

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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In the Matter of)	
)	
American Air Liquide, Inc.,)	Docket No. C-4109
a corporation.)	
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)	

COMPLAINT

Pursuant to the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that the proposed acquisition by L’Air Liquide, Société Anonyme à Directoire et Conseil de Surveillance pour L’Etude et L’Exploitation des Procédés George Claude (“L’Air Liquide”) of Messer Griesheim GmbH, a subsidiary of Messer Griesheim Group GmbH & Co. KGaA and subsequent transfer of Messer Griesheim Industries, Inc. (“MGI”) to Respondent American Air Liquide, Inc., a corporation subject to the jurisdiction of the Commission, is in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 and Section 5 of the Federal Trade Commission Act (“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 American Air Liquide, Inc. is a wholly-owned subsidiary of L’Air Liquide, and is a corporation existing under and by virtue of the laws of the United States, with its principal executive offices located at 46409 Landing Parkway, Fremont, California, 94538. American Air Liquide operates in the United States both directly and through its wholly-owned subsidiary, Air Liquide America L.P.

2. Respondent, through its subsidiary Air Liquide America L.P., is engaged in, among other things, the production and sale of industrial gases including, but not limited to, liquid oxygen, liquid nitrogen and liquid argon.

3. 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

- b. Southern California;
- c. Southern Texas;
- d. Western Louisiana; and
- e. the Central Gulf Coast.

10. For purposes of this Complaint, the relevant geographic area in which to analyze the effects of the acquisition on the liquid argon market is the United States, and narrower markets contained therein, including the Western United States.

V. THE STRUCTURE OF THE MARKETS

11. The relevant markets are highly concentrated whether measured by Herfindahl-Hirschman Indices (“HHI”) or two-firm and four-firm concentration ratios. In addition, the closest competing facilities, geographically, to MGI’s San Antonio, Texas plant are Respondent’s Ingleside and Victoria, Texas plants, and MGI’s Westlake plant is the closest competing facility, geographically, to Respondent’s Beaumont, Texas plant.

12. Respondent and MGI are actual competitors in the relevant markets.

VI. BARRIERS TO ENTRY

13. New entry into the relevant markets would not occur in a timely manner sufficient to deter or counteract the adverse competitive effects of the acquisition because it would take over two years for an entrant to accomplish the steps required for entry and achieve a significant market impact. These steps include planning, designing and building a new air separation plant, as well as securing contracts with enough customers to justify the investment.

14. Entry into the relevant markets is costly, difficult and unlikely because of, among other things, the time and cost required to construct the air separation units that produce liquid oxygen, liquid nitrogen, and liquid argon. Constructing one air separation unit large enough to be viable in the market would cost at least \$30 to \$40 million, most of which is sunk. Moreover, it is not economically justifiable to build an air separation unit unless a sufficient amount of the plant’s capacity has been pre-sold prior to construction, either to an on-site customer or to liquid customers with commitments under contract. Such pre-sale opportunities occur infrequently and unpredictably.

