

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

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

In the Matter of)
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))
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.))
))

**DECISION AND ORDER
[Public Record Version]**

The Federal Trade Commission (“Commission”), having heretofore issued its Complaint charging Ardagh Group, S.A. (“Respondent Ardagh”), 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 contemplated relief and having filed their answers denying said charges; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter withdrawn the matter from adjudication in accordance with § 3.25(c) of its Rules; and the Commission having thereafter considered the matter and having thereupon accepted the executed Consent Agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comment filed by an interested party pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and factual findings and enters the following Order (“Order”):

1. Respondent Ardagh Group, S.A., is a limited liability corporation organized, existing, and doing business under, and by virtue of, the laws of Luxembourg with its office and principal place of business at 56, rue Charles Martel, Luxembourg, and operates its glass container business in the United States through its subsidiary Ardagh Glass, Inc., which has its office and principal place of business located at 401 E. Jackson Street, Suite 2800, Tampa, FL 33602.
2. Respondent Saint-Gobain Containers, Inc., is a corporation organized, existing, and doing business under, and by virtue of, the laws of the state of Delaware with its principal place of business located at 1509 S. Macedonia Ave, Muncie, IN 47302.
3. Respondent Compagnie de Saint-Gobain is a corporation organized, existing, and doing business under, and by virtue of, the laws of France with its office and principal place of business located at “Les Miroirs,” 18 avenue d’Alsace, Courbevoie, France, and its United States office and principal place of business located at 750 E. Swedesford Rd, Valley Forge, PA 19482.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order, the following definitions, and all other definitions used in the Hold Separate Order, shall apply:

- A. “Ardagh” means Ardagh Group, S.A., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Ardagh Group, S.A., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Ardagh includes VNA, after the Acquisition Date.
- B. “Commission” means the Federal Trade Commission.

- C. “Acquirer” means any Person that receives the prior approval of the Commission to acquire the Anchor Glass Business pursuant to this Decision and Order.
- D. “Acquisition” means the proposed acquisition by Respondent Ardagh of VNA as described in the Share Purchase Agreement, dated as of January 17, 2013, between Respondent Ardagh and CSG.
- E. “Acquisition Date” means the date the Acquisition is consummated.
- F. “Anchor Glass Business” means all of Respondent Ardagh’s assets, including Tangible Personal Property and intangible assets, businesses and goodwill, related to the research, development, manufacture, distribution, marketing or sale of Anchor Glass Products including, but not limited to:
1. The Anchor Glass Manufacturing Facilities;
 2. The Anchor Glass Corporate Facility;
 3. The Anchor Glass Molds;
 4. The Anchor Glass Molds Facility;
 5. The Anchor Glass Engineering Facility;
 6. The Anchor Glass Contracts;
 7. Intellectual Property relating to the research, development, manufacture, distribution, marketing or sale of Anchor Glass Products;
 8. The non-exclusive rights to use Respondent Ardagh’s process, method, techniques, and know-how for soda ash reduction in the manufacture of glass containers that is used by Respondent Ardagh in the Ardagh Retained Business;
 9. All inventories relating to Anchor Glass Products, wherever located;
 10. All (a) trade accounts receivable and other rights to payment from customers of the Anchor Glass Business and the full benefit of all security for such accounts or rights to payment, (b) all other accounts or notes receivable in respect of the Anchor Glass Business and the full benefit of all security for such accounts or notes and (c) any claim, remedy, or other right related to any of the foregoing;
 11. All consents, licenses, certificates, registrations, or permits issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement relating to the research, development, manufacture, distribution, marketing or sale of Anchor Glass Products, and all pending applications therefor or renewals thereof;

