

receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Air Products is a corporation organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its office and principal place of business located at 7201 Hamilton Boulevard, Allentown, PA 18195.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order, the following definitions, and all other definitions used in the Order to Hold Separate and Maintain Assets, shall apply:

- A. “Air Products” means Air Products, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidia

Provided, however, that the Air Products Microbulk Assets need not include:

- (i) assets whose use is shared with or among Air Products' businesses other than the Air Products Microbulk Business unless such assets are primarily related to the operation of the Air Products Microbulk Business;
 - (ii) commercial names, trade names, "doing business as" (d/b/a) names, registered and unregistered trademarks, service marks and applications using the words "Cryoease" or "Air Products;"
 - (iii) all rights in internet web sites and internet domain names presently used by Air Products;
 - (iv) all personnel Records and other Records that Respondent is required by law to retain; and
 - (v) any part of the Air Products Microbulk Assets if not needed by an Acquirer and the Commission approves the divestiture without such assets.
- F. "Air Products Microbulk Business" means Air Products' business relating to the distribution, marketing, or sale of Microbulk Atmospheric Gases in North Carolina and northern Georgia.
- G. "Airgas" means a corporation organized, existing, and doing business under, and by virtue of

4. All (a) trade accounts receivable and other rights to payment from customers of Airgas and the full benefit of all security for such accounts or rights to payment, (b) all other accounts or notes receivable by Airgas and the full benefit of all security for such accounts or notes and (c) any claim, remedy or other right related to any of the foregoing;
5. All agreements, contracts, leases, and consensual obligations, and all outstanding offers or solicitations made by or to Airgas to enter into any of the foregoing; *provided, however,* that if such agreement, contract, lease, obligation, or offer also relates to businesses other than the Airgas Microbulk Business, then only those portions of such agreement, contract, lease, obligation, or offer that relate to the Airgas Microbulk Business shall be included;
6. All consents, licenses, certificates, registrations, or permits issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefor or renewals thereof, to the extent transferable;
7. All intangible rights and property, including Intellectual Property, going concern value, goodwill, telephone, telecopy, and e-mail addresses and listings;
8. All data and Records, including client and customer lists and Records, vendor lists, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records and, subject to legal requirements, copies of all personnel Records and other Records described in proviso (iv) of this Paragraph I.H.; *provided, however,* that if such data and Records also contain information relating to the businesses other than the Airgas Microbulk Business, then only those portions of such data and Records that relate to the Airgas Microbulk Business shall be included;
9. All insurance benefits, including rights and proceeds;
10. All claims of Airgas against third parties, whether choate or inchoate, known or unknown, contingent or noncontingent; and
11. All rights relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof.

Provided, however, that the Airgas Microbulk Assets need not include:

- (i) assets whose use is shared with or among Airgas’s businesses other than the Airgas Microbulk Business unless such assets are primarily related to the operation of the Airgas Microbulk Business;
 - (ii) commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, service marks and applications for the foregoing names and marks;
 - (iii) all rights in internet web sites and internet domain names presently used by Airgas;
 - (iv) all personnel Records and other Records that Respondent is required by law to retain; and
 - (v) any part of the Airgas Microbulk Assets if not needed by an Acquirer and the Commission approves the divestiture without such assets.
- I. “Airgas Microbulk Business” means Airgas’s business relating to the distribution, marketing, or sale of Microbulk Atmospheric Gases in North Carolina and northern Georgia.
- J. “Airgas Shares” means the issued and outstanding shares of common stock of Airgas on a fully diluted basis.
- K. “ASU” means air separation unit.
- L. “Atmospheric Gases” means oxygen, nitrogen, and argon.
- M. “Atmospheric Gases Assets” means all of Airgas’s right, title, and interest in and to all property and assets, tangible or intangible, of every kind and description, wherever located, and any improvements or additions thereto, relating to the operation of the Atmospheric Gases Business, including

12. All rights relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof.

Provided, however, that the Atmospheric Gases Assets need not include:

- (i) assets whose use is shared with or among Airgas's businesses other than the Atmospheric Gases Business unless such assets are primarily related to the operation of the Atmospheric Gases Business;
 - (ii) commercial names, trade names, "doing business as" (d/b/a) names, registered and unregistered trademarks, service marks and applications for the foregoing names and marks;
 - (iii) all rights in internet web sites and internet domain names presently used by Airgas;
 - (iv) all personnel Records and other Records that Respondent is required by law to retain; and
 - (v) any part of the Atmospheric Gases Assets if not needed by an Acquirer and the Commission approves the divestiture without such assets.
- N. "Atmospheric Gases Business" means Airgas's business relating to (1) the production or refinement of Atmospheric Gases at any Airgas on-site facilities or the ASU facilities listed in Appendix A of this Order and (2) the distribution, marketing, or sale of such Atmospheric Gases (wherever located) by pipeline, from such on-site facilities, or as Bulk Atmospheric Gases; *provided, however,* that Atmospheric Gases Business does not include Airgas's Packaged Atmospheric Gases or Microbulk Atmospheric Gases businesses.
- O. "Atmospheric Gases Employee" means, as of the Acquisition Date, (i) any full-time, part-time, or contract employee of

Property already included in the Atmospheric Gases Assets or Airgas Microbulk Assets (or Air Products Microbulk Assets, if applicable); and

2. Such tangible embodiments of the licensed rights (including but not limited to physical and electronic copies) as may be necessary or appropriate to enable an Acquirer to use the rights.

