

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman  
J. Thomas Rosb  
Edith Ramirez  
Julie Brill

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In the Matter of )  
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AMERIG AS PROPANE, L.P., )  
a limited partnership; )  
AMERIG AS PROPANE, INC., )  
a corporation; )  
 )  
and )  
 )  
ENERGY TRANSFER PARTNERS, )

Docket No. C-4346

## I. RESPONDENTS

1. Respondent AmeriGas is a limited partnership, organized, existing, and doing business, under and by virtue of, the laws of the State of Delaware, with its office and principal place of business located at 460 North Gulph Road, King of Prussia, Pennsylvania 19406. Respondent AmeriGas is engaged in the marketing and sale of propane and propane supply related services, including the distribution and supply of bulk propane to residential, commercial, and agricultural customers, and the preparing, filling, distributing, marketing, and sale of 20 lb. portable cylinders pre-filled with propane typically used by consumers for barbecue grills or other purposes (hereinafter referred to as "propane exchange cylinders").

2. Respondent AmeriGas Propane Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 460 North Gulph Road, King of Prussia, Pennsylvania 19406. Respondent AmeriGas Propane, Inc., is the general partner of Respondent AmeriGas, and is a wholly owned subsidiary of UGI Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania.

3. Respondent ETP is a limited partnership, organized, existing, and doing business under and by virtue of, the laws of the State of Delaware, with its office and principal place of business located at 738 Oak Lawn Avenue, Dallas, Texas 75219. Respondent ETP is engaged in, among other things, the marketing and sale of propane and propane supply related services, including the distribution and supply of bulk propane to residential, commercial, and agricultural customers, and the preparing, filling, distributing, marketing, and sale of propane exchange cylinders.

4. Respondent Energy Transfer Partners GP, LP. ("ETP GP") is a limited partnership, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 8801 South Yale Avenue, Suite 310, Tulsa, OK 74137. Respondent ETP GP is the general partner of Respondent ETP.

5. The office and principal place of business of the four entities to be acquired, Heritage Operating, L.P., Heritage GP, LLC, Titan Energy Partners, L.P., and Titan Energy GP, L.L.C., is 8801 South Yale Avenue, Suite 310, Tulsa, Oklahoma 74137. These four entities are subsidiaries of ETP.

6. Heritage Operating L.P. has done business as Heritage Propane Express. ETP has engaged in the preparing, filling, distribution, marketing, and sale of propane exchange cylinders primarily or exclusively through this Heritage Propane Express division.

7. Respondents AmeriGas Propane, Inc., ETP, and ETP GP 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 partnerships or corporations whose businesses arise or affect commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

## II. THE PROPOSED ACQUISITION

8. Pursuant to a Contribution and Redemption Agreement dated October 15, 2011, AmeriGas proposed to acquire all of the noncorporate assets of Heritage Operating L.P., Heritage GP, LLC, Titan Energy Partners, LP., and Titan Energy GP, LLC.

9. In November 2011, Commission staff advised Respondents of potential competitive issues and concerns in connection with AmeriGas's proposed acquisition of certain propane assets of Heritage Operating L.P., Heritage GP, LLC, Titan Energy Partners, LP., and Titan Energy GP, LLC., used in connection with the preparation, filling, distributing, marketing and sale of propane exchange cylinders. These assets included, but were not limited to production facilities, depots, district offices, employees, cylinders, delivery trucks, cages used by retail locations to display and dispense exchange cylinders, customer contracts, trademarks, computer and information technology systems, and contracts providing for access to the supply of bulk propane necessary to fill propane exchange cylinders (hereinafter referred to as “exchange cylinder assets”).

10. After being advised by Commission staff of potential competitive concerns regarding the exchange cylinder assets, Respondents informed Commission staff of their willingness to enter into an amendment to the Contribution and Redemption Agreement, referred to in Paragraph 8 above, to exclude the exchange cylinder assets from the proposed acquisition.

11. Amendment 2 to the Contribution and Redemption Agreement (Docket No. 10-0229) excludes the exchange cylinder assets from the assets that Respondent AmeriGas will acquire from Respondents ETP and ETP GP. In addition, it requires that Respondents ETP and ETP GP will continue to own and operate the exchange cylinder assets through Heritage Propane

### III . THE RELEVANT MARKETS

12. For purposes of this Complaint, the relevant line of commerce in which to analyze the effects of this acquisition is the preparing filling, distributing, marketing and sale of propane exchange cylinders for large multi-state retail chains.

13. For purposes of this Complaint, the relevant geographic areas in which to analyze the effects of the acquisition are the United States and smaller regional areas.

### IV . THE STRUCTURE OF THE MARKET

14. Consumers and commercial users of propane exchange cylinders typically utilize these cylinders for barbeque grills, patio heaters, and uses requiring the availability of propane in relatively small, portable tanks. Propane exchange cylinders offer consumers a way to obtain prefilled tanks. Many consumers prefer the convenience of obta

18. ETP, through its Heritage Propane Express division, is the third largest supplier of propane exchange cylinders in some or all of the relevant geographic areas, providing propane exchange cylinders in 37 states. Heritage Propane Express is a major player in the market for the distribution and sale of propane exchange cylinders by competing aggressively with Blue Rhino and ACE in terms of price and other terms and conditions. In some or all of the relevant geographic areas, Heritage Propane Express is the only viable alternative to Blue Rhino and ACE for a significant set of large multi-state retail chains.

19. If consummated, AmeriGas's initial proposed acquisition of ETP's propane assets, including the Heritage Propane Express division, pursuant to the original Contribution and Redemption Agreement, would reduce the number of cylinder exchange companies that can service multi-state chain retailers in all or a substantial part of the relevant geographic markets from three to two. It would also eliminate Heritage Propane Express, a low-priced competitor that has brought greater competition to the propane exchange cylinder marketplace for multi-state chain retailers. The current proposed acquisition pursuant to the terms set forth in Amendment 2 does not result in an increase in market concentration because it does not involve AmeriGas acquiring the Heritage Propane Express assets from ETP.

## V. ENTRY CONDITIONS

20. Entry into the relevant market would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. Entry into cylinder exchange involves two issues: the marginal cost of entry and the cost of entering at a sufficiently large scale to service large regional or national retailers. Timely relief is necessary to prevent the acquisition from resulting in a significant and lasting increase in market concentration.

- c. by increasing the likelihood that the merged entity will exercise market power unilaterally in the market for the provision of exchange cylinders to multi-state retail chains that sell these products to consumers; and
- d. by increasing the likelihood that consumers will be forced to pay higher prices for propane exchange cylinders due to the decrease in competition or the exercise of market power.

## VII. VIOLATIONS CHARGED

22. AmeriGas's agreement to acquire Heritage Propane Express, as originally proposed in the Contribution and Redemption Agreement described in Paragraph 8, violates Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and if consummated, constitutes 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 tenth day of January, 2012, issues its Complaint against said Respondents

By the Commission.

Donald S. Clark  
Secretary

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