12. All Business Records relating to the research, development, manufacture, distribution, marketing or sale of Anchor Glass Products; *PROVIDED, HOWEVER*, that where documents or other materials included in the Business Records to be divested contain information: (a) that relates both to the Anchor Glass Business to be divested and to the Ardagh Retained Business or other products or businesses and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Anchor Glass Business to be divested; or (b) for which the relevant party has a legal obligation to retain the original copies, the relevant party shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer, the relevant party shall provide the Acquirer access to original documents under circumstances where copies of the documents are insufficient for evidentiary or regulatory purposes.
- G. “Anchor Glass Contracts” means all agreements and contracts with customers (including, but not limited to, contracts, purchasing agreements, and rebate agreements with customers who will be served from both the Anchor Glass Manufacturing Facilities and facilities retained by Respondent Ardagh, and agreements, contracts, and understandings for transportation, storage, and other services), suppliers, vendors, representatives, agents, licensees and licensors; and all leases, mortgages, notes, bonds, and other binding commitments, whether written or oral, and all rights thereunder and related thereto related to the Anchor Glass Business from the Anchor Glass Manufacturing Facilities;
- H. “Anchor Glass Corporate Facility” means the facility located at 401 E Jackson Street # 2800, Tampa, FL 33602-5216, including, but not limited to, information technology systems, all physical assets and equipment related to the research, development, manufacture, sale, and distribution of products from the Anchor Glass Manufacturing Facilities. *PROVIDED, HOWEVER*, that parts, inventory, designs, or other assets held for use exclusively by or for the Ardagh Retained Business may be excluded.
- I. “Anchor Glass Designated Employee” means any person employed by Respondent Ardagh (1) at the Anchor Glass Manufacturing Facilities; (2) working at or out of the Anchor Glass Corporate Facility; (3) at the Anchor Glass Engineering Facility; (4) at the Anchor Glass Molds Facility; (5) who has spent over twenty-five percent (25%) of his or her time, from January 2013 to December 2013, working for or on behalf of the Anchor Glass Business, wherever located; and (6) identified by agreement between Respondent Ardagh and an Acquirer and made a part of a Divestiture Agreement. *PROVIDED, HOWEVER*, that, if approved by the Commission, an Anchor Glass Designated Employee described in this Paragraph may be excluded from this definition by agreement between Respondent Ardagh and the Acquirer. *PROVIDED, FURTHER, HOWEVER* that the employees listed on Non-Public Appendix A to this Order shall be excluded for purposes of the Hold Separate Order in this matter, but at the option of the Acquirer, may be recruited, interviewed and hired pursuant to the provisions of this Order.

- J. “Anchor Glass Engineering Facility” means the Anchor Glass engineering facility located at 1901 N Shabbona St, Streator, IL 61364, including, but not limited to, all real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held by Respondent Ardagh, and all Tangible Personal Property therein, and parts, inventory, and all other assets relating to the Anchor Glass Business. *PROVIDED, HOWEVER*, that parts, inventory, designs, or other assets held for use exclusively by or for the Ardagh Retained Business may be excluded.
- K. “Anchor Glass Manufacturing Facilities” means all real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held by Respondent Ardagh, and all Tangible Personal Property, therein, at the Elmira Facility, Jacksonville Facility, Warner Robins Facility, Henryetta Facility, Lawrenceburg Facility and the Shakopee Facility. *PROVIDED, HOWEVER*, that parts, inventory, designs, or other assets held for use exclusively by or for the Ardagh Retained Business may be excluded.
- L. “Anchor Glass Molds” means all molds, including designs and drawings for molds in existence or in development, owned by Respondent Ardagh wherever located and used, intended for use, or designed or in development for use, by the Anchor Glass Manufacturing Facilities or relating to development, manufacture, or sale of Anchor Glass Products
- M. “Anchor Glass Molds Facility” means the Zanesville mold facility located at 1555 Fairview Road, Zanesville, OH 43701, including, but not limited to, all real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held by Respondent Ardagh, and all Tangible Personal Property therein, and parts, inventory, and all other assets relating to the research, development, manufacture, distribution, marketing or sale of Anchor Glass Products. *PROVIDED, HOWEVER*, that parts, inventory, designs, or other assets held for use exclusively by or for the Ardagh Retained Business may be excluded.
- N. “Anchor Glass Products” means the glass containers:
1. manufactured by Respondent Ardagh at the Anchor Glass Manufacturing Facilities; or
 2. designed, researched and developed, but not yet commercialized, by Respondent Ardagh, anywhere in the world, and that are intended to be manufactured at the Anchor Glass Manufacturing Facilities.

