

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

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright
 Terrell McSweeney

**In the Matter of
FERRELLGAS PARTNERS, L.P, a limited
partnership, and
FERRELLGAS, L.P., a limited partnership,
also doing business as BLUE RHINO, and**

**AMERIGAS PARTNERS, L.P., a limited
Partnership, also doing business as
AMERIGAS CYLINDER EXCHANGE, and**

UGI CORPORATION, a corporation.

Docket No. 9360

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having heretofore issued its complaint charging AmeriGas Partners, L.P. and UGI Corporation (hereinafter referred to as “ACE Respondents”) and Ferrellgas Partners, L.P. and Ferrellgas L.P. with violations of Section 5 of the Federal Trade Commission Act, as amended, and ACE Respondents having answered the complaint denying said charges but admitting the jurisdictional allegations set forth therein; and

ACE Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), an admission by ACE Respondents of all the jurisdictional facts set forth in the Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by ACE Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Secretary of the Commission having thereafter withdrawn the matter from adjudication in accordance with §3.25(c) of its Rules; and

The Commission having thereafter considered the matter and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.25(f), 16 C.F.R. § 2.25(f), the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent AmeriGas Partners, L.P., is a publicly traded master 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. AmeriGas Partners, L.P.’s subsidiary AmeriGas Propane, L.P. operates a Propane Tank Exchange Business known as the AmeriGas Cylinder Exchange program.
2. Respondent UGI Corporation 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. UGI Corporation is the parent and sole owner of AmeriGas Inc., which is the sole owner of AmeriGas Propane, Inc. AmeriGas Propane, Inc. is the general partner of Respondent AmeriGas Partners, L.P., and 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.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the ACE Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “ACE Respondents” means UGI Corporation and AmeriGas Partners, L.P. and the directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each, together with joint ventures, subsidiaries, divisions, groups, and affiliates controlled by each, including AmeriGas Propane L.P. and AmeriGas Propane, Inc., and the directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Antitrust Laws” means the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, the Sherman Act, 15 U.S.C. § 1 *et seq.*, and the Clayton Act, 15 U.S.C. § 12 *et seq.*

C. “Communicate” means to transfer or disseminate any information, regardless of the means by which it is accomplished, including without limitation orally, by letter, e-mail, notice, or memorandum. This definition applies to all tenses and forms of the word “communicate,” including, but not limited to, “communicating,” “communicated” and “communication.”

D. “Competitively Sensitive Non-Public Information” means proprietary or confidential information relating to the Propane Tank Exchange Business regarding the pricing, pricing strategies, Fill Level strategies, costs, revenues, margins, output, business and strategic plans, marketing, customer information and Communications with customers, advertising, promotion or research and development,

provided, however, that “Competitively Sensitive Non-Public Information” shall not include (1) information that is publicly available or has been widely Communicated to customers or investors through methods such as website postings, analyst conference calls, press releases, and widely disseminated faxes, letters, electronic mailings and phone calls; nor (2) information required to be publicly disclosed under Federal Securities Laws, as that term is defined in §3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. §78c(47), and any regulation or order of the Securities and Exchange Commission issued under such laws.

E. “Competitor” means any other Person other than ACE Respondents that participates in the Propane Tank Exchange Business in the United States.

F. “Fill Level” means the weight of propane ACE Respondents put in their Propane Tanks. As of the date this Order is issued the Fill Level identified on ACE Respondents’ Propane Tanks is 15 pounds.

G. “Person” means any natural person or artificial person, including, but not limited to, any corporation, unincorporated entity, or government. For the purpose of this Order, any corporation includes the subsidiaries, divisions, groups, and affiliates controlled by it.

H. “Propane Tanks” means portable steel tanks marketed and sold prefilled with propane, and used for supplying fuel for propane barbeque grills and patio heaters, among other things. These tanks are commonly called “grill cylinders” or “20 pound tanks” regardless of their Fill Level. Propane Tanks include prefilled propane tanks sold as exchange tanks and as spare tanks.

I. “Propane Tank Employees and Representatives” means employees, officers and agents whose duties primarily relate to a Propane Tank Exchange Business or whose duties include, in whole or part, determining the Fill Level for, or the sales, marketing or pricing of, Propane Tanks for a Propane Tank Exchange Business.

