

II. JURISDICTION

4. Respondent Air Products and Airgas are, and at all times relevant herein have been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations whose businesses are in or affect commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED ACQUISITION

5. On February 11, 2010, Air P

V. THE STRUCTURE OF THE MARKETS

8. Respondent Air Products and Airgas are significant participants in each of the relevant markets, and each relevant market is highly concentrated, as measured by the Herfindahl-Hirschman Index (“HHI”). The Acquisition would further increase concentration levels, resulting in Air Products becoming the largest supplier of bulk liquid oxygen and nitrogen in each relevant area. In all but one of the relevant geographic markets, Air Products and Airgas are two of only five companies supplying bulk liquid oxygen and nitrogen to customers. In the fifth relevant geographic market, Air Products is the largest supplier, and the parties are two of only six suppliers of bulk liquid oxygen and nitrogen.

VI. ENTRY CONDITIONS

9. 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 because it would take over two years for an entrant to accomplish the steps required for entry and achieve a significant market impact.

10. Entry into the bulk liquid oxygen and nitrogen 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 and liquid nitrogen. Constructing one air separation unit large enough to be viable in the market would cost at least \$30 to \$50 million, most of which are sunk costs. 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 and can take several years to secure.

VII. EFFECTS OF THE ACQUISITION

11. The effects of the Acquisition, if consummated, may be to substantially lessen competition and 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: monopoly in the rele

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VIII. VIOLATIONS CHARGED

12. 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 eighth day of September, 2010, issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: