

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

ORIGINAL

COMMISSIONERS: Edith Ramirez, Chairwoman  
Maureen K. Ohlhausen  
Terrell McSweeney



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In the Matter of \_\_\_\_\_  
American Air Liquide Holdings, Inc., \_\_\_\_\_  
a corporation. \_\_\_\_\_  
\_\_\_\_\_

Docket No. C- 4574  
File No. 161-0045

**PETITION OF AMERICAN AIR LIQUIDE HOLDINGS, INC. FOR APPROVAL OF  
THE PROPOSED DIVESTITURE OF THE IOWA CO<sub>2</sub> ASSETS TO  
ASPEN AIR U.S. CORP.**

Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2016), and Paragraph II.A. of the Decision and Order contained in the Agreement Containing Consent Orders accepted for public comment in this matter (“Decision and Order”), American Air Liquide Holdings, Inc. (“Air Liquide”) hereby petitions the Commission to approve the divestiture of the Gases Assets related to the CO<sub>2</sub> Business at the Gases Locations in Galva, Iowa and Sergeant Bluff, Iowa (the “Iowa CO<sub>2</sub> Assets”)<sup>1</sup> to Aspen Air U.S. Corp. (“AAUS”).<sup>2</sup>

<sup>1</sup> All capitalized terms not defined herein have the meanings given to them in the Decision and Order, accepted by the Federal Trade Commission for public comment on May 13, 2016.  
<sup>2</sup> Aspen Air U.S. Corp.’s principal corporate offices are located at 1460, 10655 Southport Road SW, Calgary, AB T2W 4Y1. Further general information about AAUS can be found at <http://www.aspenaircorp.com>.

## I. Introduction

On April 27, 2016, Air Liquide and the Commission executed an Agreement Containing Consent Orders that included the Decision and Order and an Order to Maintain Assets (collectively, the “Consent Agreement”) to settle the Commission’s charges related to Air Liquide’s acquisition of Airgas, Inc. (the “Acquisition”). On May 13, 2016, the Commission accepted the Consent Agreement for public comment, and the acquisition was consummated shortly thereafter.<sup>3</sup>

Paragraph II.A. of the Decision and Order requires Air Liquide to divest the Gases Assets. Pursuant to this requirement, Air Liquide diligently sought buyers of these assets that would be acceptable to the Commission. On June 23, 2016, Air Liquide entered into three asset purchase agreements with Matheson Tri-Gas, Inc. (“Matheson”) for the Gases Assets related to the I&M Gases Business, Retail Business, and portions of the CO<sub>2</sub> Business.<sup>4</sup> Air Liquide submitted a divestiture petition seeking approval of the Matheson divestiture on June 21, 2016, and the petition was posted for public comment on July 8, 2016. Air Liquide<sup>5</sup> has entered into an Asset Purchase Agreement with AAUS (the “APA”) for the remaining Gases Assets, specifically, the Iowa CO<sub>2</sub> Assets.<sup>6</sup> The APA requires Air Liquide to sell the Iowa CO<sub>2</sub> Assets to AAUS for a total base purchase price of [REDACTED].

Air Liquide desires to complete the proposed divestiture to AAUS as soon as possible following Commission approval. Prompt consummation will further the purposes of the Decision and Order and is in the interests of the Commission, the public, AAUS, and

<sup>3</sup> The merger of Airgas, Inc. (“Airgas”) with AL Acquisition Corporation, a wholly owned direct subsidiary of American Air Liquide Holdings, Inc. (“AALH”) was consummated on May 23, 2016. Airgas survived the merger as a wholly owned direct subsidiary of AALH.

<sup>4</sup> The portions of the CO<sub>2</sub> business included in the Matheson asset purchase agreements are the assets related to the Gases Locations in Martinez, California; Madison, Mississippi; Borger, Texas; Washington, Indiana; and Fort Meade, Florida.

<sup>5</sup> The assets will be conveyed by Air Liquide Industrial U.S. LP, an Air Liquide subsidiary.

<sup>6</sup> The APA is attached as Confidential Exhibit I.

Air Liquide. A prompt closing will allow AAUS to move forward with its business plans for the competitive operation of the Iowa CO<sub>2</sub> Assets. It will also allow Air Liquide to fulfill its obligations under the Consent Agreement. Air Liquide accordingly requests that the Commission promptly commence the period of public comment pursuant to Section 2.41(f)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2) (2016) and grant this petition by approving the divestiture of the Iowa CO<sub>2</sub> Assets to AAUS pursuant to the proposed agreement as soon as practicable after the close of the public comment period.

**II. AAUS Is Well Positioned to Be a Strong Competitor**

AAUS is a strong buyer for the Iowa CO<sub>2</sub> Assets because it is an experienced and well-established producer of industrial gases. It is also financially sound and able to finance the transaction. AAUS poses no competitive concern because AAUS does not overlap with the divested assets either from a geographic or product perspective.

**A. AAUS Is an Experienced and Established Competitor**

**1. Background on AAUS**

Aspen Air Corporation ("AAC") is a privately-owned industrial gases company founded in 2006 by Onkar Dhaliwal, a former Air Liquide employee and veteran of the industrial gases industry. AAC is based in Calgary, Canada, with its U.S. subsidiary—AAUS—headquartered in Billings, Montana. AAUS is an independent provider of industrial and medical gas solutions, supplying nitrogen, oxygen, and argon to customers in Montana, North Dakota, South Dakota, Washington, and Wyoming in the United States, and in Alberta and Saskatchewan in Canada.

2. AAUS Is An Experienced and Established Industrial Gases Supplier

Today, AAUS operates two air separation units (“ASUs”) in the continental United States, both located in Billings, Montana. AAUS maintains FDA certification at one of its ASUs and is currently under review for FDA certification at its second ASU. AAUS commissioned its first ASU in 2007 and started producing gas at a second ASU in 2014, making AAUS the largest industrial gas supplier in the region.

Although AAUS does not produce liquid CO<sub>2</sub> (“LCO<sub>2</sub>”), it is no stranger to the LCO<sub>2</sub> business. AAUS already serves customers as an LCO<sub>2</sub> broker, which means that it both supplies LCO<sub>2</sub> and installs and maintains tanks and ancillary equipment for clients. AAUS’s management team has extensive knowledge regarding LCO<sub>2</sub>, in addition to its general industrial gas expertise. AAUS President Onkar Dhaliwal started his career at Air Liquide, where he held roles relating to industrial gas distribution, bulk sales, and industrial gas operations—finishing his time at Air Liquide as Manager of Sales and Operations. After leaving Air Liquide, he co-founded an industrial gases company—Ferus—which supplied primarily LIN and LCO<sub>2</sub>. He founded AAC in 2006 after the Board of Directors decided to sell Ferus to Natural Gas Resources.

Mr. Dhaliwal is also joined by Ed Horvath, who will serve as CO<sub>2</sub> Projects Lead for AAUS. Mr. Horvath, who is currently a contractor for AAUS, has over 35 years of experience with Air Liquide Canada, where he oversaw the construction and commissioning of several CO<sub>2</sub> plants, as well as provided quality and safety oversight for 14 separate Air Liquide plants. Brent Jones, Senior Manager of Engineering/Production has over 25 years of experience in the cryogenics, LCO<sub>2</sub>, and industrial gas businesses. Mr. Jones has substantial pipeline experience and assisted in the research, development, and design of high-pressure LCO<sub>2</sub>

pumping equipment. Mr. Jones was involved in engineering and running LCO<sub>2</sub> plants for Ferus and is a current employee of AAUS.

AAUS also has a strong distribution and sales network. Today, AAUS operates its own fleet of cryogenic trailers and portable storage units, which will also be able to support the Iowa CO<sub>2</sub> assets. In addition, AAUS has a significant client base ensuring its stability going forward.

The acquisition of the Iowa CO<sub>2</sub> Assets is consistent with AAUS's strategy of measured growth. Since its founding in 2006, AAUS has successfully built and operated two ASUs in Billings, Montana. Ultimately, the acquisition of the Iowa CO<sub>2</sub> Assets will provide a foothold from which AAUS can launch its CO<sub>2</sub> business, with the goal of expanding and achieving a larger presence in the industrial gases market.

**B. AAUS Has the Financial Capability To Complete the Transaction Successfully and Invest in the Iowa CO<sub>2</sub> Assets Going Forward**

In addition to “the competitive ability to maintain or restore competition in the market,” a divestiture buyer must have “the financial capability and incentives to acquire and operate the assets.”<sup>7</sup> AAUS is more than capable of completing the transaction and continuing to invest in the business after closing the acquisition.

AAUS intends to finance the purchase price of the transaction and provide additional working capital for site improvements through a combination of loans and equity financing. [REDACTED]. Further, AAUS's investors, including [REDACTED], are financially sound and supportive of the deal.

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<sup>7</sup> Statement of the Bureau of Competition of the Federal Trade Commission, *Negotiating Merger Remedies* (2012), p. 10 (available at <https://www.ftc.gov/system/files/attachments/negotiating-merger-remedies/merger-remediesstmt.pdf>).

**C. The Acquisition of the Iowa CO<sub>2</sub> Assets Raises No Competitive Issues**

AAUS is a new entrant in CO<sub>2</sub>, so there is no overlap with Air Liquide or competitive concern arising out of AAUS's acquisition of the Iowa CO<sub>2</sub> Assets. Combined with AAUS's presence in adjacent businesses, and AAUS management's experience in LCO<sub>2</sub>, this lack of overlap makes AAUS an especially well-suited buyer of the Iowa CO<sub>2</sub> Assets.

**III. The Divestiture Agreements Satisfy the Requirements of the Decision and Order To Divest the Gases Assets**

**A. Divestiture of the Gases Assets**

Paragraph II.A. of the Decision and Order requires that Air Liquide divest the Gases Assets absolutely and in good faith to one or more person(s) within 120 days after consummation of its acquisition of Airgas. Pursuant to the APA, AAUS will acquire the Iowa CO<sub>2</sub> Assets.<sup>8</sup>

In accordance with Paragraph II.E.1. of the Decision and Order, the APA provides AAUS a license to Retained Intellectual Property sufficient for AAUS to operate the Iowa CO<sub>2</sub> Assets in the same manner as Air Liquide did as of the closing of the acquisition.<sup>9</sup> Consistent with Paragraph II.E.2. of the Decision and Order, the APA also includes a license back to Air Liquide for transferred intellectual property that is used in both the Iowa CO<sub>2</sub> Assets and Air Liquide's retained businesses.<sup>10</sup>

**B. Transitional Services Agreement**

Paragraph II.D. of the Decision and Order requires Air Liquide to enter into certain types of agreements "at the option of an Acquirer." [REDACTED].

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<sup>8</sup> As the Commission Staff is aware, and as noted above, Air Liquide has already agreed to divest the remainder of the Gases Assets to Matheson, as required by the Decision and Order.

<sup>9</sup> See Section 5.11(b) of the APA.

<sup>10</sup> See Section 5.11(c) of the APA.

**C. Employees**

Paragraph II.C. of the Decision and Order requires that Air Liquide “cooperate with and assist an Acquirer to evaluate and hire any Gases Employee necessary to operate” the relevant Gases Business. [REDACTED].

**D. Exclusion of Certain Assets Not Needed by the Acquirer**

Paragraph I.O. of the Decision and Order specifies that the Gases Assets need not include “any part of the Gases Assets if not needed by Acquirer and the Commission approves the divestiture without such assets.” [REDACTED].

**IV. Request for Confidential Treatment**

Because this petition and its attachments contain confidential and competitively sensitive business information relating to the divestiture of the Iowa CO<sub>2</sub> Assets, Air Liquide has redacted such confidential information (including all exhibits) from the public version of this petition. The disclosure of this information would prejudice Air Liquide and AAUS, cause harm to the ongoing competitiveness of the Iowa CO<sub>2</sub> Assets, and impair Air Liquide’s ability to comply with its obligations under the Consent Agreement. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. §§ 2.41(f)(4) and 4.9(c) (2015), Air Liquide requests, on its own behalf and on behalf of AAUS, that the confidential version of this petition and its attachments and the information contained herein be accorded confidential treatment. The confidential version of this petition should be accorded such confidential treatment under Section 552 of the Freedom of Information Act and Section 4.10(a)(2) of the Commission’s Rules of Practice and Procedure. 5 U.S.C. § 552; 16 C.F.R. § 4.10(a)(2) (2015). The confidential version of this petition is also exempt from disclosure under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4),

552(b)(7)(A), 552(b)(7)(B), and 552(b)(7)(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a(h).

**V. Conclusion**

Air Liquide and AAUS have entered into agreements relating to the divestiture of the Iowa CO<sub>2</sub> Assets that comply with the Commission's Decision and Order. Paragraph II.H. of the Decision and Order provides that its purpose is to ensure the continued operation of the Gases Assets in the same businesses in which they were engaged when the Acquisition was announced, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint. There is every reason to believe that AAUS will be a viable and competitive owner of the Iowa CO<sub>2</sub> Assets. As discussed above, AAUS is an experienced and well-established supplier of industrial gases in the United States, with a management team that is experienced in the operation of LCO<sub>2</sub> assets. Moreover, AAUS's acquisition of the Iowa CO<sub>2</sub> Assets does not raise competitive issues. To the contrary, these assets are complementary to AAUS's existing business and will help AAUS continue its strategy of measured growth.

The proposed divestiture of the Iowa CO<sub>2</sub> Assets to AAUS will accomplish the Commission's goals. Thus, Air Liquide hereby seeks expeditious Commission approval of the proposed divestiture to AAUS as soon as possible after expiration of the public comment period.

Respectfully submitted,



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