- O. “Ardagh Retained Business” means the assets and businesses of Respondent Ardagh other than the Anchor Glass Business.
- P. “Business Records” means all originals and all copies of any operating, financial or other information, documents, data, computer files (including files stored on a computer’s hard drive or other storage media), electronic files, books, records, ledgers, papers, instruments, and other materials, whether located, stored, or maintained in traditional paper format or by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media, including, without limitation: distributor files and records; customer files and records, customer lists, customer product specifications, customer purchasing histories, customer service and support materials, customer approvals, and other information; credit records and information; correspondence; referral sources; supplier and vendor files and lists; advertising, promotional, and marketing materials, including website content; sales materials; research and development data, files, and reports; technical information; data bases; studies; designs, drawings, specifications and creative materials; production records and reports; service and warranty records; equipment logs; operating guides and manuals; employee and personnel records; education materials; financial and accounting records; and other documents, information, and files of any kind.
- Q. “Confidential Business Information” means information owned by, or in the possession or control of, Respondent Ardagh that is not in the public domain and that is directly related to the conduct of the Anchor Glass Business. The term “Confidential Business Information” *excludes* the following:
1. information relating to any of Respondent Ardagh’s general business strategies or practices that does not discuss with particularity the Anchor Glass Business;
 2. information specifically excluded from the Anchor Glass Business conveyed to the Acquirer;
 3. information that is contained in documents, records, or books of Respondent Ardagh that is provided to an Acquirer that is unrelated to the Anchor Glass Business acquired by that Acquirer or that is exclusively related to businesses or products retained by Respondent Ardagh;
 4. information that is protected by the attorney work product, attorney-client, joint defense, or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition law; and
 5. information that Respondent Ardagh demonstrates to the satisfaction of the Commission, in the Commission’s sole discretion:
 - a. Was or becomes generally available to the public other than as a result of disclosure by Respondent Ardagh;

- b. Is necessary to be included in Respondent Ardagh’s mandatory regulatory filings; *PROVIDED, HOWEVER*, that Respondent Ardagh shall make all reasonable efforts to maintain the confidentiality of such information in the regulatory filings;
 - c. Was available, or becomes available, to Respondent Ardagh on a non-confidential basis, but only if, to the knowledge of Respondent Ardagh, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information;
 - d. Is information the disclosure of which is consented to by the Acquirer;
 - e. Is necessary to be exchanged in the course of consummating the Acquisition or the transaction under the Divestiture Agreement;
 - f. Is disclosed in complying with the Order;
 - g. Is information the disclosure of which is necessary to allow Respondent Ardagh to comply with the requirements and obligations of the laws of the United States and other countries, and decisions of Government Entities;
or
 - h. Is disclosed in obtaining legal advice.
- R. “Divestiture Agreement” means any agreement that receives the prior approval of the Commission between Respondent Ardagh (or between a Divestiture Trustee appointed pursuant to Paragraph IV. of this Order) and an Acquirer to purchase all or any of the Anchor Glass Business, and all amendments, exhibits, attachments, agreements, and schedules thereto that have been approved by the Commission.
- S. “Divestiture Date” means the date on which Respondent Ardagh (or a Divestiture Trustee) closes on the divestiture of the Anchor Glass Business as required by Paragraph II (or Paragraph IV) of this Order.
- T. “Elmira Facility” means the glass manufacturing plant located at 151 E McCanns Blvd, Elmira Heights, NY 14903.
- U. “Henryetta Facility” means the glass manufacturing plant located at 601 E Bollinger Rd, Henryetta, OK 74437.
- V. “Hold Separate Business” means the business that Respondent Ardagh shall hold separate pursuant to the Hold Separate Order.

