

**In the Matter of**

**FERRELLGAS PARTNERS, L.P., a limited  
partnership, and**

**FERRELLGAS, L.P., a limited partnership,  
also doing business as BLUE RHINO, and**

**AMERIGAS PARTNERS, L.P., a limited  
partnership, also doing business as  
AMERIGAS CYLINDER EXCHANGE, and**

**UGI CORPORATION, a corporation.**

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reduction”). Faced with resistance from their common customer Walmart Stores, Inc. (“Walmart”), Blue Rhino and AmeriGas colluded by secretly agreeing to maintain a united front to push their joint customer, Walmart, to accept the fill reduction.

2. In the United States, consumers typically use propane exchange tanks to fuel barbeque grills and patio heaters. At all times relevant to this complaint, Respondents were the two largest suppliers of propane exchange tanks in the United States. Blue Rhino controlled approximately 50 percent of the United States wholesale propane exchange tank market; AmeriGas controlled approximately 30 percent of the market. No other competitor served more than nine percent of the market. No other competitor was capable of servicing large national retailers, such as Walmart, Lowe’s HIW, Inc. (“Lowe’s”) and The Home Depot, Inc. (“The Home Depot”), except on a limited basis.

3. In spring 20(y <<>>BDC)7(l)-2(ue)4( R)-3(hi)-2(no)-1016(a)-6(r)-7(g)10(e)4( na)4(t)-2(eg)10(e)4  
3.

## THE RESPONDENTS

10. Respondent Ferrellgas Partners, L.P., is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 7500 College Boulevard, Overland Park, Kansas. It maintains a nearly complete interest in and conducts its business activities primarily through Respondent Ferrellgas, L.P.

11. Respondent Ferrellgas, L.P., is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 7500 College Boulevard, Overland Park, Kansas. Ferrellgas, L.P., doing business as Blue Rhino, operates a national propane distribution business, and owns or has access to distribution locations nationwide. Its business includes the filling, refilling, refurbishing, sale and distribution of propane exchange tanks under the Blue Rhino name.

12. For the purposes of this complaint, “Blue Rhino” shall refer to Ferrellgas Partners, L.P., and Ferrellgas, L.P., collectively.

13. At all times relevant hereto, Respondents Ferrellgas Partners, L.P. and Ferrellgas, L.P. have been, and are now, corporations as “corporation” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

14. The acts and practices of Respondents Ferrellgas Partners, L.P. and Ferrellgas, L.P., including the acts and practices alleged herein, are in or affect commerce in the United States, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

15. Respondent AmeriGas Partners, L.P., is a publicly traded master 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. AmeriGas Partners, L.P., operates a national propane distribution Kk(1)-4(e) of Dela.i((z)-17 )]onv

Pennsylvania, with its office and principal place of business located at 460 North Gulph Road, King of Prussia, Pennsylvania.

17. For the purposes of this complaint, “AmeriGas” shall refer to AmeriGas Partners, L.P., and UGI Corporation, collectively.

18. At all times relevant hereto, AmeriGas Partners, L.P., and UGI Corporation have been, and are now, corporations as “corporation” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

19. The acts and practices

## **THE RELEVANT MARKETS**

26. The relevant product market in which to evaluate Respondents' conduct is the wholesale marketing and sale of propane exchange tanks.

27. There are no widely used substitutes for propane exchange tanks that provide a similar ease of use. No other product significantly constrains the prices of propane exchange tanks.

28. The relevant geographic market is the United States. To compete effectively for sales to national retailers, including Walmart, The Home Depot and Lowe's, propane exchange tank manufacturers need access to refilling and refurbishing facilities located throughout the United States. Propane exchange tank suppliers that lack nationwide access to such assets are unable to constrain the prices of propane exchange tanks suppliers that have nationwide access to such assets.

