



United States of America
FEDERAL TRADE COMMISSION
Washington, D.C. 20580

Office of the Secretary

January 7, 2015

David FitzGerald
State of Kansas

Re: *In the Matter of AmeriGas and Blue Rhino, Docket No. 9360*

Mr. FitzGerald,

Thank you for your comment regarding the proposed consent orders accepted by the Federal Trade Commission for public comment in the above-captioned matter. The Commission has reviewed your comment in connection with its decision concerning whether to accord final approval to the proposed consent orders.

The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 165 C.F.R. § 4.9(b)(6)(ii), and has given your comment careful consideration. The Commission has evaluated whether the proposed consent orders are an adequate remedy for the activity alleged in the Commission's complaint. The Complaint alleges that the companies illegally collaborated to force Walmart to accept each company's prior reduction in the amount of propane in its exchange tanks. The Complaint does not allege that the initial fill reductions by AmeriGas and Blue Rhino were the result of an illegal agreement between the companies.

As we understand your comment, you have concerns, among other things, about the failure of the proposed consent orders to require AmeriGas and Blue Rhino to pay restitution or disgorgement. The Commission exercises responsibly its prosecutorial discretion and evaluates the unique circumstances of each case through the framework of existing case law to determine whether to seek disgorgement and restitution remedies.

Although the proposed orders do not include disgorgement or restitution remedies, they contain several provisions intended to prevent AmeriGas and Blue Rhino from engaging in future unlawful conduct. Section II of the proposed orders prohibits the companies from engaging in certain types of agreements with competitors. Section III of the proposed orders requires each company to institute and maintain an antitrust compliance program, appoint an antitrust compliance officer to supervise the compliance program, and enable employees to report violations of the antitrust laws or the Commission's Order without fear of retaliation. Section IV of the proposed orders requires the companies to submit compliance reports to the Commission and to permit a representative of the Commission to inspect the companies' books and interview executives and employees to determine whether the companies are complying with

the orders. These orders will be in effect for 20 years. If the Commission determines that either AmeriGas or Blue Rhino has violated the order, Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45, empowers the Commission to seek civil penalties of up to \$16,000 for each day the company is found to have violated the order.

After evaluating your concerns in the light of the provisions of the proposed orders and the Commission's authority to seek civil penalties for order violations, the Commission has determined that the public interest is best served by issuing the Decisions and Orders in final form without modification. Copies of the final Decisions and Orders are enclosed for your information. Relevant materials also are available from the Commission's website at <http://www.ftc.gov>.

We appreciate your interest in this matter. Hearing from concerned citizens assists the Commission in its work on antitrust and consumer protection matters.

By direction of the Commission, Commissioner Ohlhausen dissenting and Commissioner McSweeney not participating.

Donald S. Clark
Secretary



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Thank you for your comment regarding the proposed consent orders accepted by the Federal Trade Commission for public comment in the above-captioned matter. The Commission has reviewed your comment in connection with its decision concerning whether to accord final approval to the proposed consent orders.

As we understand your comment, you have concerns about the unilateral pricing policies of AmeriGas. The Commission's complaint against AmeriGas and Blue Rhino alleges that the two companies illegally collaborated to force Wal-Mart to accept each company's prior reduction in the amount of propane in its exchange tanks. The Complaint does not allege that either company engaged in unilateral pricing in violation of the antitrust laws.

The proposed orders contain several provisions intended to prevent AmeriGas and Blue Rhino from engaging in future unlawful conduct. Section II of the proposed orders prohibits the companies from engaging in certain types of agreements with competitors. Section III of the proposed orders requires each company to institute and maintain an antitrust compliance program, appoint an antitrust compliance officer to supervise the compliance program, and enable employees to report violations of the antitrust laws or the Commission's Order without fear of retaliation. Section IV of the proposed orders requires the companies to submit compliance reports to the Commission and to permit a representative of the Commission to inspect the companies' books and interview executives and employees to determine whether the companies are complying with the orders. These orders will be in effect for 20 years. If the Commission determines that either AmeriGas or Blue Rhino has violated the order, Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. § 45, empowers the Commission to seek civil penalties of up to \$16,000 for each day the company is found to have violated the order.

After evaluating your concerns in the light of the provisions of the proposed orders and the Commission's authority to seek civil penalties for order violations, the Commission has determined that the public interest is best served by issuing the Decisions and Orders in final form without modification. Copies of the final Decisions and Orders are enclosed for your information. Relevant materials also are available from the Commission's website at <http://www.ftc.gov>.

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