ANALYSIS OF PROPOSED AGREEMENT CONTAINING CONSENT ORDERS TO AID PUBLIC COMMENT

In the Matter of American Air Liquide Holdings, Inc.

File No. 161 0045

I. INTRODUCTION

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") designed to remedy the anticompetitive effects resulting from the proposed acquisition of Airgas, Inc. ("Airgas") by American Air Liquide Holdings, Inc. ("Air Liquide"). Pursuant to the Consent Agreement, Air Liquide will divest sixteen air separation units ("ASUs"), four vertically integrated dry ice and liquid carbon dioxide plants, two separate liquid carbon dioxide plants, two nitrous oxide plants, and three retail packaged welding gas and hardgoods stores. Air Liquide has agreed to divest the required facilities to one or more Commission-approved buyers within four months of consummating its transaction with Airgas. The divestiture of these facilities and related assets will preserve the competition between Air Liquide and Airgas that the proposed acquisition would otherwise eliminate.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the accompanying Decision and Order ("Order").

II. THE TRANSACTION

Pursuant to an Agreement and Plan of Merger dated November 17, 2015, a wholly owned subsidiary of Air Liquide will merge with and into Airgas in a transaction valued at approximately $13.4 billion. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially lessening competition in various geographic markets for bulk oxygen, bulk nitrogen, bulk argon, bulk nitrous oxide, bulk liquid carbon dioxide, dry ice, and retail packaged welding gases.

III. THE PARTIES

Air Liquide is an international company specializing in industrial gases and related services. Air Liquide is the fourth-largest atmospheric gas producer in the United States, operating forty-nine liquid ASUs spread throughout the country. In the United States, Air Liquide also operates two nitrous oxide production facilities and eleven liquid carbon dioxide production facilities, six of which also produce dry ice. Air Liquide has largely exited its retail packaged gas and hardgoods business in the United States, but still operates five branch locations

in Alaska. In 2015, Air Liquide's revenue totaled €16.4 billion, with €3.9 billion coming from the United States.

Airgas, headquartered in Radnor, Pennsylvania, is the leading U.S. distributor of packaged industrial, medical, and specialty gases and hardgoods, as well as welding equipment and supplies. Airgas is the fifth-largest atmospheric gas producer in the United States, operating seventeen liquid ASUs, most of which are concentrated in the eastern half of the country. Airgas also operates a number of other industrial gas production plants, including three nitrous oxide production facilities, eleven liquid carbon dioxide production facilities, and fourteen dry ice production facilities. Airgas operates a network of approximately nine hundred retail branches where it sells hardgoods and packaged gas. For the fiscal year ending March 31, 2015, Airgas's consolidated net sales were approximately $5.3 billion, with over 98% of those revenues coming from the United States.

IV. THE RELEVANT MARKETS FOR BULK OXYGEN, BULK NITROGEN, AND BULK ARGON

Atmospheric gases are gases that are present in the Earth's atmosphere. Industrial gas suppliers like Airgas and Air Liquide produce atmospheric gases for use in a wide range of applications, including oil and gas, steelmaking, healthcare, and food manufacturing. Liquid oxygen, nitrogen, and argon are three of the most widely used atmospheric industrial gases, and each has specific properties that make it uniquely suited for the applications for which it is used. For most of these applications, there is no substitute for the use of oxygen, nitrogen, or argon.

Atmospheric gases are distributed to customers in different forms and methods depending on the volume of gas the customer requires. Customers who require large volumes are supplied either by on-site ASUs that are located at the customer's facility or by a pipeline connecting a plant to that customer. Bulk customers are those who have significant volume requirements, but are not large enough to justify on-site or pipeline gas delivery. Bulk customers typically are supplied with bulk oxygen, bulk nitrogen, or bulk argon in cryogenic trailers carrying the gas in liquid form. The liquid form is more condensed than the gaseous form and therefore easier to transport and store in large quantities. The bulk liquid gases are then stored in tanks located at the customer site. From there, customers can either use the product in its liquid form or convert it back to gas. Small-volume customers purchase nitrogen, oxygen, or argon in cylinders containing the product in gaseous form. These smaller customers are usually served by distributors, who receive their product from industrial gas suppliers in bulk liquid form. It is not feasible for bulk oxygen, bulk nitrogen, or bulk argon customers to switch distribution methods because their demand is too great for cylinder delivery and too small for on-site or pipeline delivery.

For atmospheric gases, the ratio of the product's value to its transportation costs largely determines the relevant geographic market. Due to the relatively low sales price of bulk oxygen and nitrogen and the significant freight costs associated with transporting them, these gases can generally only be shipped economically a maximum distance of approximately 100 to 250 miles

from the ASU that produces the gas. Therefore, it is appropriate to analyze the competitive

The remaining liquid solidifies into a snow-like consistency. This snow is then collected and pressed into dry ice blocks or pellets, and distributed to customers in standard or bulk pellet bags or in blocks, slices, or sticks. Dry ice has many applications, including shipping of frozen food and medical supplies, cooling of materials during production, and industrial blast cleaning. It is used in a variety of industries such as food processing, transportation, and biotechnology. Suppliers of dry ice either sell directly to end users, or wholesale to distributors or resellers. For the vast majority of applications, there are no viable substitutes for dry ice.

Dry ice begins to dissipate as soon as it is produced. As a result, dry ice is not typically transported more than 150 miles to a customer, although where local supply is insufficient

VIII. EFFECTS OF THE ACQUISITION

The proposed acquisition would eliminate direct and substantial competition between Air Liquide and Airgas in each of the relevant markets, provide Air Liquide with a larger base of sales on which to enjoy the benefit of a unilateral price increase, and eliminate a competitor to which customers otherwise could have diverted their sales in markets where alternative sources of supply are limited. The proposed acquisition, therefore, likely would allow Air Liquide to exercise market power unilaterally, increasing the likelihood that purchasers of bulk oxygen, bulk nitrogen, bulk argon, bulk nitrous oxide, bulk liquid carbon dioxide, dry ice, or retail packaged welding gas would be forced to pay higher prices in the relevant areas.

The proposed acquisition would also enhance the likelihood of collusion or coordinated action between or among the remaining firms in the relevant markets for bulk oxygen, bulk nitrogen, bulk argon, bulk liquid carbon dioxide, and dry ice because a significant competitor would be eliminated, and only a small number of viable competitors would remain. In addition, certain conditions prevalent in these relevant markets, including the relative homogeneity of the firms and products involved and availability of detailed market information, are conducive to collusion or coordinated action.

X. ENTRY

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 proposed acquisition.

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least $10 to $30 million. In addition, successful entry into the bulk liquid carbon dioxide market requires access to raw carbon dioxide supply sources, which are typically unavailable due t long-

required facilities, together with all related equipment, customer and supply contracts, technology, and goodwill, to one or more Commission-approved buyers within four months of consummating its transaction with Airgas.

Any acquirer of the divested assets must receive the prior approval of the Commission. The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed acquirer of divested assets must not itself present competitive problems. There are a number of parties interested in purchasing the assets to be divested that have the expertise, experience, and financial viability to successfully purchase and manage these assets to maintain the current level of competition in the relevant markets. The Commission is therefore satisfied that sufficient potential buyers for the divested assets in each relevant market currently exist.

The proposed Consent Agreement incorporates a proposed Order to Maintain Assets to ensure the continued operations of the divestiture assets while a sale is conducted, and for a brief transition period once the Commission approves a buyer for the assets. The proposed Order to Maintain Assets also allows the Commission to appoint an interim monitor to oversee compliance with all the obligations and responsibilities under the proposed Consent Order and requires Air Liquide to execute an agreement conferring upon the interim monitor all of the rights, powers, and authorities necessary to permit the monitor to ensure the continued health and competitiveness of the divested businesses.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.