Specialty Air Technologies, Inc.

May 14,2004

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Ave., N.W.,
Washington, DC 20580
Attn: Susan Creighton

ORIGINAL

FEDERAL TRADE COMMISSION
RECEIVED DOCUMENTS
509122-01
MAY 25 2004
041 0020-C4109
SECRETARY

RE: **Objection to L'Air Liquide's Acquisition of Messer Griesheim GmbH**

Dear Ms. Creighton,

I am objecting to the FTC's proposed consent order for the above mentioned acquisition. I am the President/Owner of a small wholesale specialty gas company in southern California. We employ 7 associates and currently purchase our liquid nitrogen, liquid argon and liquid UHP oxygen from MG Industries under a Distributor Sales Agreement since 1999 and renewed our agreement in March 2002. I also was employed by MG Industries from 1980 to 1985 with my last assignment as Assistant to the President, Mr. Herb Rudolph.

We specialize in supplying "niche" products and our UHP oxygen accounts for 25% of our total sales with, **all of this product**, being sold to Independent Distributors or major specialty gas manufacturers (Praxair, BOC, Matheson/Trigas). **All of these accounts were formerly supplied by L'Air Liquide** and their acquisition of the two UHP oxygen plants in Kalama, WA and St. Mary's, PA would have an adverse anticompetitive effect on our business with the proposed assignment of my UHP oxygen supply to L'Air Liquide.

Our liquid UHP oxygen is currently supplied by the MG plant in Kalama, WA. Our liquid nitrogen is supplied from the MG Vacaville, CA plant while the liquid argon is supplied by the MG Irwindale, CA plant. I have been notified verbally by the MG sales representative, Mr. Bruce Nagy, that the UHP oxygen part of our Distributor Agreement is being assigned to L'Air Liquide and MG will retain the liquid nitrogen and liquid argon supply as part of the proposed consent order to divest six ASU's currently owned by MG.

The assignment of our liquid UHP oxygen supply to L'Air Liquide would be anticompetitive to our being able to supply cylinder gases of UHP oxygen to our wholesale customer base since my former competitor might now be my supplier. I am requesting that you contact me directly at (562) 984-7230 to review this UHP oxygen assignment of my supply agreement.

Thank you for your consideration.

Sincerely,

MAStraka

Mark A. Straka
President
Specialty Air Technologies, Inc.

6544 ½ Cherry Avenue, Long Beach, CA 90805
Tel: (562) 984-7230 Fax: (562) 984-7240

For Release: April 29, 2004

Preserving Competition, FTC Clears L'Air Liquide's $3.5 Billion Acquisition of Messer Griesheim GmbH

Messer Griesheim Industries to be Transferred to American Air Liquide; Divestitures Ordered in Major U.S. Markets for Liquid Oxygen, Nitrogen and Argon

The Federal Trade Commission today announced a proposed consent order with two leading industrial gas producers, L'Air Liquide (Air Liquide) and Messer Griesheim GmbH (Messer), under which Air Liquide will be allowed to acquire Messer but will be required to divest several important U.S. assets to ensure that competition is maintained in the markets for liquid oxygen, liquid nitrogen, and liquid argon. Through the transaction, Air Liquide will acquire the entire capital share of Messer and subsequently transfer Messer's Messer Griesheim Industries (MGI) to its subsidiary American Air Liquide.

To remedy the alleged anticompetitve effects of the proposed transaction, the consent order will require American Air Liquide to divest six air separation units (ASUs) and related assets currently owned and operated by MGI in California, Texas, Louisiana, and Mississippi within six months of a final order. The companies announced the proposed $3.5 billion acquisition in January of this year.

"Absent the relief required by the Commission's proposed order, this acquisition was likely to substantially lessen competition in those U.S. markets for liquid argon, oxygen, and nitrogen, where the parties previously competed," said Susan Creighton, Director of the FTC's Bureau of Competition. "The consent agreement announced today will preserve the existing competition in those markets and ensure that consumers of these important industrial gases do not pay more for them in the future."

Parties to the Proposed Transaction

Air Liquide is a world leader in the sales of industrial and medical gases and related equipment. Its subsidiary, American Air Liquide, is the parent corporation of the subsidiary that produces and supplies oxygen, nitrogen, and argon - as well as many other industrial gases - to U.S. customers. These gases are used for many applications in a variety of industries, including the petrochemical, manufacturing, and fabrication industries, as well as the medical field. American Air Liquide is the fourth-largest supplier of industrial gases in the United States, with ASUs located throughout the nation, primarily in Texas and the Gulf Coast region.

