

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, and

Compagnie de Saint-Gobain, a corporation,
and

Saint-Gobain Containers, Inc.,
a corporation.

DOCKET NO. 9356

JOINT MOTION TO RESCHEDULE THE DECEMBER 19 HEARING DATE

Expedited Consideration Requested

WHEREAS, on June 28, 2013, the Federal Trade Commission (the “Commission”) voted to issue the complaint in this action seeking to enjoin Respondent Ardagh Group, S.A (“Ardagh”) from acquiring the shares of Respondent Saint-Gobain Containers, Inc. (“Saint-Gobain”) from a subsidiary of Respondent Compagnie de Saint-Gobain (collectively, “Respondents,” and, together with Complaint Counsel, the “Parties”);

WHEREAS, beginning in July 2013, the parties have engaged in settlement discussions in an effort to reach agreement on a package of glass container plant divestitures that could serve to resolve the Commission’s concerns regarding the proposed acquisition’s alleged anticompetitive effects;

WHEREAS, on September 19, Respondents announced they were prepared to divest four plants, consisting of two Ardagh plants and two Saint-Gobain plants, in order to resolve the Commission's concerns;

WHEREAS, on October 31, the Parties participated in a settlement conference in the Administrative Action before the ALJ and during that conference Respondents announced they were prepared to divest a different package of four glass container plants in order to resolve the Commission's concerns;

WHEREAS, on November 7, Ardagh entered into a stipulation with Complaint Counsel which was filed with the district court. Ardagh stipulated that it would not consummate any acquisition of any stock, assets, or other interest in Respondent Saint-Gobain until the earlier of: (i) the first business day after the Commission accepts for public comment an agreement containing a consent order in this administrative action, or (ii) the completion of the administrative action, including all appeals;

WHEREAS, on December 11, Respondents made a new settlement proposal. Respondents' new proposal is to divest six of the eight plants previously owned and operated by Anchor Glass, which Ardagh purchased in 2012, along with Anchor's Tampa Florida headquarters, management team and employees and the infrastructure and all other assets necessary to address the alleged anticompetitive effects in the markets for glass containers supplied to Distillers and Brewers. Respondents would divest the plants to a buyer that is ready, willing, and able to operate the assets in a manner that preserves competition, and is likely to resolve the Commission's concerns with Ardagh's proposed acquisition of Saint-Gobain. Specifically, Ardagh proposes to divest the following plants: Elmira, New York; Henryetta,

Oklahoma; Jacksonville, Florida; Lawrenceburg, Indiana; Shakopee, Minnesota; and Warner-Robbins, Georgia;

WHEREAS, Administrative hearing is scheduled to begin in front of Chief Administrative Law Judge Chappell at 10:00 am on December 19, 2013;¹ and

WHEREAS, Complaint Counsel is not prepared to make a recommendation to the Commission to accept the proposal and remove the matter from administrative litigation at this time, but the Parties wish to continue their efforts to resolve the dispute without simultaneously conducting the administrative hearing.

NOW THEREFORE, Complaint Counsel and Respondents Ardagh Group S.A., Compagnie de Saint-Gobain, and Saint-Gobain Containers, Inc. jointly move the Federal Trade Commission for an order, pursuant to Rule 3.21(c)(2) and Rule 3.22, 16 C.F.R. §§ 3.21(c)(2) and 3.22, staying this action and rescheduling the date of the evidentiary hearing until April 15, 2014. The hearing is presently scheduled to begin at 10:00 a.m., December 19, 2013. With the exception of the pre-trial hearing, scheduled for December 17, the parties have met all of the pre-trial deadlines and completed all of the necessary pre-trial filings. This is the parties' first request for a rescheduling of the hearing.

Under Rule 3.11(b)(4), the Commission includes in a complaint the date and time for the evidentiary hearing. Rule 3.21(c)(2) and Rule 3.22 further provide that the Administrative Law Judge does not have the authority to change the hearing date set by the Commission. Instead, if the parties file a motion to change the hearing date, the Administrative Law judge must certify the motion to the Commission, which must rule on the motion.

¹ Revised Scheduling Order dated October 18, 2013, at <http://www.ftc.gov/sites/default/files/documents/cases/131018aljrevisedschedulingorder.pdf>.

The grounds for this motion are that, as set forth above, the parties are now engaged in settlement negotiations that may make a hearing unnecessary. On December 11, 2013, Respondent Ardagh made a new settlement proposal that Complaint Counsel is working diligently to evaluate. Complaint Counsel is not prepared to recommend the settlement proposal to the Commission at this time, but believes the proposed divestitures (unlike the previous proposals) could, if the appropriate conditions are met, lead to a recommendation that the Commission accept a consent settlement agreement. Complaint Counsel and Respondents believe that the proposal warrants further evaluation and negotiations that may lead to a consent agreement settlement. Rescheduling the hearing will permit the parties to devote their full resources to the settlement negotiations and may allow the Office of Administrative Law Judges, the parties, and third party witnesses to avoid incurring the significant expenses of final trial preparations and trial.

The parties also propose that the Commission's order direct them to report to the Commission and the Chief Administrative Law Judge the status of the settlement negotiations no later than April 1, 2014. In the event the hearing continues to be necessary, this notice will give the Office of Administrative Law Judges and the parties sufficient time to reschedule the pre-trial hearing and to complete final trial preparations if the settlement negotiations are unsuccessful.

The parties respectfully request expedited treatment of this motion. The hearing is scheduled to commence on December 19, and continue on January 2, 2014. To avoid inconveniencing party and third party witnesses all of whom are scheduled to travel to Washington to appear at trial, the parties request the Commission rule on this motion no later than December 19, 2013.

A proposed order rescheduling the hearing is attached.

December 16, 2013

Respectfully submitted,

s/ Edward D. Hassi
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[PROPOSED] ORDER RESCHEDULING THE DATE FOR HEARING

Upon the joint motion of Complaint Counsel and Respondents Ardagh Group S.A., Compagnie de Saint-Gobain, and Saint-Gobain Containers, Inc. for an order, pursuant to Rule 3.21(c)(2) and Rule 3.22, 16 C.F.R. §§ 3.21(c)(2) and 3.22, to reschedule the date of the evidentiary hearing.

IT IS ORDERED THAT the evidentiary hearing in this this matter is rescheduled to begin at 10:00 a.m., on April 15, 2014, at the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, and

IT IS FURTHER ORDERED THAT the parties shall report the status of the settlement negotiations to the Administrative Law Judge, with a copy to the Commission no later than April 1, 2014.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 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
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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Counsel for Respondent Saint-Gobain Containers, Inc.

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 I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

December 16, 2013

By: s/ Edward D. Hassi
Attorney