29. Beginning in or about 2006, Respondents entered into a series of "co-packing agreements." Pursuant to these agreements, each company agreed to refurbish and refill propane exchange tanks for the other company at certain of each company's facilities. Today, each Respondent processes slightly less than ten percent of the other company's used, empty tanks pursuant to co-packing agreements. Blue Rhino refurbishes and refills exchange tanks for AmeriGas at Blue Rhino facilities in Florida, Colorado, Washington and Missouri. AmeriGas refurbishes and refills exchange tanks for Blue Rhino at AmeriGas facilities in California and New Hampshire.

### **RESPONDENTS INCREASE PRICES BY REDUCING THE FILL LEVEL**

30. In early 2008, Respondents faced rapid increases in propane exchange tank input costs. These inputs included propane, steel for the tanks and diesel fuel for delivery trucks.

31. In or about January 2008, Respondent AmeriGas considered a plan to recoup its rising input costs by reducing the fill level in its propane exchange tanks. AmeriGas decided not to pursue the fill reduction plan because, among other reasons, AmeriGas believed it could be competitively disadvantaged if other companies in the industry did not follow AmeriGas's lead by also reducing the fill level in their propane exchange tanks.

32. In April 2008, Blue Rhino management approved a proposal to reduce the fill level in the company's propane exchange tanks from the then-standard 17 pounds to 15 pounds, without a corresponding price reduction, to offset the increased input costs. The Blue Rhino proposal included a plan to ask AmeriGas in advance whether their co-packing facilities could handle the proposed fill reduction.

33. This reduction in fill level was in effect a 13% increase in the price of the propane.

34.

did not also reduce fill levels. Blue Rhino was particularly concerned about its competitive standing with its second-largest customer, Walmart, because Walmart purchased tanks from both Blue Rhino and AmeriGas.

35. Walmart is the largest propane exchange tank retailer in the United States. Blue Rhino services approximately 60 percent of the Walmart locations nationwide, while AmeriGas services approximately 35 percent. Ozark Mountain Propane Company (“Ozark”), a smaller regional propane supplier, services t

42. On June 18, 2008, Blue Rhino's President telephoned AmeriGas's Director of National Accounts. The two men called each other six more times over the next 30 hours. The

advise each other of the status of their discussions with Walmart and to encourage each other to hold firm to convince Walmart to accept the reduction in fill.

- a. On or about July 11, 2008, Blue Rhino's Vice President of Sales called AmeriGas's Director of National Accounts. The two sales executives





59. There are no legitimate, procompetitive efficiencies that justify the conduct of Respondents, as alleged herein, or that outweigh its anticompetitive effects.

### **VIOLATION ALLEGED RESTRAINT OF TRADE**

60. Paragraphs 1 to 59 above are re-alleged as if fully set forth herein.

61. When faced with Walmart's resistance to their plans to reduce the fill level of their propane exchange tanks, Respondents colluded by secretly agreeing that neither would deviate from the planned fill reduction to Walmart. They worked together to take the steps necessary to push Walmart to promptly accept the price increase they each implemented through the fill reduction. Their concerted actions unreasonably restrained trade and constituted unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

### **NOTICE**

Notice is hereby given to Respondents that the second day of December, 2014, at 10:00 a.m., is hereby fixed as the time and Federal Trade Commission offices, 600 Pennsylvania Avenue, NW, Washington D.C. 20580, as the place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted. If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings of fact and conclusions of law under § 3.46 of said Rules.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint, and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after an answer is filed by the last answering Respondent. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within five days of receiving the answer of the last answering Respondent, to make certain initial disclosures without awaiting a formal discovery request.

#### **NOTICE OF CONTEMPLATED RELIEF**

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that Respondents have violated or are violating Section 5 of the FTC

7. Any other relief appropriate to correct or remedy the anticompetitive effects in their incipency of any or all of the conduct alleged in the complaint.

**WHEREFORE, THE PREMISES CONSIDERED**, the Federal Trade Commission on this twenty-seventh day of March, 2014, issues its complaint against Respondents.

By the Commission, Commissioner Ohlhausen dissenting.

Donald S. Clark  
Secretary

SEAL: