

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

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 CERTAIN OF THE GASES ASSETS TO
RELIANT PROCESSING, LTD.**

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 issued in this matter (“Decision and Order”), American Air Liquide Holdings, Inc. (“Air Liquide”) hereby petitions the Commission to approve the divestiture of the Gases Assets¹ related to the Galva, Iowa and Sergeant Bluff, Iowa portions of the CO₂ Business (the “Iowa Assets”)² to Reliant Processing, Ltd., a Texas limited partnership whose limited partner is Reliant Holdings, Ltd. (“Reliant”), also a Texas limited partnership.³ Air Liquide previously submitted a petition (the “Aspen Petition”) seeking approval of the divestiture of the Iowa Assets to Aspen Air U.S.

¹ All capitalized terms not defined herein have the meanings given to them in the Decision and Order in this matter, which was issued by the Federal Trade Commission on July 15, 2016.

² The full addresses of the two relevant Gases Locations are 1584 Market Avenue, Galva, Iowa 51020 and 1182 260th Street, Sergeant Bluff, Iowa 51054.

³ For simplicity, this petition refers to “Reliant” when describing the activities of Reliant Holdings, Ltd. or one or more of its subsidiaries, including (but not limited to) Reliant Gases, Ltd., Reliant Distribution, Ltd., Reliant Dry Ice, Ltd., Reliant Processing, Ltd., Reliant Manufacturing, Ltd., and Reliant Transportation, Ltd. Reliant’s principal corporate offices are located at 10817 West County Road 60, Midland, TX 79707. Further general information about Reliant can be found at <http://www.reliantholdingsltd.com>.

Corporation. This petition is intended to replace the Aspen Petition, which is hereby withdrawn.⁴

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.⁵ The Commission issued a final Decision and Order on July 15, 2016.

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 that would be acceptable to the Commission. Air Liquide divested the majority of the Gases Assets to Matheson Tri-Gas, Inc. (“Matheson”),⁶ and has now entered into an Asset Purchase Agreement with Reliant for the Iowa Assets (the “APA”).⁷ Pursuant to the APA, Air Liquide is selling the Iowa Assets to Reliant for a total base purchase price of [REDACTED].

Air Liquide desires to complete the proposed divestiture to Reliant 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, Reliant, and Air Liquide. A prompt closing will allow Reliant to move forward with its business

⁴ [REDACTED].

⁵ 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.

⁶ The Commission approved the divestiture of those assets to Matheson on August 31, 2016, and the divestiture closed on September 8, 2016.

⁷ The APA is attached as Confidential Exhibit 1. [REDACTED].

plans for the competitive operation of the Iowa 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 Assets to Reliant pursuant to the proposed agreement as soon as practicable after the close of the public comment period.

II. Reliant Is Well Positioned To Be a Strong Competitor

The Commission has consistently required that a divestiture buyer be capable of operating the divested assets competitively. In its 2012 statement on the negotiation of merger remedies, the Commission's Bureau of Competition emphasized that a divestiture buyer must have "the competitive ability to maintain or restore competition in the market."⁸ The Commission has also observed that "the most successful buyers appear to be the ones that know the most about what they are buying."⁹ Given its extensive experience in producing and distributing liquid carbon dioxide ("LCO₂") and dry ice, Reliant is ideally positioned to compete in the relevant markets as the owner of the Iowa Assets.

A. Reliant Is a Well-Established and Experienced Competitor

1. Background on Reliant

Reliant was founded (then under the name Flo-CO₂, Inc.) in 1989. Today, Reliant produces, sells, and distributes LCO₂ and dry ice to the food, beverage, medical, and industrial sectors and also provides technical, application, and installation services to its customers. One

⁸ 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>).

⁹ Staff of the Bureau of Competition of the Federal Trade Commission, *A Study of the Commission's Divestiture Process* (1999), p. 34 (available at <https://www.ftc.gov/sites/default/files/attachments/merger-review/divestiture.pdf>).

Reliant affiliate, which retains the Flo-CO₂ name, also provides CO₂ fracturing and enhanced oil recovery services to the oil and gas industry.

2. Reliant Is an Established LCO₂ and Dry Ice Supplier

Today, Reliant operates nine LCO₂ plants in the southern and western United States, with a total of approximately [REDACTED] tons per day (“tpd”) of capacity.¹⁰ Adding the Iowa Assets will expand Reliant’s network into new regions and add approximately [REDACTED] tpd of LCO₂ capacity to Reliant’s existing operations. Reliant is also experienced in the dry ice business, operating six dry ice plants with approximately [REDACTED] tpd of capacity.¹¹ Reliant also owns a 51% interest in Pacific Dry Ice, a retail distributor of dry ice. Through Pacific Dry Ice and its own operations, Reliant services the entire Southwest and West Coast.¹² The addition of the Iowa Assets will increase Reliant’s dry ice capacity by roughly [REDACTED] and expand its geographic reach to the Midwest. Purchasing these assets is a logical way for Reliant to grow its established LCO₂ and dry ice business.

In addition to its production capabilities, Reliant has a strong track record in sales and distribution. Last year, Reliant sold over [REDACTED] tons of LCO₂, generating more than [REDACTED] in gross sales. The company also sold [REDACTED] pounds of dry ice, with gross sales exceeding [REDACTED]. With an extensive fleet including [REDACTED] rail cars, [REDACTED] tractors, and [REDACTED] other vehicles, Reliant is well positioned to deliver efficiently throughout its service area.

¹⁰ Reliant’s current LCO₂ plants are located in Arizona, Colorado, Mississippi, New Mexico, Oklahoma, and Texas.

¹¹ Reliant’s current dry ice plants are located in Alabama, Arizona, Colorado, Mississippi, New Mexico, and Oklahoma.

¹² See <http://www.reliantdryice.com/about-us.php>.

B. Reliant Is Committed to the LCO₂ and Dry Ice Business

Reliant's bid for the Iowa Assets and its history of investment and expansion demonstrate the company's commitment to competing aggressively in LCO₂ and dry ice. For instance, in 2006 and 2007, Reliant built two new plants in Windsor, Colorado and Maricopa, Arizona, each of which produces both LCO₂ and dry ice.¹³ [REDACTED]. With these acquisitions and the construction of its own plants, Reliant has steadily grown its business over nearly three decades to become one of the nation's top five suppliers (by capacity) of LCO₂. As noted above, Reliant now operates eleven plants with approximately [REDACTED] tpd of combined LCO₂ and dry ice capacity. The company also has the capability for continued organic growth, as it designs and builds its LCO₂ plants in-house.¹⁴

C. Reliant's Acquisition of the Iowa Assets Raises No Competitive Issues

Although it is helpful for a divestiture buyer to participate in "related product markets or adjacent geographic markets," as Reliant does, the buyer "should not currently be a significant market participant" in those markets where the divestiture seeks to maintain or restore competition.¹⁵ The Commission's complaint alleges that the relevant geographic market is "Iowa and surrounding areas."¹⁶ Reliant does not currently have any operations in the Midwest, much less in Iowa, and thus its acquisition of the Iowa Assets raises no competitive concerns. Indeed, no existing Reliant plant is located within 500 miles of the Iowa Assets. [REDACTED].

Far from raising any competitive concerns, the Iowa Assets are complementary to Reliant's existing geographic footprint in the South and West.

¹³ See <http://www.reliantholdingsltd.com/NewPlants.aspx>.

¹⁴ See <http://www.floco2.com/co2supply.aspx>.

¹⁵ Statement of the Bureau of Competition of the Federal Trade Commission, *Negotiating Merger Remedies* (2012), p. 11.

¹⁶ Complaint ¶ 11.b. The Commission's complaint only alleges "Iowa and surrounding areas" as a relevant market for dry ice, not LCO₂.

D. Reliant Has the Financial Capability To Complete the Transaction Successfully and Invest in the Iowa 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.”¹⁷ Reliant is more than capable of completing the transaction and continuing to invest in the business after closing the acquisition. [REDACTED]. These revenues and assets, coupled with Reliant’s commitment to investing in its LCO₂ and dry ice business (as discussed in section II.B above) further demonstrate that Reliant has the financial ability and incentives to complete this acquisition and operate the assets going forward.

Indeed, the staff of the Compliance Division of the Commission’s Bureau of Competition reviewed Reliant’s financials before Air Liquide signed the APA with Reliant, and we are not aware of the staff raising any questions or concerns.

III. The Divestiture Agreements Satisfy the Requirements of the Decision and Order

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). Pursuant to the APA, Reliant will acquire the Iowa Assets, which are the only Gases Assets remaining for divestiture. [REDACTED].

B. Ancillary Agreements

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

¹⁷ Statement of the Bureau of Competition of the Federal Trade Commission, *Negotiating Merger Remedies* (2012), p. 10.

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 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, among other things, “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 Gases 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 Reliant, cause harm to the ongoing competitiveness of the Gases 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) (2016), Air Liquide requests, on its own behalf and on behalf of Reliant, 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) (2016). 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 Reliant have entered into agreements relating to the divestiture of the Iowa 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 Reliant will be a viable and competitive owner of the Iowa Assets. As discussed in greater detail above, Reliant is an experienced and well-established supplier of LCO₂ and dry ice in the United States. Moreover, Reliant's acquisition of the Iowa Assets does not raise any competitive issues. To the contrary, these assets are complementary to Reliant's existing business.

The proposed divestiture of the Iowa Assets to Reliant will accomplish the Commission's goals. Therefore, Air Liquide hereby seeks expeditious Commission approval of the proposed divestiture to Reliant as soon as possible after expiration of the public comment period.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brian Byrne', is written over a horizontal line.

Brian Byrne
Morgan Mulvenon
Cleary Gottlieb Steen & Hamilton LLP
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 974-1500

Counsel for Air Liquide

Dated: October 7, 2016