- W. “Intellectual Property” means:
1. Patents, and the rights to obtain and file for Patents, trademarks, and copyrights and registrations thereof and to bring suit against a third party for the past, present or future infringement, misappropriation, dilution, misuse or other violations of any of the foregoing;
 2. product manufacturing technology, including process technology, technology for equipment, inspection technology, and research and development of product or process technology;
 3. Product and manufacturing copyrights;
 4. all plans (including proposed and tentative plans, whether or not adopted or commercialized), research and development, specifications, drawings, and other assets (including the non-exclusive right to use Patents, know-how, and other intellectual property relating to such plans);
 5. product trademarks, trade dress, trade secrets, technology, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, development, and other information, formulas, and proprietary information (whether patented, patentable or otherwise) related to the manufacture of the products, including, but not limited to, all product specifications, processes, analytical methods, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with any Government Entity approvals and compliance, and labeling and all other information related to the manufacturing process, and supplier lists;
 6. licenses including, but not limited to, third party software, if transferrable, and sublicenses to software modified by Respondent Ardagh;
 7. formulations and a description of all ingredients, materials, or components used in the manufacture of products; and
 8. any other intellectual property used in the past by Respondent Ardagh in the design, manufacture, and sale of products from the Anchor Glass Business.
- X. “Jacksonville Facility” means the glass manufacturing plant located at 2121 Huron St., Jacksonville, FL 32254-2052.

- Y. “Lawrenceburg Facility” means the glass manufacturing plant located at 200 Belleview Dr., Greendale, IN 47025.
- Z. “Patents” means pending patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Acquisition Date, and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.
- AA. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other business entity other than Respondent Ardagh.
- BB. “Shakopee Facility” means the glass manufacturing plant located at 4108 Valley Industrial Blvd N, Shakopee, MN 55379.
- CC. “Tangible Personal Property” means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, rolling stock, and other items of tangible personal property (other than inventories) of every kind owned or leased by Respondent Ardagh, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- DD. “Transitional Assistance” means any transitional services required by the Acquirer for the operation of the divested business including, but not limited to administrative assistance (including, but not limited to, order processing, shipping, accounting, and information transitioning services), technical assistance, and supply agreements.
- EE. “Warner Robins Facility” means the glass manufacturing plant located at 1044 Booth Rd, Warner Robins, GA 31088.

II.

IT IS FURTHER ORDERED that:

- A. Respondent Ardagh shall divest the Anchor Glass Business at no minimum price, absolutely and in good faith, as an on-going business, no later than one-hundred eighty (180) days from the date Respondent Ardagh signs the Agreement Containing Consent Orders, to an Acquirer that receives the prior approval of the Commission and in a manner (including an asset or stock sale) that receives the prior approval of the Commission.
- B. At the request of the Acquirer, pursuant to an agreement that receives the prior approval of the Commission, Respondent Ardagh shall, for a period not to exceed one (1) year

from the date Respondent Ardagh divests the Anchor Glass Business, provide Transitional Assistance to the Acquirer:

1. Sufficient to enable the Acquirer to operate the divested business in substantially the same manner that Respondent Ardagh conducted the divested assets and business prior to the divestiture; and
2. At substantially the same level and quality as such services are provided by Respondent Ardagh in connection with its operation of the divested assets and business prior to the divestiture.

PROVIDED, HOWEVER, that Respondent Ardagh shall not (i) require the Acquirer to pay compensation for Transitional Assistance that exceeds the direct cost of providing such goods and services, or (ii) seek to limit the damages (such as indirect, special, and consequential damages) which an Acquirer would be entitled to receive in the event of Respondent Ardagh's breach of any agreement to provide Transitional Assistance.

C. Respondent Ardagh shall not terminate or modify any agreement that is part of the Divestiture Agreement before the end of the term approved by the Commission without:

1. Prior approval of the Commission;
2. The written agreement of the Acquirer and thirty (30) days prior notice to the Commission; or
3. In the case of a proposed unilateral termination by Respondent Ardagh due to an alleged breach of an agreement by the Acquirer, sixty (60) days notice of such termination. *PROVIDED, HOWEVER*, that such sixty (60) days notice shall be given only after the parties have:
 - a. Attempted to settle the dispute between themselves, and
 - b. Either engaged in arbitration and received an arbitrator's decision, or received a final court decision after all appeals.