J. “Propane Tank Exchange Business” means the business of marketing, selling, filling and Refilling Propane Tanks for sale to customers who sell the Propane Tanks to, or exchange them with, end users for a fee.

- K. “Propane Refilling Agreement” means an agreement to (i) Refill Propane Tanks on behalf of a Competitor, or (ii) have a Competitor Refill Propane Tanks on behalf of ACE Respondents. A Propane Refilling Agreement may include ancillary transportation services; however, an agreement that includes goods and services in addition to Refilling and ancillary transportation services is not a Propane Refilling Agreement.
- L. “Refill” or “Refilling” means preparing and filling Propane Tanks that have been returned by an end user so that the cylinders can be reused. Refilling includes, but is not limited to, cleaning, refurbishing, repainting and/or filling the cylinders.
- M. “Restricted Employees” means employees, officers or agents whose duties include, in whole or part, determining the Fill Level for, or the sales, marketing or pricing of, Propane Tanks for a Propane Tank Exchange Business.

II.

IT IS FURTHER ORDERED that in connection with ACE Respondents’ Propane Tank Exchange Business in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, ACE Respondents shall cease and desist from, either directly or indirectly, or through any corporate or other device:

- A. Entering into, attempting to enter into, adhering to, participating in, maintaining, organizing, implementing, enforcing, inviting, offering or soliciting any combination, conspiracy, agreement, or understanding between or among ACE Respondents and any Competitor to raise, fix, maintain, or stabilize prices or price levels of Propane Tanks through any means, including modifying the Fill Level contained in Propane Tanks sold by ACE Respondents and/or its Competitors, or coordinating Communications to customers of ACE Respondents and/or their Competitors.
- B. Communicating Competitively Sensitive Non-Public Information to any Competitor, or requesting, encouraging or facilitating the Communication of Competitively Sensitive Non-Public Information from any Competitor, *PROVIDED, HOWEVER*, it shall not be a violation of this Paragraph to:
 - 1. Negotiate and fulfill the terms of a Propane Refilling Agreement *so long as*
 - a) Competitively Sensitive Non-Public Information is Communicated only as reasonably necessary to negotiate and fulfill the terms of the relevant Propane Refilling Agreement, and
 - b) no Competitively Sensitive Non-Public Information is Communicated regarding pricing to customers, pricing strategies, changes in Fill Level, Fill Level strategies, revenues, or business and strategic plans, and
 - c) prospective Competitively Sensitive Non-Public Information, such as information regarding a Competitor’s future volume needs or advance production requests, is not Communicated to any Restricted Employee of ACE Respondents, except that

such data may be included in ACE Respondents' total production volume or the total production volume at a particular facility;

2. Disclose Competitively Sensitive Non-Public Information to a Competitor if such disclosure is reasonably necessary to engage in legally supervised due diligence for a potential sale, acquisition or joint venture, or to participate in a joint venture, *so long as* ACE Respondents require such Competitor to agree not to disclose current or prospective Competitively Sensitive Non-Public Information to a Restricted Employee of the Competitor; except that Restricted Employees of the Competitor may receive financial modeling, generalized segment data, transition plans and other due diligence documents and information to be used solely for the assessment and approval of a sale, acquisition or joint venture, provided that the following Competitively Sensitive Non-Public Information is not Communicated and cannot be derived from the documents and information that are Communicated: individual and non-aggregated customer data (e.g. costs, margins, prices or strategies by customer); non-aggregated costs, margins, sales and pricing data; current or prospective pricing strategies; marketing plans; and strategic plans;
3. Solicit or receive Competitively Sensitive Non-Public Information from a Competitor if doing so is reasonably necessary to engage in legally supervised due diligence for a potential sale, acquisition, or joint venture, or to participate in a joint venture, *so long as* ACE Respondents take all reasonable steps to ensure that none of the Competitor's current or prospective Competitively Sensitive Non-Public Information is disclosed to any of ACE Respondents' Restricted Employees; except that Restricted Employees may receive financial modeling, generalized segment data, transition plans and other due diligence documents and information to be used solely for the assessment and approval of a sale, acquisition or joint venture, provided that the following Competitively Sensitive Non-Public Information is not Communicated and cannot be derived from the documents and information that are Communicated: individual and non-aggregated customer data (e.g. costs, margins, prices or strategies by customer); non-aggregated costs, margins, sales and pricing data; current or prospective pricing strategies; marketing plans; and strategic plans;
4. Respond to health, safety, emergency or regulatory matters so long as ACE Respondents disclose Competitively Sensitive Non-Public Information in the course of responding to such matters only to the extent reasonably necessary; and
5. Participate in industry-wide data exchange or market research so long as i) neither ACE Respondents nor Competitors participate in collecting or aggregating Competitively Sensitive Non-Public Information; ii) ACE Respondents only provide Competitively Sensitive Non-Public Information that is at least three (3) months old; and iii) no Competitively Sensitive Non-Public Information is Communicated to ACE Respondents or any Competitor except as part of aggregated industry-wide data collected from at least five (5) firms, none of whose data accounts for more than 25% of the total data collected and Communicated.

