

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman  
Maureen K. Ohlhausen  
Terrell McSweeney

In the Matter of	)	
	)	
American Air Liquide Holdings, Inc.,	)	Docket No. C-4574
a corporation.	)	
	)	

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed merger of a wholly owned subsidiary of Respondent American Air Liquide Holdings, Inc. (“Air Liquide,” a wholly owned subsidiary of L’ Air Liquide, S.A.) with and into Airgas, Inc. (“Airgas”) and Respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of 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; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement (“Consent Agreement”) containing consent orders, an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent 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 Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the Consent Agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following Order to Maintain Assets:

1. Respondent American Air Liquide Holdings, Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its corporate office and principal place of business located at 9811 Katy Freeway, Suite 100, Houston, Texas 77024. American Air Liquide Holdings, Inc., is an indirect wholly owned subsidiary of L’Air Liquide, S.A., a French *société anonyme*.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

## **ORDER**

### **I.**

**IT IS HEREBY ORDERED** that, as used in this Order to Maintain Assets, the following definitions shall apply (to the extent any capitalized term appearing in this Order to Maintain Assets is not defined below, the term shall be defined as that term is defined in the Decision and Order contained in the Consent Agreement):

- A. “Air Liquide” means (a) American Air Liquide Holdings, Inc., its directors, officers, employees, agents, representatives, successors, and assigns and includes its parent L’Air Liquide, S.A.; and the subsidiaries, divisions, groups, and affiliates in each case controlled by American Air Liquide Holdings, Inc. (including Airgas, Inc., after the Acquisition) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Acquirer” means any Person that acquires any of

H. “Confidential Information” means any and all of the following information:

1. all information that is a trade secret under applicable trade secret or other law;
2. all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, software and computer software and database technologies, systems, structures, and architectures;
3. all information concerning the relevant business (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants’ materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel, and personnel training techniques and materials); and
4. all notes, analyses, compilations, studies, summaries, and other material to the extent containing or based, in whole or in part, upon any of the information described above;

*Provided, however,* that Confidential Information shall not include information that (i) was, is, or becomes generally available to the public other than as a result of a breach of this Order to Maintain Assets; (ii) was or is des J 1futs

- J. “Divestiture Agreement” means any agreement between Respondent (or a Divestiture Trustee) and Acquirer that receives the prior approval of the Commission to divest the Gases Assets, including all related ancillary agreements, schedules, exhibits, and attachments thereto.
- K. “Divestiture Date” means the date on which Respondent (or the Divestiture Trustee) closes on the transaction to divest any of the Gases Assets to an Acquirer.
- L. “Gases Assets” means the assets identified in Paragraph I.O. of the Decision and Order.
- M. “Gases Business” means the I&M Gases Business, CO<sub>2</sub> Business, and the Retail Business.
- N. “Gases Employee” means any individual (i) employed on a full-time, part-time, or contract basis at any of the Gases Locations as of and after the date of the announcement of the Acquisition or (ii) identified by agreement between Respondent and an Acquirer and made part of a Divestiture Agreement.
- O. “Gases Locations” means the locations identified on Appendix A of this Order to Maintain Assets.
- P. “I&M Gases Business” means the business of producing, refining, distributing, marketing, or selling atmospheric gases (liquid oxygen, liquid nitrogen, and liquid argon) and nitrous oxide conducted by either Air Liquide or Airgas prior to the Acquisition at their respective atmospheric gases and nitrous oxide locations identified in Appendix A of this Order.
- Q. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.
- R. “Retail Business” means the business of selling hardgoods, welding products, and gases conducted by Airgas prior to the Acquisition at the retail locations identified in Appendix A of this Order to Maintain Assets.
- S. “Third Party Consent” means any consent, assignment, license, permit, or other authorization from any Person other than Respondent that is necessary to divest or operate the Gases Assets.

## II.

**IT IS FURTHER ORDERED** that during the time period before the Divestiture Date, Respondent shall operate the Gases Business and Gases Assets in the ordinary course of business consistent with past practices as of the date that Respondent announced the Acquisition, including but not limited to, the following responsibilities:

- A. Respondent shall maintain (i) the Gases Business and Gases Assets in substantially the same condition (except for normal wear and tear) existing at the time Respondent signs the Consent Agreement, and (ii) relations and good will with suppliers, customers, landlords, creditors, agents, and other having business relationships with the Gases Business and Gases Assets;
- B. Respondent shall provide the Gases Business with sufficient financial and other resources to (i) operate the Gases Business and Gases Assets at least at the current rate of operation and staffing and to carry out, at their scheduled pace, all business plans, sales and promotional activities in place prior to the Acquisition; (ii) perform all maintenance to, and replacements or remodeling of, the assets of the Gases Business in the ordinary course of business and in accordance with past practice and current plans; (iii) carry on such capital projects, physical plant improvements, and business plans as are already underway or planned for which all necessary regulatory and legal approvals have been obtained, including but not limited to, existing or planned renovation, remodeling, or expansion projects; and (iv) maintain the viability, competitiveness, and marketability of the Gases Business and Gases Assets.
- C. Respondent shall preserve the Gases Business and Gases Assets as an ongoing business and not take any affirmative action, or fail to take any action within Respondent's control, as a result of which the viability, competitiveness, and marketability of the Gases Business and Gases Assets would be diminished.

## III.

**IT IS FURTHER ORDERED** that no later than the Divestiture Date, Respondent shall secure all Third Party Consents; *provided, however*, that if Respondent is unable to obtain any Third Party Consent, Respondent shall (i) provide such assistance as an Acquirer may reasonably request in its efforts to obtain a comparable consent or (ii) with the acceptance of an Acquirer and the prior approval of the Commission, substitute equivalent assets or arrangements.

#### IV.

**IT IS FURTHER ORDERED** that:

- A. Until the Divestiture Date, Respondent shall staff the Gases Business and Gases Assets with sufficient employees to maintain the viability and competitiveness of the Gases Business and Gases Assets, including but not limited to, providing each Gases Employee with reasonable financ( but)-20hed [Bottom921(c)52utfedv Emc]TJ -13(m)-2(m)-2/Bot-2(a76(e)4,(i)-







5. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- D. The Monitor shall report in writing to the Commission concerning Respondent's compliance with this Order to Maintain Assets and the Decision and Order on a schedule as determined by Commission staff, including a final report after Respondent has completed all obligations required by Paragraph II. of the Decision and Order.
- E. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. The Monitor's power and duties shall terminate fifteen (15) days after the Monitor has completed his final report pursuant to Paragraph VI.D. of this Order to Maintain Assets, or at such other time as directed by the Commission.
- G.

which Respondent completed such divestiture and the date the divestiture was accomplished.

### **VIII.**

**IT IS FURTHER ORDERED** that the purpose of this Order to Maintain Assets is to (i) preserve the Gases Business and Gases Assets as a viable, competitive, and ongoing business until the divestiture required by the Decision and Order is achieved; (ii) prevent interim harm to competition pending the relevant divestiture and other relief; and (iii

