

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeney

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.

Docket No. 9360

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having heretofore issued its complaint charging AmeriGas Partners, L.P. and UGI Corporation (inafter referred to as “ACE Respondents”) and Ferrellgas Partners, L.P. and Ferrellgas L.P. with violation 4(l)-2 action (5-t a the Federal Trade Commission Act, as amended, and Resposement”), an admission by ACE Respondents of all the jurisdictional facts set forth in the Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by ACE Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Secretary of the Commission having thereafter withdrawn the matter from adjudication in accordance with §3.25(c) of its Rules; and

The Commission having thereafter considered the matter and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.25(f), 16 C.F.R. § 2.25(f), the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order.")

1. 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.'s subsidiary AmeriGas Propane, L.P. operates Propane Tank Exchange Business known as the AmeriGas Cylinder Exchange program.
2. Respondent UGI Corporation 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. UGI Corporation is the parent and sole owner of AmeriGas Inc., which is the sole owner of

- C. “Communicate” means to transfer or disseminate any information, regardless of the means by which it is accomplished, including without limitation orally, by letter, e-mail, notice, or memorandum. This definition applies to all tenses and forms of the word “communicate,” including, but not limited to, “communicating,” “communicated” and “communication.”
- D. “Competitively Sensitive Non-Public Information” means proprietary or confidential information relating to the Propane Tank Exchange Business regarding the pricing, pricing strategies, Fill Level strategies, costs, revenues, margins, output, business and strategic plans, marketing, customer information and Communications with customers, advertising, promotion or research and development,
- provided, however,* that “Competitively Sensitive Non-Public Information” shall not include (1) information that is publicly available or has been widely Communicated to customers or investors through methods such as website postings, analyst conference calls, press releases, and widely disseminated faxes, letters, electronic mailings and phone calls; no(2) information required to be publicly disclosed under Federal Securities Laws, as that term is defined in §3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. §78c(47), and any regulation or order of the Securities and Exchange Commission issued under such laws.
- E. “Competitor” means any other Person other than ACE Respondents that participates in the Propane Tank Exchange Business in the United States
- F. “Fill Level” means the weight of propane ACE Respondents put in their Propane Tanks. As of the date this Order is issued the Fill Level identified on ACE Respondents’ Propane Tanks is 15 pounds.
- G. “Person” means any natural person or artificial person, ~~including~~, but not limited to, any corporation, unincorporated entity, or government. For the purpose of this Order, any corporation includes the subsidiaries, divisions, groups, and affiliates controlled by it.
- H. “Propane Tanks” means portable steel tanks ~~made~~ and sold prefilled with propane, and used for supplying fuel for propane barbecue grills and ~~heaters~~, among other things. These tanks are commonly called ~~gas~~ cylinders” or “20 pound tanks” regardless of their Fill Level. Propane Tanks include prefilled propane tanks sold as exchange tanks and as spare tanks.
- I. “Propane Tank Employees and Representatives” means employees and agents whose duties primarily relate to a Propane Tank Exchange Business ~~whose~~ duties include, in whole or part, determining the Fill Level for, or the sales, marketing or pricing of, Propane Tanks ~~for~~ a Propane Tank Exchange Business
- J. “Propane Tank Exchange Business” means the business of marketing, selling, filling and Refilling Propane Tanks for sale to customers who sell the Propane Tanks to, or exchange them with, end users for a fee.

such data may be included in ACE Respondents' total production volume or the total production volume at a particular facility;

2. Disclose Competitively Sensitive Non-Public Information to a Competitor if such disclosure is reasonably necessary to engage in legally supervised due diligence for a potential sale, acquisition or joint venture, or to participate in a joint venture, *so long as* ACE Respondents require such Competitor to agree not to disclose or prospective Competitively Sensitive Non-Public Information to a Restricted Employee of the Competitor; except that Restricted Employees of the Competitor may receive financial modeling, generalized segment data, transition plans and other due diligence documents and information to be used solely for the assessment and approval of a sale, acquisition or joint venture, provided that the following Competitively Sensitive Non-Public Information is not Communicated and cannot be derived from the documents and information that are Communicated: individual and non-aggregated customer data (e.g. costs, margins, prices or strategies by customer); non-aggregated costs, margins, sales and pricing data; current or prospective pricing strategies; marketing plans; and strategic plans
3. Solicit or receive Competitively Sensitive Non-Public Information from a Competitor if doing so is reasonably necessary to engage in legally supervised due diligence for a potential sale, acquisition, or joint venture, or to participate in a joint venture, *so long as* ACE Respondents take all reasonable steps to ensure that none of the Competitor's current or prospective Competitively Sensitive Non-Public Information is disclosed to any of ACE Respondents' Restricted Employees, except that Restricted Employees may receive financial modeling, generalized segment data, transition plans and other

IV.

IT IS FURTHER ORDERED that

A. ACE Respondents shall submit to the Commission a verified written report:

1. within thirty (30) days after the date this Order is issued; and
2. one (1) year after the date this Order is issued and annually for four (4) years thereafter,

which report shall set forth in detail the manner and form in which they are complying, and have complied with this Order, and shall, inter alia, identify the antitrust compliance officer and describe the antitrust compliance program required by 31 CFR 101.11(a)(2)(i)-(v).