III.

IT IS FURTHER ORDERED that, within five (5) days of issuance of this Order:

- A. ACE Respondents shall establish and maintain an antitrust compliance program for their Propane Tank Exchange Business in the United States that sets forth the policies and procedures ACE Respondents have implemented to comply with the requirements of this Order and with the Antitrust Laws.
- B. As part of establishing and maintaining an antitrust compliance program under this Paragraph ACE Respondents shall:
 - 1. Appoint and retain for the duration of the Order an antitrust compliance officer to supervise ACE Respondents' antitrust compliance program. ACE Respondents may appoint successive antitrust compliance officers, but each must be an employee or officer of, or antitrust counsel for, ACE Respondents;
 - 2. Provide training regarding ACE Respondents' obligations under this Order and the Antitrust Laws as applied to ACE Respondents' Propane Tank Exchange Business in the United States
 - a) at least annually to all Propane Tank Employees and Representatives of ACE Respondents, and
 - b) within thirty (30) days after an individual first becomes a Propane Tank Employee or Representative of ACE Respondents,

PROVIDED, HOWEVER, that the antitrust training obligations in this Paragraph III.B.2 shall not apply to (i) non-management production and transportation employees and representatives who (x) do not have access to ACE Respondents' Competitively Sensitive Non-Public Information and (y) do not, in the course of their employment or representation, Communicate with any Competitors; and (ii) employees and representatives who are not involved in ACE Respondents' Propane Tank Exchange Business in the United States;

- 3. Enable Propane Tank Employees and Representatives of ACE Respondents to ask questions about, and report violations of, this Order and the Antitrust Laws confidentially and without fear of retaliation of any kind;
- 4. Discipline Propane Tank Employees and Representatives of ACE Respondents for failure to comply with this Order and the Antitrust Laws; and
- 5. Maintain records showing that ACE Respondents have complied with and are complying with the provisions of the antitrust compliance program, including but not limited to, records showing that Propane Tank Employees and Representatives have received all trainings required under this Order during the preceding two (2) years.

IV.

IT IS FURTHER ORDERED that

A. ACE Respondents shall submit to the Commission a verified written report:

1. within thirty (30) days after the date this Order is issued; and
2. one (1) year after the date this Order is issued, and annually for four (4) years thereafter,

which report shall set forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order, and shall, inter alia, identify the antitrust compliance officer and describe the antitrust compliance program required by Paragraph III of this Order, and, to the extent not included in a prior report, provide the following information regarding each agreement or circumstance pursuant to which an ACE Respondent Communicated Competitively Sensitive Non-Public Information with or among Competitors: i) the nature of such agreement or circumstance; ii) the Competitor or Competitors with whom Competitively Sensitive Non-Public Information was Communicated; and iii) the Propane Tank Employees and Representatives of ACE Respondents, or categories of Propane Tank Employees and Representatives of ACE Respondents, involved in Communicating such Competitively Sensitive Non-Public Information.

B. For purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to any ACE Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, that Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

1. access, during business office hours of that Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of that Respondent related to compliance with this Order, which copying services shall be provided by that Respondent at the request of the authorized representative(s) of the Commission and at the expense of the that Respondent; and
2. to interview officers, directors, or employees of that Respondent, who may have counsel present, regarding such matters.

V.

IT IS FURTHER ORDERED that ACE Respondents shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of an ACE Respondent; or
- B. any proposed acquisition, merger or consolidation of an ACE Respondent; or
- C. any other change in an ACE Respondent, including without limitation, assignment and the creation, sale or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

VI.

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years from the date on which the Order is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: