

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

COMMISSIONERS: **Jon Leibowitz, Chairman**
 William E. Kovacic
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

In the Matter of

Air Products and Chemicals, Inc.,
 a corporation.

Docket No. C-4299

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Air Products and Chemicals, Inc. (“Air Products”), a corporation subject to the jurisdiction of the Commission, has made an offer to acquire all of the voting securities of Airgas, Inc. (“Airgas”), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Air Products is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business located at 7201 Hamilton Boulevard, Allentown, PA 18195.

2. Airgas is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business located at 259 North Radnor-Chester Road, Suite 100, Radnor, PA 19087.

3. Respondent Air Products and Airgas are engaged in, among other things, the production and sale of industrial gases, including, but not limited to, bulk liquid oxygen and bulk liquid nitrogen.

II. JURISDICTION

4. Respondent Air Products and Airgas are, and at all times relevant herein have been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations whose businesses are in or affect commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED ACQUISITION

5. On February 11, 2010, Air Products announced its intention to acquire all outstanding common shares of Airgas pursuant to an all-cash tender offer for approximately \$7.0 billion, including the assumption of debt (the “Acquisition”). The Airgas board of directors rejected Air Products’ tender offer. More recently, on July 8, 2010, Air Products increased its original tender offer of \$60 per share to \$63.50 per share. Airgas remains hostile to Air Products’ tender offer.

IV. THE RELEVANT MARKETS

6. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are the manufacture and sale of:

- a. bulk liquid oxygen; and
- b. bulk liquid nitrogen.

7. For the purposes of this complaint, the relevant geographic areas in which to analyze the effects of the Acquisition on the bulk liquid oxygen and bulk liquid nitrogen markets are:

- a. the Northeast;
- b. the Eastern Midwest;
- c. the Chicago-Milwaukee metropolitan area;
- d. the Southeast; and
- e. Oklahoma and surrounding areas.

V. THE STRUCTURE OF THE MARKETS

8. Respondent Air Products and Airgas are significant participants in each of the relevant markets, and each relevant market is highly concentrated, as measured by the Herfindahl-Hirschman Index (“HHI”). The Acquisition would further increase concentration levels, resulting in Air Products becoming the largest supplier of bulk liquid oxygen and nitrogen in each relevant area. In all but one of the relevant geographic markets, Air Products and Airgas are two of only five companies supplying bulk liquid oxygen and nitrogen to customers. In the fifth relevant geographic market, Air Products is the largest supplier, and the parties are two of only six suppliers of bulk liquid oxygen and nitrogen.

VI. ENTRY CONDITIONS

9. New entry into the relevant markets would not occur in a timely manner sufficient to deter or counteract the likely adverse competitive effects of the Acquisition because it would take over two years for an entrant to accomplish the steps required for entry and achieve a significant market impact.

10. Entry into the bulk liquid oxygen and nitrogen markets is costly, difficult, and unlikely because of, among other things, the time and cost required to construct the air separation units that produce liquid oxygen and liquid nitrogen. Constructing one air separation unit large enough to be viable in the market would cost at least \$30 to \$50 million, most of which are sunk costs. Moreover, it is not economically justifiable to build an air separation unit unless a sufficient amount of the plant’s capacity has been pre-sold prior to construction, either to an on-site customer or to liquid customers with commitments under contract. Such pre-sale opportunities occur infrequently and unpredictably and can take several years to secure.

VII. EFFECTS OF THE ACQUISITION

11. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating actual, direct, and substantial competition between Respondent Air Products and Airgas;
- b. by increasing the likelihood that Respondent Air Products would unilaterally exercise market power in the relevant markets;
- c. by enhancing the likelihood of collusion or coordinated interaction between or among the remaining firms in the relevant markets; and
- d. by increasing the likelihood that consumers would be forced to pay higher prices for bulk liquid oxygen and nitrogen in the relevant geographic areas.

VIII. VIOLATIONS CHARGED

12. The Acquisition described in Paragraph 5, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this eighth day of September, 2010, issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: