

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
J. Thomas Rosch
Edith Ramirez
Julie Brill

In the Matter of)
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AMERIGAS PROPANE, L.P.,)
a limited partnership;)
AMERIGAS PROPANE, INC.,)
a corporation;)
)
and)
)
ENERGY TRANSFER PARTNERS, L.P.)
a limited partnership; and)
ENERGY TRANSFER PARTNERS, GP, L.P.)
a limited partnership.)

Docket No. C-4346

COMPLAINT

Pursuant to the Clayton Act and Federal Trade Commission Act (“FTC Act”), and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent AmeriGas Propane, L.P. (“AmeriGas”), intends to acquire the assets of Heritage Operating, L.P., Heritage GP, LLC, Titan Energy Partners, L.P., and Titan Energy GP, L.L.C., from Respondent Energy Transfer Partners, L.P. (“ETP”), a company subject to the jurisdiction of the Commission, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and that such acquisition, if consummated, would violate 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, 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. RESPONDENTS

1. Respondent AmeriGas is a limited partnership, 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 460 North Gulph Road, King of Prussia, Pennsylvania 19406. Respondent AmeriGas is engaged in the marketing and sale of propane and propane supply related services, including the distribution and supply of bulk propane to residential, commercial, and agricultural customers, and the preparing, filling, distributing, marketing, and sale of 20 lb. portable cylinders prefilled with propane, typically used by consumers for barbeque grills or other purposes (hereinafter referred to as “propane exchange cylinders”).

2. Respondent AmeriGas Propane, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 460 North Gulph Road, King of Prussia, Pennsylvania 19406. Respondent AmeriGas Propane, Inc., is the general partner of Respondent AmeriGas, and is a wholly-owned subsidiary of UGI Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania.

3. Respondent ETP is a limited partnership, 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 3738 Oak Lawn Avenue, Dallas, Texas 72519. Respondent ETP is engaged in, among other things, the marketing and sale of propane and propane supply related services, including the distribution and supply of bulk propane to residential, commercial, and agricultural customers, and the preparing, filling, distributing, marketing, and sale of propane exchange cylinders.

4. Respondent Energy Transfer Partners GP, L.P. (“ETP GP”) is a limited partnership, 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 8801 South Yale Ave., Suite 310, Tulsa, OK 74137. Respondent ETP GP is the general partner of Respondent ETP.

5. The office and principal place of business of the four entities to be acquired, Heritage Operating, L.P., Heritage GP, LLC, Titan Energy Partners, L.P., and Titan Energy GP, L.L.C., is 8801 South Yale Avenue, Suite 310, Tulsa, Oklahoma 74137. These four entities are subsidiaries of ETP.

6. Heritage Operating, L.P. has done business as Heritage Propane Express. ETP has engaged in the preparing, filling, distribution, marketing, and sale of propane exchange cylinders primarily or exclusively through this Heritage Propane Express division.

7. Respondents AmeriGas, AmeriGas Propane, Inc., ETP, and ETP GP 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 partnerships or corporations whose businesses are in or affect commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

8. Pursuant to a Contribution and Redemption Agreement dated October 15, 2011, AmeriGas proposed to acquire all of the noncorporate assets of Heritage Operating, L.P., Heritage GP, LLC, Titan Energy Partners, L.P., and Titan Energy GP, L.L.C.

9. In November 2011, Commission staff advised Respondents of potential competitive issues and concerns in connection with AmeriGas’s proposed acquisition of certain propane assets of Heritage Operating, L.P., Heritage GP, LLC, Titan Energy Partners, L.P., and Titan Energy GP, L.L.C., used in connection with the preparation, filling, distributing, marketing and sale of propane exchange cylinders. These assets included, but were not limited to production facilities, depots, district offices, employees, cylinders, delivery trucks, cages used by retail locations to display and dispense exchange cylinders, customer contracts, trademarks, computer and information technology systems, and contracts providing for access to the supply of bulk propane necessary to fill propane exchange cylinders (hereinafter referred to as “exchange cylinder assets”).

10. After being advised by Commission staff of potential competitive concerns regarding the exchange cylinder assets, Respondents informed Commission staff of their willingness to enter into an amendment to the Contribution and Redemption Agreement, referred to in Paragraph 8 above, to exclude the exchange cylinder assets from the proposed acquisition.

11. Amendment 2 to the Contribution and Redemption Agreement (“Amendment 2”) excludes the exchange cylinder assets from the assets that Respondent AmeriGas will acquire from Respondents ETP and ETP GP. In addition, it requires that Respondents ETP and ETP GP will continue to own and operate the exchange cylinder assets through Heritage Propane Express, LLC, a Delaware limited liability corporation and wholly-owned subsidiary of ETP. Amendment 2 also requires AmeriGas to temporarily provide to Heritage Propane Express, LLC certain specified transition services currently provided by the businesses that AmeriGas is acquiring so that the exchange cylinder assets of Heritage Propane Express, LLC can continue to be used in the preparing, filling, distributing, marketing and sale of propane exchange cylinders.

III. THE RELEVANT MARKETS

12. For purposes of this Complaint, the relevant line of commerce in which to analyze the effects of this acquisition is the preparing, filling, distributing, marketing and sale of propane exchange cylinders for large multi-state retail chains.

13. For purposes of this Complaint, the relevant geographic areas in which to analyze the effects of the acquisition are the United States and smaller regional areas.

IV. THE STRUCTURE OF THE MARKET

14. Consumers and commercial users of propane exchange cylinders typically utilize these cylinders for barbeque grills, patio heaters, and uses requiring the availability of propane in relatively small, portable tanks. Propane exchange cylinders offer consumers a way to obtain prefilled tanks. Many consumers prefer the convenience of obtaining prefilled cylinders rather than transporting the cylinders to commercial propane filling stations and refilling those cylinders. Many retailers also prefer the convenience and safety of selling properly prefilled exchange cylinders rather than maintaining large tanks of propane on retail premises, training employees to fill cylinders, and arranging for certifications usually required in connection with the inspection and filling of propane cylinders. In the past decade, the use of propane exchange cylinders has grown steadily, while refilling cylinders has declined. As a consequence, refilling cylinder services do not act as a competitive constraint on the price of propane cylinder exchange.

15. Prefilled cylinders for cylinder exchange purposes are generally delivered on a regular basis to cages located outside large national or regional retail establishments, as well as grocery, convenience, home improvement and hardware stores. These retail establishments then sell the prefilled cylinders to consumers. In most situations, consumers can choose whether to either purchase a cylinder that is prefilled with propane outright, or to exchange a used, empty exchange cylinder for another exchange cylinder that is prefilled with propane.

16. Many large multi-state retail chains require that their propane exchange cylinder suppliers have the scale and geographic scope of coverage to handle significant portions of their business. These chains also require that their propane exchange cylinder suppliers offer “just in time” deliveries to ensure that cages are continuously stocked with prefilled cylinders, particularly during peak holiday periods and weekends.

17. The market for propane exchange cylinders suppliers that can service large multi-state retail chains is highly concentrated. There are three large propane exchange cylinder competitors in the United States. Ferrellgas Partners, L.P.’s “Blue Rhino” division is the largest supplier of propane exchange cylinders. AmeriGas is currently the second largest supplier of propane exchange cylinders in some or all of the relevant geographic areas through its AmeriGas Cylinder Exchange or “ACE” division.

18. ETP, through its Heritage Propane Express division, is the third largest supplier of propane exchange cylinders in some or all of the relevant geographic areas, providing propane exchange cylinders in 37 states. Heritage Propane Express is a maverick in the market for the distribution and sale of propane exchange cylinders by competing aggressively with Blue Rhino and ACE in terms of price and other terms and conditions. In some or all of the relevant geographic areas, Heritage Propane Express is the only viable alternative to Blue Rhino and ACE for a significant set of large multi-state retail chains.

19. If consummated, AmeriGas's initial proposed acquisition of ETP's propane assets, including the Heritage Propane Express division, pursuant to the original Contribution and Redemption Agreement, would reduce the number of cylinder exchange companies that can service multi-state chain retailers in all or a substantial part of the relevant geographic markets from three to two. It would also eliminate Heritage Propane Express, a low-priced competitor that has brought greater competition to the propane exchange cylinder marketplace for multi-state chain retailers. The current proposed acquisition pursuant to the terms set forth in Amendment 2 does not result in an increase in market concentration because it does not involve AmeriGas acquiring the Heritage Propane Express assets from ETP.

V. ENTRY CONDITIONS

20. Entry into the relevant market would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. Entry into cylinder exchange involves two issues: the general cost of entry and the cost of entering at a sufficiently large scale to service large regional or national retailers. Timely entry at a scale that would be sufficient to provide services to a large regional or national customer is unlikely.

VI. EFFECTS OF THE PROPOSED ACQUISITION

21. Heritage Propane Express competes head-to-head with AmeriGas's ACE division in the market for the preparing, filling, distributing, marketing, and sale of propane exchange cylinders. The effects of the acquisition of the Heritage Propane Express assets by Respondent AmeriGas pursuant to the Contribution and Redemption Agreement, if consummated as originally proposed, may be to substantially lessen competition and to tend to create a monopoly in the relevant market 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:

- a. by eliminating actual, direct and substantial competition between ACE and Heritage Propane Express in the market for propane exchange cylinders;
- b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between Blue Rhino and ACE in the relevant market by removing Heritage Propane Express, a maverick, from the marketplace;

- c. by increasing the likelihood that the merged entity will exercise market power unilaterally in the market for the provision of exchange cylinders to multi-state retail chains that sell these products to consumers; and
- d. by increasing the likelihood that consumers will be forced to pay higher prices for propane exchange cylinders due to the decrease in competition or the exercise of market power.

VII. VIOLATIONS CHARGED

22. AmeriGas's agreement to acquire Heritage Propane Express, as originally proposed in the Contribution and Redemption Agreement described in Paragraph 8, violates Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and if consummated, constitutes 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 tenth day of January, 2012, issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

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