

**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

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent American Air Liquide Holdings, Inc. (“Air Liquide”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire 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 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. RESPONDENT

1. Respondent Air Liquide is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its corporate office and principal place of business located at 9811 Katy Freeway, Suite 100, Houston, Texas 77024. Air Liquide, is an indirect wholly owned subsidiary of L’Air Liquide, S.A., a French *société anonyme*.

2. The Respondent is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and is a company whose business is in or affects commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. ACQUIRED COMPANY

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

4. Airgas is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and is a company whose business is in or affects commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED ACQUISITION

5. Pursuant to an Agreement and Plan of Merger dated November 17, 2015, a wholly owned subsidiary of Respondent will merge with and into Airgas in a transaction valued at approximately \$13.4 billion (the “Acquisition”). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

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 oxygen;
- b. bulk nitrogen;
- c. bulk argon;
- d. bulk nitrous oxide;
- e. bulk liquid carbon dioxide;
- f. dry ice; and
- g. retail packaged welding gases.

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

- a. the Northeast;
- b. the Mid-Atlantic;

- c. the Southeast;
- d. Atlanta and surrounding areas;
- e. Arkansas and surrounding areas;
- f. Oklahoma and surrounding areas;
- g. Western Kentucky and surrounding areas;
- h. Chicago, Milwaukee, and surrounding areas;
- i. Western Ohio and surrounding areas; and
- j. Pittsburgh, Cleveland, and surrounding areas.

8. For purposes of this Complaint, the relevant geographic area in which to analyze the effects of the Acquisition on the bulk argon market is the United States.

9. For purposes of this Complaint, the relevant geographic area in which to analyze the effects of the Acquisition on the bulk nitrous oxide market is the United States and Canada.

10. For purposes of this Complaint, the relevant geographic areas in which to analyze the effects of the Acquisition on the bulk liquid carbon dioxide market are:

- a. Indiana, Kentucky, and surrounding areas;
- b. Mississippi and surrounding areas; and
- c. the Texas Panhandle and surrounding areas.

11. For purposes of this Complaint, the relevant geographic areas in which to analyze the effects of the Acquisition on the dry ice market are:

- a. the San Francisco Bay Area;
- b. Iowa and surrounding areas; and
- c. the Texas Panhandle and surrounding areas.

12. For purposes of this Complaint, the relevant geographic areas in which to analyze the effects of the Acquisition on the retail packaged welding gases market are:

- a. Anchorage, Alaska;
- b. Fairbanks, Alaska; and
- c. Kenai, Alaska.

V. THE STRUCTURE OF THE MARKETS

13. Respondent Air Liquide and Airgas are two of a limited number of significant participants in each of the relevant markets for bulk oxygen, bulk nitrogen, bulk argon, bulk liquid carbon dioxide, and dry ice, and each relevant market is concentrated, as measured by the Herfindahl-Hirschman Index. The Acquisition would further increase concentration levels, resulting in Air Liquide becoming one of the largest suppliers in each relevant area.

14. Respondent Air Liquide and Airgas are the only two participants in the relevant geographic markets for bulk nitrous oxide and retail packaged welding gases. The Acquisition would result in Respondent holding a monopoly in these relevant markets.

VI. ENTRY CONDITIONS

15. 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.

16. Entry into the bulk oxygen, nitrogen, and argon markets is costly, difficult, and unlikely because of, among other things, the time and cost required to construct the air separation units that produce these products. Constructing an air separation unit at a scale sufficient to be viable in the market would cost at least \$30 to \$100 million, most of which are sunk costs. Moreover, it is not economically justifiable to build an air separation unit unless a significant amount of the plant's capacity has been pre-sold prior to construction, either to an on-site customer or to customers with commitments under contract. Such pre-sale opportunities occur infrequently and unpredictably and can take several years to secure.

17. Entry into the bulk nitrous oxide market is costly, difficult, and unlikely because of, among other things, the time and cost required to construct a plant capable of producing nitrous oxide. Constructing such a plant would cost at least \$5 to \$10 million, and the demand for nitrous oxide is generally insufficient to justify the high costs of building a nitrous oxide plant. In addition, there are regulatory barriers to overcome due to the hazardous nature of producing nitrous oxide.

18. Entry into the bulk liquid carbon dioxide and dry ice markets would also not be likely, timely, or sufficient to deter or counteract the likely adverse competitive effects of the Acquisition. Constructing a plant capable of producing bulk liquid carbon dioxide would cost at least \$10 to \$30 million. In addition, successful entry into the bulk liquid carbon dioxide market requires access to raw carbon dioxide supply sources, which are typically unavailable due to long-term contracts with incumbent liquid carbon dioxide suppliers. For dry ice production, there are similar entry barriers. Because liquid carbon dioxide is the primary input in dry ice production, the most significant barrier to entering the market for dry ice is obtaining a liquid carbon dioxide source. If the entrant does not have its own source, it would have to secure one or enter into a supply agreement with an existing liquid carbon dioxide manufacturer. The entrant would also have to build a dry ice facility, but sales opportunities would likely be too small to justify the sunk costs associated with the required investment.

19. Entry into the retail packaged welding gases market would also not be likely, timely, or sufficient to deter or counteract the likely adverse competitive effects of the Acquisition. Currently, Air Liquide is the only entity capable of filling packaged gases in the relevant geographic markets for retail packaged welding gas, all of which are in Alaska. A new entrant would be required either to purchase bulk gases and construct a fill plant to put the gases in packaged form or to establish a supply network to transport packaged gases from a fill plant outside of Alaska to the relevant geographic markets. Because of the obstacles that must be overcome, significant market impact is unlikely to occur and could not be achieved in a timely manner.

VII. EFFECTS OF THE ACQUISITION

20. The effects of the acquisition may be to substantially lessen competition or 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 Liquide and Airgas;
- b. by increasing the likelihood that Respondent Air Liquide would unilaterally exercise market power in the bulk oxygen, bulk nitrogen, bulk argon, bulk nitrous oxide, bulk liquid carbon dioxide, dry ice, and retail packaged welding gases markets in the relevant geographic areas;
- c. by enhancing the likelihood of collusion or coordinated interaction between or among the remaining firms in the bulk oxygen, bulk nitrogen, bulk argon, bulk liquid carbon dioxide, and dry ice markets in the relevant geographic areas; and

- d. by increasing the likelihood that consumers would be forced to pay higher prices for bulk oxygen, bulk nitrogen, bulk argon, bulk nitrous oxide, bulk liquid carbon dioxide, dry ice, and retail packaged welding gases in the relevant geographic areas.

VIII. VIOLATIONS CHARGED

21. 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 twelfth day of May, 2016, issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: