UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Maureen K. Ohlhausen
Terrell McSweeny

In the Matter of **American Air Liquide Holdings, Inc.,** **a corporation.**	**Docket No. C- 4574** **File No. 161-0045**

PETITION OF AMERICAN AIR LIQUIDE HOLDINGS, INC. FOR APPROVAL OF THE PROPOSED DIVESTITURE OF CERTAIN OF THE GASES ASSETS TO MATHESON TRI-GAS, INC.

Pursuant to Section 2.41(f) of the Federal Trade Commission ("Commission") Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2016), and Paragraph II.A. of the Decision and Order contained in the Agreement Containing Consent Orders accepted for public comment in this matter ("Decision and Order"), American Air Liquide Holdings, Inc. ("Air Liquide") hereby petitions the Commission to approve the divestiture of the Gases Assets related to the I&M Gases Business, the Retail Business, and portions of the CO_2 Business[1] to Matheson Tri-Gas, Inc. ("Matheson"), a Delaware corporation and wholly owned subsidiary of Taiyo Nippon Sanso Corporation of Japan ("TNSC").[2]

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1 All capitalized terms not defined herein have the meanings given to them in the Decision and Order, accepted by the Federal Trade Commission for public comment on May 13, 2016.

2 Matheson's principal corporate offices are located at 150 Allen Road, Suite 302, Basking Ridge, NJ 07920. Further general information about Matheson can be found at http://www.mathesongas.com. General information about Taiyo Nippon Sanso can be found at https://www.tn-sanso.co.jp/en/.

I. Introduction

On April 27, 2016, Air Liquide and the Commission executed an Agreement Containing Consent Orders that included the Decision and Order and an Order to Maintain Assets (collectively, the "Consent Agreement") to settle the Commission's charges related to Air Liquide's acquisition of Airgas, Inc. (the "Acquisition"). On May 13, 2016, the Commission accepted the Consent Agreement for public comment, and the acquisition was consummated shortly thereafter.[3]

Paragraph II.A. of the Decision and Order requires Air Liquide to divest the Gases Assets. Pursuant to this requirement, Air Liquide diligently sought a buyer that would be acceptable to the Commission. Air Liquide[4] has entered into an Asset Purchase Agreement with Matheson (the "Main APA") for the Gases Assets related to the I&M Gases Business, Retail Business, and portions of the CO_2 Business.[5] Air Liquide has also entered into separate Asset Purchase Agreements with Matheson covering the Borger, Texas, and Washington, Indiana portions of the CO_2 Business (respectively, the "Borger APA" and the "Washington APA," and together with the Main APA, the "APAs").[6] Together, the APAs require Air Liquide to sell the Gases Assets related to (1) the entire I&M Gases Business, (2) the entire Retail Business, and (3) the portions of the CO_2 Business related to the Gases Locations in Borger, Texas; Fort Meade, Florida; Madison, Mississippi; Martinez, California; and Washington, Indiana

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3 The merger of Airgas, Inc. ("Airgas") with AL Acquisition Corporation, a wholly owned direct subsidiary of American Air Liquide Holdings, Inc. ("AALH") was consummated on May 23, 2016. Airgas survived the merger as a wholly owned direct subsidiary of AALH.

4 The assets will be conveyed by Air Liquide subsidiaries Air Liquide Industrial U.S. LP, Air Liquide Large Industries U.S. LP, Air Liquide America Specialty Gases LLC, and Airgas Merchant Gases, LLC.

5 The Main APA is attached as Confidential Exhibit 1. The portions of the CO_2 business included in the Main APA are the assets related to the Gases Locations in Martinez, California; Madison, Mississippi; and Fort Meade, Florida.

6 The Borger APA is attached as Confidential Exhibit 2 and the Washington APA is attached as Confidential Exhibit 3.

(collectively the "Relevant Gases Assets") to Matheson for a total base purchase price of [REDACTED].

Air Liquide desires to complete the proposed divestiture to Matheson as soon as possible following Commission approval. Prompt consummation will further the purposes of the Decision and Order and is in the interests of the Commission, the public, Matheson, and Air Liquide. A prompt closing will allow Matheson to move forward with its business plans for the competitive operation of the Relevant Gases Assets. It will also allow Air Liquide to fulfill its obligations under the Consent Agreement. Air Liquide accordingly requests that the Commission promptly commence the period of public comment pursuant to Section 2.41(f)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2) (2016) and grant this petition by approving the divestiture of the Relevant Gases Assets to Matheson pursuant to the proposed agreements as soon as practicable after the close of the public comment period.

II. Matheson Is Well Positioned to Be a Strong Competitor

The Commission has consistently required that a divestiture buyer be capable of operating the divested assets competitively. In its 2012 statement on the negotiation of merger remedies, the Commission's Bureau of Competition emphasized that a divestiture buyer must have "the competitive ability to maintain or restore competition in the market."[7] The Commission has also observed that "the most successful buyers appear to be the ones that know the most about what they are buying."[8] Given its extensive experience in the industrial gases

7 Statement of the Bureau of Competition of the Federal Trade Commission, *Negotiating Merger Remedies* (2012), p. 10 (available at https://www.ftc.gov/system/files/attachments/negotiating-merger-remedies/merger-remediesstmt.pdf).

8 Staff of the Bureau of Competition of the Federal Trade Commission, *A Study of the Commission's Divestiture Process* (1999), p. 34 (available at https://www.ftc.gov/sites/default/files/attachments/merger-review/divestiture.pdf).

industry, Matheson is ideally positioned to compete in the relevant markets as the owner of the Relevant Gases Assets.

A. Matheson Is a Well-Established and Experienced Competitor

1. Background on Matheson

Matheson Tri-Gas, Inc. was formed when Nippon Sanso, a predecessor to TNSC, merged its U.S. industrial gas subsidiary, Tri-Gas, Inc., and its U.S. specialty gas subsidiary, Matheson Gas Products, Inc., in 1999. Tri-Gas, Inc. has been a manufacturer of industrial gases, packaged gases, and gas equipment since 1987 and was acquired by Nippon Sanso in 1992. Matheson Gas Products, Inc., a wholly-owned subsidiary of Nippon Sanso since 1989, has been active in the U.S. specialty gas sector since 1927.[9] In 2004, Nippon Sanso merged with Taiyo Toyo Sanso, creating TNSC, Matheson's current parent company. TNSC is the world's fifth largest industrial gas company.[10]

2. Matheson's Prior Experience as an FTC-Approved Divestiture Buyer

The Commission has previously approved Matheson as a divestiture buyer on at least three occasions. In 1987, the Commission approved Matheson predecessor Tri-Gas, Inc. as the divestiture buyer of four air separation units ("ASUs") in connection with Air Liquide's acquisition of Big Three Industries.[11] In 2004, the Commission approved Matheson Tri-Gas as the divestiture buyer of six ASUs in connection with Air Liquide's acquisition of the U.S. operations of the Messer Group.[12] And in 2006, the Commission likewise approved the divestiture of helium assets to Matheson in connection with Linde AG's acquisition of the BOC

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9 http://www.mathesongas.com/corporate/mtghistory.aspx.

10 http://www.mathesongas.com/corporate/mtgparent.aspx.

11 In the Matter of L'Air Liquide, S.A., Docket No. C-3216 (1987). Tri-Gas, Inc. also acquired bulk transports and other rolling stock, cylinder fill plants, and packaged gas assets.

12 In the Matter of American Air Liquide, Inc., Docket No. C-4109 (2004).

Group.[13] All of these divestitures were successful, and Matheson has continued to operate these assets competitively. As discussed in Section II.B. below, Matheson has built on the acquisitions from the two prior Air Liquide divestitures with substantial investments in its atmospheric gases business. Matheson has also built on its helium acquisition and established itself as a leading global supplier, operating 17 transfills worldwide.[14]

3. Matheson Is an Established Industrial Gases Supplier

Today, Matheson operates 17 ASUs in the continental United States, primarily in the South and West,[15] with a total of approximately [REDACTED] tons per day ("tpd") of liquid oxygen/liquid nitrogen ("LOX/LIN") capacity and approximately [REDACTED] tpd of liquid argon ("LAR") capacity. Adding the I&M Gases Business's 18 ASUs[16] in the Eastern and Midwestern United States[17] would give Matheson a coast-to-coast network of ASUs and add approximately [REDACTED] tpd of LOX/LIN capacity and more than [REDACTED] tpd of LAR capacity to Matheson's existing operations.

Matheson is also experienced in liquid carbon dioxide ("LCO_2") and dry ice operations. In 2014, Matheson acquired LCO_2 and dry ice producer Continental Carbonic Products, Inc. ("Continental Carbonic"), and today operates eight LCO_2 and/or dry ice plants throughout the Midwest with over [REDACTED] tpd of LCO_2 capacity and over [REDACTED] tpd of dry ice capacity. The addition of the divested Air Liquide LCO_2/dry ice assets in California, Florida, Indiana, Mississippi, and Texas will give Matheson an additional [REDACTED] tpd of LCO_2 capacity, [REDACTED] tpd of dry ice capacity, and a presence in

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13 In the Matter of Linde AG and The BOC Group PLC., Docket No. C-4163 (2006).

