchor Glass Business, KPS retained the following third-parties: Paul, Weiss, Rifkind, Wharton & Garrison LLP (legal), Ernst & Young Transaction Advisory Services (accounting / tax / IT), PricewaterhouseCoopers, LLP (human resources / benefits), Spilman Thomas & Battle PLLC (union / human resources / benefits), Aon Risk Services Central, Inc. (insurance) and ENVIRON International Corporation (environmental). KPS's diligence investigation included: (a) reviewing the books and records of the Anchor Glass Business; (b) participating in numerous meetings and conference calls with members of the Anchor Glass Business management team; (c) conducting facility tours of all of the Anchor Glass Business's glass container manufacturing facilities; (d) engaging glass industry experts to assist in its evaluation of the Anchor Glass Business; (e) completing its business, accounting, tax, legal, environmental, human resources and benefits, insurance and information technology due diligence and (f) developing a detailed business plan for the Anchor Glass Business. KPS's comprehensive due diligence investigation of the Anchor Glass Business and development of a detailed business plan with the management team will position the Anchor Glass Business for long-term success in the U.S. glass container market place.

C. KPS Has Relevant Industry and Transaction Experience

KPS has significant experience owning and operating businesses in Anchor's key end-markets in North America. Most relevant to the Proposed Divestiture is KPS's acquisition of North American Breweries, Inc. ("NAB"). In 2009, KPS established a platform company in the branded consumer beverage business, NAB. Headquartered in Rochester, NY, NAB is a national platform for investments and growth in the beer and malt beverage industries. NAB manufactures, imports, markets and sells its branded product portfolio through an independent network of wholesalers throughout the U.S. NAB's portfolio of brands includes: the Labatt brands; the Genesee brands; the Original Honey Brown Lager and Dundee Ales & Lagers;

Seagram's Escapes; Magic Hat; Pyramid; and MacTarnahan's. In December 2012, KPS completed the sale of NAB to Cervecería Costa Rica, S.A. Through KPS's investment in NAB, KPS gained considerable experience and insight into the end-market dynamics impacting the Anchor Glass Business. Of note, NAB's Rochester, NY facility sources its glass bottle requirements from the Anchor Glass Business's Elmira, NY facility, and has cited the Elmira facility as one of its top-ranking suppliers.

In addition to KPS's relevant industry experience, KPS has extensive expertise buying divisions of larger corporations and successfully building independent standalone businesses. Since its founding, KPS has completed over 20 corporate carve-out transactions. Many of these acquisitions involved business lines that are leaders in their respective industries and many of these businesses operate globally. KPS has been successful in dealing with many complex separation issues and understands the level of coordination often required between buyer and seller post-closing.

KPS's relevant industry and transaction experience will ensure the continued growth and development of the Anchor Glass Business.

D. KPS Focuses on Operational Improvement Opportunities

KPS expends a significant amount of time and resources working with management teams to improve the operations of its portfolio companies. KPS makes significant investments in instituting structured continuous improvement programs and developing the human resources of its portfolio companies (including both people and training). As such, KPS will work with the Anchor management team to improve supply chain management, labor productivity and capacity utilization to ensure that Anchor remains an industry leader in terms of quality, customer service and delivery metrics.

E. KPS has Substantial Capital Available to Support the Proposed Divestiture and Future Organic and Strategic Growth Initiatives

KPS is currently investing out of its fourth investment fund, KPS Fund IV, a $3.57 billion investment vehicle. The Anchor Glass Business will be a platform investment in Fund IV, which has a seven year investment period, and will be an entirely independent and standalone investment from any of KPS's other portfolio companies. As a Fund IV platform investment, Anchor Glass will have access to a significant amount of capital in Fund IV to fund the acquisition, support the company's continued growth and fund future add-on acquisitions. KPS will look to create value through partnering with Anchor's management team to pursue organic and strategic growth initiatives. KPS will provide Anchor with the capital necessary to support capacity expansion opportunities and to support strategic acquisitions both domestically and internationally. KPS has sufficient financial resources to close the Proposed Divestiture and to support the future development of the Anchor Glass Business.

F. KPS Works Constructively with Unions

Approximately 83% of the 1,950 Anchor Glass employees are represented by two unions, the Glass, Molders, Pottery, Plastics, and Allied Workers International ("GMP") union and the United Steelworkers ("USW") union. For over twenty years, KPS has worked constructively with the major industrial and service unions in North America. In all of the transactions that KPS has completed where unions were present, KPS received their strong support. KPS has completed many transactions in which the cooperation of unions was a key component in ensuring the long-term success of the business. Most recently, in connection with the acquisition of Expera, 1,300 USW represented employees overwhelmingly ratified three new collective bargaining agreements.

G. The Management Team of the Anchor Glass Business Is Highly Capable and Experienced

The existing management team of the Anchor Glass Business (the "Management Team") will continue to operate the business under KPS ownership. The Management Team has a demonstrated track record of investing in and growing the business and earnings. The Management Team has successfully executed on a strategic plan that has yielded measureable results in the form of improved financial performance. With over 102 years of combined glass industry experience, the Management Team will ensure that Anchor Glass will operate as a viable and effective competitor in the US marketplace. The Management Team includes Jim Fredlake as Chief Executive Officer, Ken Wilkes as Chief Financial Officer, Gene Gavin as Senior Vice President of Manufacturing and Gordon Love as Vice President of Sales.

Chief Executive Officer James Fredlake has been with the Anchor Glass Business since 2006, first as head of Anchor Glass Container Corporation and then of Ardagh Glass Americas since August 2012. From August 2006 to September 2009, he was Anchor's Executive Vice President and Chief Financial Officer. Prior to joining Anchor Glass Container Corporation, Mr. Fredlake held various financial and operating roles, lastly as Chief Financial Officer of Alcoa Fujikura Limited. Ken Wilkes, the Chief Financial Officer, has been with the Anchor Glass Business since 2010. Mr. Wilkes has served as Chief Financial Officer of Ardagh Glass Americas since August 2012 and as Executive Vice President and Chief Financial Officer of

Anchor Glass Container Corporation since early 2010. Prior to his joining the Anchor Glass Business, Mr. Wilkes was at Libbey Glass, where he was responsible for international operations and led its global expansion. Gene Gavin, Senior Vice President of Manufacturing of Ardagh Glass Americas since August 2012, has been in various leadership roles at Anchor Glass Container Corporation since 1980, in several plants and at the corporate headquarters. Mr. Gavin has been instrumental in improving the efficiency of Anchor Glass manufacturing facilities, improving yields and reducing cost. Gordon Love has served as Vice President of Sales of Ardagh Glass Americas since August 2012 and as Vice President of Sales of Anchor Glass Container Corporation since 1997. Mr. Love has more than 39 years of experience in the glass packaging industry. The Anchor Glass Business also benefits from a deep bench of management talent in addition to its executive officers.

V. The Proposed Divestiture Conveys All the Assets Required to be Divested and is Consistent with the Terms and Purposes of the Order

A. The Proposed Divestiture is Consistent with the Terms of the Order

Paragraph II of the D&O requires the divestiture of the Anchor Glass Business no later than one hundred eighty (180) days from the date Ardagh signed the Agreement Containing Consent Order.

The transaction described in the SPA conveys all of the Anchor Glass Business as described in Paragraph I.F of the D&O. Section 2.01 of the SPA provides for the purchase and sale of the "Shares," which are defined as all the issued and all of the issued and outstanding shares of capital stock of Anchor Glass Container Corporation, a Delaware corporation (the "Company"). The Company owns or possesses the right to use all the assets used by, necessary for, or relating to the Anchor Glass Business, owns all Books and Records used by, necessary for, or relating to, the Anchor Glass Business, and is party to the contracts used by, necessary for, or relating to the Anchor Glass Business.

The Company also owns, and the SPA conveys, all the Intellectual Property used by, necessary for, or relating to, the Anchor Glass Business. Specifically, Section 4.14(c) of the SPA provides that, subject to certain assumptions, the Company shall continue to have the rights to use all Licensed Intellectual Property licensed to the Company under the material Company IP Agreements on substantially identical terms as the Company enjoyed prior to Closing. Pursuant to Section 6.13 of the SPA and the Form of License Agreement, attached to the SPA as Exhibit C, Ardagh agrees to grant a license to GCA to use certain software following the closing.

Paragraph II.B of the D&O requires, at the request of the Acquirer, that Ardagh provide Transitional Assistance to GCA for a period not to exceed one year from the date of divestiture. Consistent with the D&O, Section 6.12 of the SPA and the Form of Transition Services Agreement, attached as Exhibit B of the SPA, provide operational, environmental and IT systems services sufficient to enable GCA to operate the Anchor Glass Business in substantial the same manner as prior to the Acquisition.

Paragraph II.D of the D&O requires Ardagh to maintain the full economic viability and marketability of the Anchor Glass Business, to minimize the risk of loss of competitive potential for the Anchor Glass Business, to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to the Anchor Glass Business, and prevents Ardagh from selling, transferring, encumbering or otherwise impairing the Anchor Glass Business. In Section

6.01 of the SPA, from the date of execution of the SPA until closing, the Company agrees to conduct business in the ordinary course in all material aspects and to use its commercially reasonable efforts to keep available the services of its managerial Employees and to preserve its relationships with customers, suppliers, contractors or other third parties required to operate the Anchor Business, in each case, in the ordinary course of business consistent with past practice of the Company.

Paragraph II.F of the D&O provides that, for a period of two years after the divestiture of the Anchor Glass Business, Ardagh shall not solicit employment of any person employed by GCA. Sections 6.11(a) and (b) of the SPA complies with this Paragraph by preventing Ardagh and its affiliates from soliciting senior level employees of the Anchor Glass Business for a period of three years following closing of the divestiture.

Paragraph III of the D&O provides that Ardagh employees shall not receive, have access to, use or continue to use, or disclose any Confidential Business Information pertaining to the Anchor Glass Business other than as permitted under the D&O. Section 6.03 of the SPA prevents Ardagh and its affiliates from using any and all non-public and otherwise confidential information for a period of three years following closing of the divestiture.

B. The Proposed Divestiture is Consistent with the Purpose of the Order

Paragraph II.G of the D&O provides, *inter alia*, that the purpose of the divestiture of the Anchor Glass Business is to ensure the continued use of the assets of the Anchor Glass Business in the same businesses in which such assets were engaged at the time of the announcement of the

Saint-Gobain Acquisition by Ardagh, to minimize the loss of competitive potential for the Anchor Glass Business, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint. By divesting the Anchor Glass Business as contemplated by the D&O, the proposed divestiture will ensure that the Anchor Glass Business will continue to be operated as a viable and effective competitor in the sale of glass containers to brewers and distillers in the United States. As discussed in Section IV above, KPS has the financial capability and the necessary experience to operate a viable, competitive glass container business. Moreover, the Anchor Glass Business management team has the necessary experience to operate the Anchor Glass Business. In short, as GCA has the ability to create and operate an independent, viable and effective competitor in the glass container industry in the United States, Ardagh's sale of the Anchor Glass Business to GCA will remedy the competitive harm alleged in the Complaint.

VI. Conclusion

Because the proposed divestiture of the Anchor Glass Business to GCA is pro-competitive, in the public interest and addresses the competitive concerns raised in the Complaint and the D&O, and for the additional reasons set forth above, Ardagh respectfully requests that the Commission approve GCA as the Acquirer of the Anchor Glass Business, the SPA and the transactions contemplated thereby.

Dated: April 24, 2014

Respectfully submitted,

By: ______________________
Wayne Dale Collins
Shearman & Sterling LLP
599 Lexington Avenue
New York, New York 10022

Counsel for Ardagh Group, S.A.

CONFIDENTIAL EXHIBIT A

(Stock Purchase Agreement among Ardagh Containers Holdings Limited, Anchor Glass Container Corporation, Glass Container Acquisition, LLC and, solely with respect to Section 12.13, Ardagh Group S.A.)

[REDACTED FROM PUBLIC VERSION]