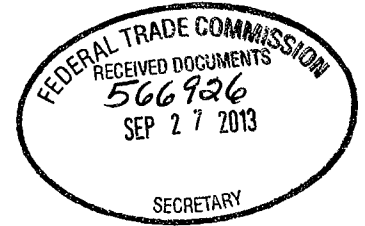


ORIGINAL

PUBLIC

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



In the Matter of)	
)	
Ardagh Group S.A,)	Docket No. 9356
a public limited liability company,)	
)	PUBLIC
and)	
)	
Saint-Gobain Containers, Inc.,)	
a corporation,)	
)	
and)	
)	
Compagnie de Saint-Gobain,)	
a corporation.)	
)	

APPLICATION OF RESPONDENT ARDAGH GROUP S.A. UNDER RULE 3.25(a)
FOR SETTLEMENT CONFERENCE

Pursuant to Rule 3.25(a) of the Commission’s Rules of Practice for Adjudicative Proceedings, Respondent Ardagh Group S.A. (“Ardagh”) requests that the Court convene an in-person settlement conference in order to facilitate settlement discussions.

On June 28, 2013, the Commission issued an administrative complaint alleging that Ardagh’s acquisition of Saint-Gobain Containers, Inc. (d/b/a “Verallia North America” or “VNA”) would threaten to substantially lessen competition in the manufacture and sale of glass beer containers and of glass liquor containers. On July 3, 2013, the Commission filed a substantively similar complaint in the United States District Court for the District of Columbia seeking injunctive relief to stop the proposed acquisition pending a resolution of the merits in the administrative proceeding. The evidentiary hearing on the preliminary injunction before Judge Barbara Rothstein in the District Court for the District of Columbia is scheduled to start on October 17, 2013 and the evidentiary hearing on the merits in this Court is scheduled to begin on December 2, 2013.

Since the filing of these lawsuits, the parties have been diligently trying to settle this matter. Any settlement necessarily begins with the identification of a group of glass container plants to be divested.

Ardagh made its first settlement proposal to the Bureau of Competition for the divestiture of plants on July 2, 2013, the day after Ardagh was informed that the administrative complaint had been issued. In the course of the ensuing discussions, Ardagh proposed four alternative divestiture packages and the Bureau of Competition has replied with three divestiture packages. Despite good faith efforts, the parties have been unable to reach agreement on any of these proposals.

On September 11, 2013, Ardagh made its sixth divestiture proposal to the Bureau of Competition, which consisted of the sale of four plants: Ardagh's Jacksonville, FL and Warner Robins, GA plants together with the sale of VNA's Wilson, NC and Dolton, IL plants. Collectively, these four plants produce the equivalent of almost 110% of Ardagh's 2012 beer container sales and are capable of producing 125% of VNA's 2012 liquor container sales.

At that time, Ardagh also informed the Bureau of Competition that Ardagh was in negotiations with several buyers to purchase these plants, although given the stage of the negotiations Ardagh did not disclose the names of these bidders. In addition, Ardagh informed the Bureau of Competition that Ardagh is providing Ardagh and VNA craft beer customers an option to extend their existing supply contracts to December 31, 2023.

Ardagh hopes that the Bureau of Competition will agree that the sale of the four plants and the extension of the craft brewer contracts will suffice as the basis for a consent settlement (subject to identifying an acceptable buyer). However, given the time constraints, Ardagh informed the Bureau of Competition that it would proceed with selling the plants and extending the craft brewer contracts (both of which would be conditioned on the completion of the acquisition of the remaining VNA plants), even if a consent settlement could not be reached. Ardagh also told the Bureau of Competition that it would inform Judge Rothstein of the restructuring of the transaction in Ardagh's opposition brief to the FTC's motion for a preliminary injunction to be filed on September 18, 2013.¹

At the September 24, 2013 pretrial conference before Judge Rothstein, FTC counsel argued that the District Court should not hear evidence on the restructured transaction because the FTC has not had time to assess whether the proposed restructuring eliminated the FTC's concerns about the challenged transaction. Judge Rothstein agreed, but urged the parties to move forward quickly and do whatever was necessary in order to see if a settlement was within reach.

¹ Courts have consistently held that when the parties restructure a transaction to eliminate the alleged reduction in competition supposedly resulting from the original transaction, the court will evaluate the probable effects of the restructured transaction, not the original transaction. *See* Mem. Op. at 6-8, *FTC v. Arch Coal, Inc.*, No. 04-0534 (JDB) (D.D.C. July 7, 2004); *FTC v. Libbey Inc.*, 211 F. Supp. 2d 34, 46 (D.D.C. 2002); Order at 2-3, *United States v. Franklin Elec. Co.*, No. 00-C-0334-C (W.D. Wis. July 19, 2000). A copy of Respondents' opposition brief, which was filed under seal in federal district court, has been forwarded separately.

Given the current inability of the parties to reach agreement on the plants to be divested (despite a willingness on both sides to settle) and given the forthcoming hearing dates both in the District Court and in this Court, Ardagh respectfully requests that this Court exercise its discretion under Rule 3.25(a) to convene an in-person settlement conference at the Court's earliest convenience in order to facilitate settlement discussions.

Dated: September 26, 2013

Respectfully Submitted,

s/ Wayne Dale Collins

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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 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 U.S. Mail a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
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.

September 26, 2013

By: s/ Heather Kafele
Attorney