Messer's U.S. subsidiary, MGI, is the fifth-largest producer of liquid atmospheric gases (including oxygen, nitrogen, and argon) in the United States. MGI owns and operates many ASUs, including several in Texas and the Gulf Coast Region, as well as in northern and southern California. Under the transaction as proposed, pursuant to a sale and purchase agreement dated January 19, 2004, Air Liquide agreed to acquire the entire share capital of Messer for approximately $3.5 billion, including $1.3 billion in assumed debt. As a result of the agreement, Air Liquide would immediately transfer MGI to American Air Liquide.

The Commission's Complaint

According to the Commission's complaint, the transaction as proposed would be anticompetitive and in violation of Section 7 of the Clayton Act and Section 5 of the FTC Act. If consummated, the complaint states the transaction would likely reduce competition in the market for liquid argon in the continental United States and in certain regional U.S. markets for liquid oxygen and liquid nitrogen.

The FTC contends that the relevant U.S. markets for liquid oxygen, nitrogen, and argon already are

Related Documents

American Air Liquide,
Docket No. C-4109, Fil
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highly concentrated, and this concentration level would increase as a result of the transaction as proposed. In the Southern Texas and Western Louisiana markets, MGI and American Air Liquide are the only producers capable of economically supplying customers with liquid oxygen and nitrogen. By eliminating competition between the two companies, the proposed transaction would allow American Air Liquide to exercise unilateral market power in these two geographic markets, leading to higher prices for consumers of these products.

The complaint further states that the proposed acquisition would enhance the likelihood of collusion or coordinated action among the remaining firms in other geographic markets for liquid oxygen and liquid nitrogen and in the market for liquid argon. In Southern California, Northern California, and the Central Gulf Coast - where MGI and American Air Liquide constitute two of five companies supplying liquid oxygen and nitrogen - the transaction would likely reduce competition by increasing the likelihood of coordinated interaction among the remaining parties in these markets. Regarding the liquid argon market, the complaint states that by eliminating MGI as a competitor - particularly on the West Coast - the proposed transaction would enhance the likelihood of coordinated interaction among the remaining firms, and would be likely to result in higher liquid argon prices for consumers.

Finally, the complaint states that there are significant barriers to new entry in the markets for liquid oxygen, liquid nitrogen, and liquid argon, and that it is unlikely that new entry would occur in a timely manner to offset the anticompetitive effects of the transaction as proposed.

Terms of the Proposed Order

The proposed consent order is designed to remedy the anticompetitive impacts of the proposed transaction as identified by the Commission. This will be accomplished by American Air Liquide's divestiture of six ASUs and related assets currently owned and operated by MGI in the following locations: 1) Vacaville, California; 2) Irwindale, California; 3) San Antonio, Texas; 4) Westlake, Louisiana; 5) DeLisle, Mississippi; and 6) Waxahachie, Texas. Under the terms of the proposed order, American Air Liquide is required to divest these assets within six months of the date that the consent agreement becomes final, and to divest these assets to a single buyer. If the FTC determines that the company has not provided it with an acceptable buyer within this time, or that the manner of the divestiture is not acceptable, the order would allow the FTC to appoint a trustee to divest the assets.

The proposed order also contains an agreement to hold separate and maintain assets that is designed to protect the viability, marketability, and competitiveness of the assets to be divested prior to their sale and transfer to the buyer. The hold separate agreement becomes effective on the date the Commission accepts the consent agreement for public comment, and will remain in place until the asset package is divested to an appropriate buyer, as detailed in the order. Finally, the proposed consent order contains a provision for the FTC to appoint a hold separate trustee to oversee the management of the divestiture, until the sale is complete and for a brief transition time following the sale. To ensure the divestiture is accomplished successfully and according to the terms of the order, the trustee is required to file periodic reports with the Commission through the end of the transition period.

The Commission vote to accept the proposed consent order and order to hold separate and to place a copy on the public record was 5-0. The order will be subject to public comment for 30 days, until May 29, 2004, after which the Commission will decide whether to make it final. Comments should be sent to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Ave., N.W., Washington, DC 20580.

NOTE: A consent agreement is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of $11,000.

Copies of the complaint, proposed consent order, order to hold separate, and an analysis to aid public comment are available on the FTC's Web site at www.ftc.gov. The FTC's Bureau of Competition seeks to prevent business practices that restrain competition. The Bureau carries out its mission by investigating alleged law violations and, when appropriate, recommending that the Commission take formal enforcement action. To notify the Bureau concerning particular business practices, call or write the Office of Policy and Evaluation, Room 394, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave, N.W., Washington, DC 20580, Electronic Mail: antitrust@ftc.gov; Telephone (202) 326-3300. For more information on the laws that the Bureau enforces, the Commission has published "Promoting Competition, Protecting Consumers: A Plain English Guide to Antitrust Laws," which can be accessed at http://www.ftc.gov/bc/compguide/index.htm.

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(FTC File No. 041-0020)

(http://www.ftc.gov/opa/2004/04/lairliquide.htm)