Q. “Atmospheric Gases License-Back” means:

1. A worldwide, royalty-free, paid-up, perpetual, irrevocable, transferable, sublicensable, non-exclusive license under any Intellectual Property that is included in the Atmospheric Gases Assets or the Airgas Microbulk Assets (or Air Products Microbulk Assets, if applicable) and is not solely related to the operation of the Atmospheric Gases Business or the Airgas Microbulk Business (or the Air Products Microbulk Business, if applicable); and
2. Such tangible embodiments of the licensed rights (including but not limited to physical and electronic copies) as may be necessary or appropriate to enable an Acquirer to use the rights.

R. “Bulk Atmospheric Gases” means Atmospheric Gases delivered in bulk liquid form (as the term “bulk” generally is defined by participants in the Atmospheric Gases industry, including by Respondent in the ordinary course of its business), typically to an on-site storage tank with a capacity greater than 2,000 liters.

S. “Confidential Business Information” means competitively sensitive, proprietary and all other business information of any kind owned by or pertaining to any business or assets specified in the relevant provisions of this Order or the Order to Hold Separate and Maintain Assets (including, but not limited to, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists, salary and benefits information, technolog

Gases Assets or the Airgas Microbulk Assets (or the Air Products Microbulk Assets, if applicable) including all amendments, exhibits, attachments, ag

II.

IT IS FURTHER ORDERED that:

- A. Respondent shall divest the Atmospheric Gases Assets and the Airgas Microbulk Assets at no minimum price, absolutely and in good faith, as an on-going business, no later than 120 days from the Acquisition Date, to one or more Acquirers that receive the prior approval of the Commission and in a manner that receives the prior approval of the Commission; *provided, however*, that Respondent shall divest the Air Products Microbulk Assets instead of the Airgas Microbulk Assets at the option of an Acquirer.
- B. At any time after February 15, 2011, if Respondent has not acquired a majority of the Airgas Shares, the Commission may, at its discretion, notify Respondent that it shall be

E. The Commission may order

2. At substantially the same level and quality as such services were provided by Airgas or Air Products (as the case may be) in connection with its operation of the divested assets and business prior to the Acquisition Date.

Provided, however, that Respondent shall not (i) require an Acquirer to pay compensation for Transitional Assistance that exceeds the Direct Cost of providing such Transitional Assistance or (ii) terminate its obligation to provide Transitional Assistance because of a material breach by an Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction or arbitration proceeding (if an Acquirer ag

days from the date Respondent divests the relevant assets and (ii) provide a

provide written notice to the Commission no later than five days after any modification of the Divestiture Agreement.

- M. The purpose of the divestiture of the Atmospheric Gases Assets and the Airgas Microbulk Assets (or Air Products Microbulk Assets, if applicable) is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time this Order becomes final and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. Respondent shall not (i) provide, disclose or otherwise make available Confidential Business Information owned by or pertaining to the Divested Assets and Businesses (hereinafter defined) or the Air Products Microbulk Assets and Air Products Microbulk Business to any Person or (ii) use such Confidential Business Information for any reason or purpose; *provided, however*, that Respondent may disclose or use such Confidential Business Information:
1. In the course of performing its obligations or as permitted under this Order or the Order to Hold Separate and Maintain Assets;
 2. In the course of performing its obligations under any Divestiture Agreement (including any transitional services or supply agreements);
 3. In the course of complying with financial reporting requirements, obtaining legal advice, defending legal claims, investigations, or enforcing actions threatened or brought against the Divested Assets and Businesses, or as required by law; and
 4. Relating to the Air Products Microbulk Assets and the Air Products Microbulk Business in the ordinary course of business and in accordance with past practice until such time that Respondent has divested the Air Products Microbulk Assets, if applicable;

Provided, however, that Confidential Business Information relating to the Air Products Microbulk Assets and Air Products Microbulk Business shall not be subject to this Paragraph III as of the da

Information is required, and (iii) only to those Persons who agree in writing to maintain the confidentiality of such information.