D. Until Respondent Ardagh or the Divestiture Trustee complete the divestitures and other obligations to transfer the Anchor Glass Business as required by this Order: Respondent Ardagh shall take actions as are necessary to:

1. maintain the full economic viability and marketability of the Anchor Glass Business;
2. minimize any risk of loss of competitive potential for the Anchor Glass Business;

3. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to the Anchor Glass Business; and
 4. not sell, transfer, encumber, or otherwise impair the Anchor Glass Business (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Anchor Glass Business.
- E. From the date Respondent Ardagh executes the Divestiture Agreement, Respondent Ardagh shall provide a proposed Acquirer with the opportunity to recruit and employ any Anchor Glass Designated Employee in conformance with the following:
1. No later than ten (10) days after a request from a proposed Acquirer, or staff of the Commission, Respondent Ardagh shall provide a proposed Acquirer with the following information for each Anchor Glass Designated Employee, as and to the extent permitted by law:
 - a. name, job title or position, date of hire and effective service date;
 - b. a specific description of the employee's responsibilities;
 - c. the base salary or current wages;
 - d. the most recent bonus paid, aggregate annual compensation for Respondent Ardagh's last fiscal year and current target or guaranteed bonus, if any;
 - e. employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 - f. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly-situated employees; and
 - g. at a proposed Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant Anchor Glass Designated Employee(s).
 2. No later than ten (10) days after a request from a proposed Acquirer, Respondent Ardagh shall provide the proposed Acquirer with:
 - a. an opportunity to meet, personally and outside the presence or hearing of any employee or agent of Respondent Ardagh, with any Anchor Glass Designated Employee;

- b. an opportunity to inspect the personnel files and other documentation relating to any such employee, to the extent permissible under applicable laws; and
 - c. to make offers of employment to any Anchor Glass Designated Employee.
 - 3. Respondent Ardagh shall (i) not interfere, directly or indirectly, with the hiring or employing by a proposed Acquirer of any Anchor Glass Designated Employee, (ii) not offer any incentive to any Anchor Glass Designated Employee to decline employment with a proposed Acquirer, (iii) not make any counteroffer to any Anchor Glass Designated Employee who receives a written offer of employment from a proposed Acquirer; *PROVIDED, HOWEVER*, that nothing in this Order shall be construed to require Respondent Ardagh to terminate the employment of any employee or prevent Respondent Ardagh from continuing the employment of any employee; and (iv) remove any impediments within the control of Respondent Ardagh that may deter any Anchor Glass Designated Employee from accepting employment with a proposed Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondent Ardagh that would affect the ability of such employee to be employed by a proposed Acquirer.
- F. For a period of two (2) years after the Divestiture Date, Respondent Ardagh shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Person employed by an Acquirer of the Anchor Glass Business, to terminate his or her employment relationship with an Acquirer; *PROVIDED, HOWEVER*, Respondent Ardagh may:
 - 1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, so long as these actions are not targeted specifically at any Anchor Glass Designated Employees; and
 - 2. Hire employees of the Anchor Glass Business who apply for employment with Respondent Ardagh, so long as such individuals were not solicited by Respondent Ardagh in violation of this paragraph; *PROVIDED, FURTHER, HOWEVER*, that this sub-Paragraph shall not prohibit Respondent Ardagh from making offers of employment to or employing any employee of the Anchor Glass Business if an Acquirer has notified Respondent Ardagh in writing that an Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the individual's employment has been terminated by an Acquirer.
- G. The purpose of this Paragraph II is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondent Ardagh, minimize the loss of competitive potential for the Anchor Glass Business, minimize the risk of disclosure of unauthorized use of

Confidential Business Information related to the Anchor Glass Business; to prevent the destruction, removal, wasting, deterioration, or impairment of the Anchor Glass Business, except for ordinary wear and tear and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. Employees of the Ardagh Retained Business shall not receive, have access to, use or continue to use, or disclose any Confidential Business Information pertaining to the Anchor Glass Business except in the course of:
1. Performing their obligations as permitted under this Order or the Order to Hold Separate;
 2. Performing their obligations under any Divestiture Agreement; or
 3. Complying with financial reporting requirements or environmental, health, and safety policies and standards, ensuring the integrity of the financial and operational controls on the Anchor Glass Business, obtaining legal advice, defending legal claims, investigations, or enforcing actions threatened or brought against the Anchor Glass Business, or as required by law.

For purposes of this Paragraph III.A., Respondent Ardagh's employees who provide or are involved in the receipt of support services under the Hold Separate Order or staff the Hold Separate Business shall be deemed to be performing obligations under the Order to Hold Separate.

- B. If the receipt, access to, use, or disclosure of Confidential Business Information pertaining to the Anchor Glass Business is permitted to Respondent Ardagh's employees under Paragraph III.A. of this Order, Respondent Ardagh shall limit such information (1) only to those Persons who require such information for the purposes permitted under Paragraph III.A., (2) only to the extent such Confidential Business Information is required, and (3) only after such Persons have signed an appropriate agreement in writing to maintain the confidentiality of such information.
- C. Respondent Ardagh shall enforce the terms of this Paragraph III as to any Person other than the 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 III, including training of Respondent Ardagh's employees and all other actions that Respondent Ardagh would take to protect its own trade secrets and proprietary information.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondent Ardagh has not divested the Anchor Glass Business and otherwise fully complied with the obligations as required by Paragraph II.A of this Order, the Commission may appoint a Divestiture Trustee to divest the Anchor Glass Business in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Hold Separate Monitor pursuant to the relevant provisions of the Hold Separate Order.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent Ardagh shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent Ardagh to comply with this Order.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Ardagh, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent Ardagh has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent Ardagh of the identity of any proposed Divestiture Trustee, Respondent Ardagh shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondent Ardagh shall execute an agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or transfer required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondent Ardagh shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to enter into Transitional Assistance agreements

2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court; *PROVIDED, HOWEVER*, that the Commission may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent Ardagh shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent Ardagh shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent Ardagh shall extend the time for divestiture under this Paragraph IV in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Ardagh's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *PROVIDED, HOWEVER*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent Ardagh from among those approved by the Commission; *PROVIDED, FURTHER, HOWEVER*, that Respondent Ardagh shall select such entity within five (5) days of receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent Ardagh, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent Ardagh, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed

Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent Ardagh, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent Ardagh shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee'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 gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee. For purposes of this Paragraph IV.E.6., the term "Divestiture Trustee" shall include all persons retained by the Divestiture Trustee pursuant to Paragraph IV.E.5. of this Order.
 7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 8. The Divestiture Trustee shall report in writing to Respondent Ardagh and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondent Ardagh may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
 10. The Commission may require, among other things, the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- F. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph IV.
- G. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional

orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

V.

IT IS FURTHER ORDERED that:

- A. The Divestiture Agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of an Acquirer or to reduce any obligations of the Respondent Ardagh under such agreement.
- B. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof.
- C. Respondent Ardagh shall comply with all provisions of the Divestiture Agreement, and any breach by Respondent Ardagh of any term of such agreement shall constitute a violation of this Order. If any term of the Divestiture Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondent Ardagh cannot fully comply with both terms, the Order Term shall determine Respondent Ardagh’s obligations under this Order. Any failure by the Respondent Ardagh to comply with any term of such Divestiture Agreement shall constitute a failure to comply with this Order.

VI.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent Ardagh signs the Consent Agreement in this matter, the Commission may appoint a Monitor to assure that Respondent Ardagh expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order;
- B. The Commission shall select the Monitor, subject to the consent of Respondent Ardagh, which consent shall not be unreasonably withheld. If Respondent Ardagh has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent Ardagh of the identity of any proposed Monitor, Respondent Ardagh shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than ten (10) days after appointment of the Monitor, Respondent Ardagh shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent Ardagh’s compliance with the relevant terms of the Order in a manner consistent with the purposes of the Order.

- D. If a Monitor is appointed pursuant to this Paragraph VI, Respondent Ardagh shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor Respondent Ardagh's compliance with the terms of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission including, but not limited to:
 - a. Assuring that Respondent Ardagh expeditiously complies with all of its obligations and perform all of its responsibilities as required by the Decision and Order in this matter;
 - b. Monitoring any transition services agreements;
 - c. Assuring that Confidential Business Information is not received or used by Respondent Ardagh or the Acquirer, except as allowed in the Order in this matter.
 2. The Monitor shall have the power and authority to monitor Respondent Ardagh's compliance with the divestiture and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission.
 3. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
- E. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent Ardagh's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent Ardagh's compliance with its obligations under the Order, including, but not limited to, its obligations related to the Anchor Glass Business.
- F. Respondent Ardagh shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent Ardagh's compliance with the Order.
- G. The Monitor shall serve, without bond or other security, at the expense of Respondent Ardagh, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondent Ardagh, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.

- H. Respondent Ardagh shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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 gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph VI.H., the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph VI.G. of this Order.
- I. Respondent Ardagh shall report to the Monitor in accordance with the requirements of this Order and as otherwise provided in the agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by the Respondent Ardagh, and any reports submitted by the Acquirer with respect to the performance of Respondent Ardagh's obligations under the Order or the Remedial Agreement(s). Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by Respondent Ardagh of its obligations under the Order.
- J. Respondent Ardagh may require the Monitor and each of the Monitor's consultants, accountants and other representatives and assistants to sign a customary confidentiality agreement. *PROVIDED, HOWEVER*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- K. The Commission may require, among other things, the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- L. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph VI.
- M. Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- N. The Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order, or the same Person appointed as Hold Separate Monitor pursuant to the relevant provisions of the Order to Hold Separate in this matter.

VII.

IT IS FURTHER ORDERED that for a period of ten (10) years from the date this Order becomes final, Respondent Ardagh shall not, without providing advance written notification to the Commission in the manner described in this Paragraph VII, directly or indirectly, acquire:

- A. any stock, share capital, equity, or other interest in any Person, corporate or non-corporate, that manufactures or sells glass containers in or into the United States; or
- B. any business, whether by asset purchase or otherwise, that engages in or engaged in, at any time after the Acquisition, or during the six (6) month period prior to the Acquisition, the manufacture, production, or sale of glass containers in or into the United States.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondent Ardagh and not of any other party to the transaction. Respondent Ardagh shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent Ardagh shall not consummate the transaction until thirty days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

PROVIDED, HOWEVER, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

PROVIDED, FURTHER, HOWEVER, that prior notification shall not be required by this Paragraph VII for any acquisition after which Respondent Ardagh would hold no more than one percent (1%) of the outstanding securities or other equity interest in any Person described in this Paragraph VII.

VIII.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondent Ardagh has fully complied with the provisions of Paragraph II of this Order, Respondent Ardagh shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order and the Hold Separate Order. Respondent Ardagh shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Order and the Hold Separate Order, 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 of, other than of privileged materials, all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture and approval, and, as applicable, a statement that any divestiture approved by the Commission has been accomplished, including a description of the manner in which Respondent Ardagh completed such divestiture and the date the divestiture was accomplished.
- B. One (1) year after the date this Order becomes final and annually thereafter until this Order terminates, and at such other times as the Commission may request, Respondent Ardagh shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied and is complying with this Order and any Divestiture Agreement.

IX.

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

- A. to any proposed dissolution of Respondent Ardagh;
- B. to any proposed acquisition, merger, or 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, memoranda and other records and documents in the possession or under the control of Respondent Ardagh related to compliance with the Consent Agreement and/or this Order and the Hold Separate Order, which copying services shall be provided by Respondent Ardagh at the request of the authorized representative of the Commission and at the expense of Respondent Ardagh;
- B. Upon five (5) days' notice to Respondent Ardagh and without restraint or interference from them, to interview officers, directors, or employees of Respondent Ardagh, who may have counsel present.

XI.

IT IS FURTHER ORDERED that this Order shall terminate on June 17, 2024.

XII.

IT IS FURTHER ORDERED that the Complaint is dismissed as to Respondent Saint-Gobain Containers, Inc. and Respondent Compagnie de Saint-Gobain.

By the Commission, Commissioner Wright dissenting and Commissioner McSweeney not participating.

Donald S. Clark
Secretary

SEAL:
ISSUED: June 17, 2014

NON-PUBLIC APPENDIX A

**HSO EXCLUDED EMPLOYEES BUT
SUBJECT TO INTERVIEW AND HIRE UNDER DECISION AND ORDER**

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