14 *See* http://www.mathesongas.com/industrialgas/globalhelium.aspx.

15 Matheson's current ASUs are located in Arizona, California, Florida, Iowa, Louisiana, Mississippi, North Dakota, Nebraska, New Mexico, and Texas.

16 Two of the 16 divested atmospheric gases sites (Gaston, South Carolina and Spartanburg, South Carolina) each include two ASUs. The two Gaston ASUs are co-located, while the two Spartanburg ASUs are identified as separate Gases Locations in Appendix A of the Decision and Order.

17 The divested ASUs are in Arkansas, Illinois, Indiana, Kentucky, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Virginia, and Wisconsin.

the South, West, and additional parts of the Midwest. The addition of these assets is a logical way for Matheson to grow the business it acquired from Continental Carbonic two years ago and to continue to increase its LCO_2 and dry ice presence.

The addition of the Retail Business is another logical extension of Matheson's existing operations. Matheson presently operates more than 150 retail stores throughout the continental United States as well as a network of five stores in Hawaii.[18] Six of Matheson's current stores are in the Pacific Northwest, making Alaska a natural extension of Matheson's existing footprint.

Finally, the nitrous oxide business included in the divestiture is a logical complement to Matheson's current offerings. In approving Air Liquide as a divestiture buyer of these same nitrous oxide plants in 2001, the Commission noted that Air Liquide already produced other medical gases (*e.g.*, medical-grade oxygen and nitrogen) and had extensive contacts with gas distributors, "which are the major customers of nitrous oxide."[19] Matheson is similarly active in bulk medical gases, including medical-grade oxygen and nitrogen, as well as the production and distribution of packaged medical gases. Additionally, Matheson is a major supplier to independent gas distributors, who are major buyers of nitrous oxide. Matheson similarly has relationships with major end-users of nitrous oxide (*e.g.*, hospitals and other medical facilities) through its bulk and packaged medical gas businesses.

B. Matheson's Record of Investment Demonstrates Its Commitment to the Industrial Gas Business

Matheson's bid for the Gases Assets and its recent history of investment and expansion demonstrate Matheson's commitment to competing aggressively in industrial gases.

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18 A complete list of Matheson's current retail locations is available at https://www.mathesongas.com/pdfs/1955MTGretailLocations4x9.pdf.

19 "FTC Settlement Would Restore Competition in U.S. Market for Nitrous Oxide," FTC Press Release, October 26, 2001 (available at https://www.ftc.gov/news-events/press-releases/2001/10/ftc-settlement-would-restore-competition-us-market-nitrous-oxide).

Matheson has a strong track record of investment in its industrial gas business. As noted above, Matheson purchased Continental Carbonic in 2014, expanding its product portfolio to include LCO_2 and dry ice. On the LOX/LIN front, since 2004 (when Matheson acquired six ASUs in connection with the Air Liquide/Messer divestiture), Matheson has built five new ASUs and expanded its capacity at a sixth, adding more than [REDACTED] tpd of LOX/LIN capacity in total:

Recent Matheson LOX/LIN Capacity Expansions			
Year	*Location*	*Nature of Project*	*LOX/LIN Capacity Increase (tpd)*
2007	Vernon, CA	Constructed new ASU	[REDACTED]
2009	Des Moines, IA	Constructed new ASU	[REDACTED]
2009	San Antonio, TX	Expanded ASU	[REDACTED]
2013	Lakeland, FL	Constructed new ASU	[REDACTED]
2014	Dickinson, ND	Constructed new ASU	[REDACTED]
2015	Mesa, AZ	Constructed new ASU	[REDACTED]

Matheson recently announced plans for two additional expansions. In January 2015, Matheson announced plans to build an ASU in Lake Charles, Louisiana, which will supply bulk industrial gases as well as provide pipeline product to an ethane cracker operated by Sasol, an international energy and chemical company.[20] Matheson has also announced plans to expand its operations in Southern California by constructing a second large-capacity ASU in Vernon, California.[21]

[REDACTED]. This substantial capital investment demonstrates Matheson's commitment to growing its business and its intention to remain a fierce competitor for years to come. In sum, there is no question that Matheson is committed to competing actively in industrial gases going forward.

20 http://www.mathesongas.com/newsevents/releases/article.aspx?articleID=200.

21 http://www.gasworld.com/second-asu-plans-for-matheson/2007841.article.

C. Matheson's Acquisition of the Relevant Gases Assets Raises No Competitive Issues

To be acceptable to the Commission, a divestiture buyer "must be one that can maintain or restore competition in the relevant market."[22] Although it is helpful on the one hand for a buyer to participate in "related product markets or adjacent geographic markets," the buyer "should not currently be a significant market participant" in those markets where the divestiture seeks to maintain or restore competition.[23] Matheson's acquisition of the Relevant Gases Assets raises no competitive concerns. As an initial matter, there is no competitive concern with Matheson's acquisition of the nitrous oxide portion of the I&M Gases Business because Matheson does not produce nitrous oxide. Likewise, there is no concern with regard to the Retail Business because Matheson does not operate any retail stores in Alaska.

With respect to the atmospheric gases portion of the I&M Gases Business, the divested ASUs are complementary to Matheson's existing geographic footprint. All of the ASUs that Matheson would acquire are located in states where Matheson does not have an ASU today. Moreover, with just one exception, every divested ASU is at least 250 miles from the nearest current Matheson ASU. The lone exception is the divested Lawton, Oklahoma plant, which is approximately 200 miles from Matheson's two Dallas-area plants (Irving, Texas and Waxahachie, Texas). However, Matheson's acquisition of the Lawton plant creates no competitive issue. [REDACTED].[24] The Commission's complaint identifies "Oklahoma and surrounding areas" as the relevant geographic market for analyzing LOX/LIN competition.[25]

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22 Statement of the Bureau of Competition of the Federal Trade Commission, *Negotiating Merger Remedies* (2012), p. 10 (available at https://www.ftc.gov/system/files/attachments/negotiating-merger-remedies/merger-remediesstmt.pdf).

23 *Id.* at 11.

24 This information was previously provided to the Commission in a letter dated February 17, 2016.

25 Complaint Para. 7.f.

Even if Dallas is considered part of "Oklahoma and surrounding areas," that area is and would remain highly competitive. [REDACTED].

The portions of the CO_2 Business that Matheson will acquire are also complementary to Matheson's existing geographic footprint. Matheson's existing LCO_2/dry ice plants are in Arkansas, Illinois, Michigan, Minnesota, Mississippi, Nebraska, Ohio, and Tennessee, and it will acquire assets in California, Florida, Indiana, Mississippi, and Texas. With the exception of the Indiana plant (which is discussed below), none of the divestiture plants that produce the corresponding products are located within 400 miles of any existing Matheson LCO_2/dry ice plants.[26]

Nor is there any competitive concern with respect to Matheson's acquisition of Air Liquide's Washington, Indiana plant.[27] [REDACTED].

There would be three post-divestiture competitors (Air Liquide/Airgas, Praxair, and Air Products) with LCO_2 plants closer than any Matheson plant to Washington. Moreover, another competitor (Linde) is also located in Pekin and is essentially equidistant to the Matheson plant. [REDACTED].

For all of these reasons, Matheson's acquisition of the Washington plant poses no risk of harm to competition.

D. Matheson Has the Financial Capability to Complete the Transaction Successfully and Invest in the Gases Assets Going Forward

In addition to "the competitive ability to maintain or restore competition in the market," a divestiture buyer must have "the financial capability and incentives to acquire and

[26] [REDACTED].

[27] The information in this paragraph and the next was previously provided to the Commission in a letter dated May 5, 2016.

operate the assets."[28] Matheson is more than capable of completing the transaction and continuing to invest in the business after closing the acquisition.

[REDACTED].

These substantial revenues and assets, coupled with Matheson's demonstrated commitment to investing in its industrial gases business (as discussed in section II.B above) leave no doubt that Matheson has the financial ability and incentives to complete this acquisition and operate the assets going forward.

III. The Divestiture Agreements Satisfy the Requirements of the Decision and Order to Divest the Gases Assets

A. Divestiture of the Gases Assets

Paragraph II.A. of the Decision and Order requires that Air Liquide divest the Gases Assets absolutely and in good faith to one or more person(s) within 120 days after consummation of its acquisition of Airgas, including by divesting the I&M Gases Business to a single acquirer. Pursuant to the three APAs, Matheson will acquire the I&M Gases Business, the Retail Business, and the portions of the CO_2 Business listed in Appendix A to this petition.[29]

In accordance with Paragraph II.E.1. of the Decision and Order, the APAs provide Matheson a license to Retained Intellectual Property sufficient for Matheson to operate the relevant Gases Business in the same manner as Air Liquide or Airgas as of the closing of the acquisition.[30] Consistent with Paragraph II.E.2. of the Decision and Order, the APAs also include a license back to Air Liquide for transferred intellectual property that is used in both the

28 Statement of the Bureau of Competition of the Federal Trade Commission, *Negotiating Merger Remedies* (2012), p. 10 (available at https://www.ftc.gov/system/files/attachments/negotiating-merger-remedies/merger-remediesstmt.pdf).

29 As the Commission Staff is aware, Air Liquide has received bids for the remaining portions of the Gases Assets and is working diligently to finalize arrangements for their divestiture.

30 *See* Section 5.11(b) of the APAs.

Gases Business and Air Liquide's retained businesses.[31] Each APA prohibits Air Liquide from soliciting divestiture employees for two years, fulfilling the requirement of Paragraph II.C.4. of the Decision and Order.[32] Likewise, the Main APA (and the corresponding disclosure schedules) fulfills the requirement imposed by Paragraph II.G. of the Decision & Order that Air Liquide not solicit Multi-Product Customers or Multi-Location Customers (with respect to the divested business) for two years after the divestiture.[33]

B. Ancillary Agreements

Paragraph II.D. of the Decision and Order requires Air Liquide to enter into three types of agreements "at the option of an Acquirer." [REDACTED].

C. Employees

Paragraph II.C. of the Decision and Order requires that Air Liquide "cooperate with and assist an Acquirer to evaluate and hire any Gases Employee necessary to operate" the Gases Business. [REDACTED].

D. Exclusion of Certain Assets Not Needed by the Acquirer

Paragraph I.O. of the Decision and Order specifies that the Gases Assets need not include, among other things, "any part of the Gases Assets if not needed by Acquirer and the Commission approves the divestiture without such assets." [REDACTED].

IV. Request for Confidential Treatment

Because this petition and its attachments contain confidential and competitively sensitive business information relating to the divestiture of the Gases Assets, Air Liquide has redacted such confidential information (including all exhibits) from the public version of this petition. The disclosure of this information would prejudice Air

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31 *See* Section 5.11(c) of the APAs.

32 *See* Section 5.18(a) of the APAs.

33 *See* Section 5.18(b) of the Main APA.

Liquide and Matheson, cause harm to the ongoing competitiveness of the Gases Assets, and impair Air Liquide's ability to comply with its obligations under the Consent Agreement. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. §§ 2.41(f)(4) and 4.9(c) (2015), Air Liquide requests, on its own behalf and on behalf of Matheson, that the confidential version of this petition and its attachments and the information contained herein be accorded confidential treatment. The confidential version of this petition should be accorded such confidential treatment under Section 552 of the Freedom of Information Act and Section 4.10(a)(2) of the Commission's Rules of Practice and Procedure. 5 U.S.C. § 552; 16 C.F.R. § 4.10(a)(2) (2015). The confidential version of this petition is also exempt from disclosure under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4), 552(b)(7)(A), 552(b)(7)(B), and 552(b)(7)(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a(h).

V. <u>Conclusion</u>

Air Liquide and Matheson have entered into agreements relating to the divestiture of portions of the Gases Assets that comply with the Commission's Decision and Order. Paragraph II.H. of the Decision and Order provides that its purpose is to ensure the continued operation of the Gases Assets in the same businesses in which they were engaged when the Acquisition was announced, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint. There is every reason to believe that Matheson will be a viable and competitive owner of these portions of the Gases Assets. As discussed in greater detail above, Matheson is an experienced and well-established supplier of industrial gases in the United States. Moreover, Matheson's acquisition of the Gases Assets does not raise competitive issues. To the contrary, these assets are complementary to Matheson's existing business.

The proposed divestiture of the Gases Assets to Matheson will accomplish the Commission's goals. Therefore, Air Liquide hereby seeks expeditious Commission approval of the proposed divestiture to Matheson as soon as possible after expiration of the public comment period.

Respectfully submitted,

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Dated: June 21, 2016

APPENDIX A

Portions of the CO_2 Business to be Acquired by Matheson

Pursuant to the APAs, Matheson will acquire the Gases Assets related to the following Gases Locations of the CO_2 Business (in addition to all assets related to the I&M Gases Business and Retail Business):

2300 Fairlanes Boulevard
Borger, Texas 79007

3301 Highway 630 West
Fort Meade, Florida 33841

218 Weisenberger Road
Madison, Mississippi 39130

651 Solano Way
Martinez, California 94553

1285 South 300 West
Washington, Indiana 47501