- C. Respondent shall enforce the terms of this Paragraph III as to any Person other than an Acquirer of the Atmospheric Gases Assets and take such action as is necessary to cause each such Person to comply with the terms of this Paragraph III, including training of Respondent's employees and all other actions that Respondent would take to protect its own trade secrets and proprietary information.

For purposes of this Paragraph III., "Divested Assets and Businesses" means the Atmospheric Gases Assets, Atmospheric Gases Business, Airgas Microbulk Assets, or Airgas Microbulk Business.

IV.

IT IS FURTHER ORDERED that:

- A. Prior to the Acquisition Date, Respondent may obtain Confidential Business Information owned by or pertaining to any Airgas business for the purposes of conducting customary due diligence as permitted by Airgas; *provided, however*, that:
1. Respondent may not obtain Confidential Business Information owned by or pertaining to the Atmospheric Gases Business or Airgas Microbulk Business relating to (i) current or future information about any price plans, or price, cost, or margin information at the customer level (but may obtain aggregated, non-customer specific cost and revenue information); (ii) Strategies or Policies Related to Competition (hereinafter defined); or (iii) Cost or Price Analyses (hereinafter defined);
 2. With respect to any Confidential Business Information that Respondent may obtain under this Paragraph IV.A., (i) no Person who is involved in the pricing, marketing, sale, or production of Atmospheric Gases in the United States (other than officers, directors, and counsel) shall have access to such information and (ii) any Person with access to such information shall agree in writing to maintain the confidentiality of the information.
- B. After the Acquisition Date, Respondent may obtain Confidential Business Information owned by or pertaining to businesses other than the Atmospheric Gases Business or Airgas Microbulk Business (until Respondent has divested the Air Products Microbulk Assets, if applicable) for the purposes of integration planning with respect to such other businesses; *provided, however*, that with respect to any Confidential Business Information that Respondent may obtain under this Paragraph IV.B., the Integration Clean Team (hereinafter defined) shall, until the end of the Hold Separate Period, (i) have sole access to such information (other than employees of the Hold Separate Business); (ii) agree in writing to maintain the confidentiality of the information; and (iii)

not provide such information to anyone other than in aggregated or summary form to Air Products' officers, directors, and counsel.

C. For purposes of this Paragraph IV:

1. "Integration Clean Team" means (i) third parties that Respondent has retained for the purpose of acquiring and integrating Airgas, including but not limited to outside legal counsel, and (ii) no more than twelve (12) Persons from Air Products, provided that in no event shall such persons have direct responsibility for pricing, marketing, sale, or production of Atmospheric Gases in the United States (except Air Products' officers, directors, or counsel);
2. "Strategies or Policies Related to Competition" means information relating to a company's current or future approach to negotiating with customers, targeting specific customers, identifying or in any other manner attempting to win customers, retaining customers, or risk of loss of customers, including but not limited to all sales personnel call reports, market studies, forecasts, and surveys which contain such information; and
3. "Cost or Price Analyses" means a formula, analysis, method, study, test, program, examination, tool, or other type of logical reasoning used to determine a product's cost or price for an identifiable individual customer.

V.

IT IS FURTHER ORDERED that:

- A. If Respondent has not divested all of the Atmospheric Gases Assets as required by Paragraphs II.A. or II.B. of this Order, the Commission may appoint one or more Persons as Divestiture Trustee to divest the Atmospheric Gases Assets or Airgas Microbulk Assets (or Air Products Microbulk Assets, if applicable) in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as HS Trustee pursuant to the relevant provisions of the Order to Hold Separate and Maintain Assets.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.

- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however,* that if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; *provided further, however,* that Respondent shall select such entity within five (5) days of receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that he Divei0.0000 T.8400 0.s4h1TD(oy)Tj11.6400 0.0000 TD(, a)Tj11.2800 0.0000 TD(

8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondent or the Commission may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement required by Respondent shall not restrict the Divestiture Trustee from providing any information to the Commission.
- F. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph V.
- G. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional ~~By Order of the Commission as may be necessary and appropriate.~~

as the Commission may require

Appendix A

Airgas ASUs By Relevant Market

Northeast

Bozrah, Connecticut

Eastern Midwest

Carrollton, Kentucky

Canton, Ohio

Dayton, Ohio

Chicago-Milwaukee metropolitan area

New Carlisle, Indiana

Madison, Wisconsin

Waukesha, Wisconsin

Southeast

Carrollton, Georgia

Jefferson, Georgia

Gaston, South Carolina (2 ASUs)

Rock Hill, South Carolina

Chester, Virginia

Oklahoma and surrounding areas

Mulberry, Arkansas

Lawton, Oklahoma

The Atmospheric Gases Assets shall not include any assets relating to Airgas's Atmospheric Gases Business in Hawaii.

Confidential Appendix B

[Redacted From Public Record Version, But Incorporated By Reference]