

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

)	
In the Matter of)	
)	
American Air Liquide, Inc.,)	Docket No. C-4109
a corporation.)	
)	
)	

COMPLAINT

Pursuant to the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that the proposed acquisition by L’Air Liquide, Société Anonyme à Directoire et Conseil de Surveillance pour L’Etude et L’Exploitation des Procédés George Claude (“L’Air Liquide”) of Messer Griesheim GmbH, a subsidiary of Messer Griesheim Group GmbH & Co. KGaA and subsequent transfer of Messer Griesheim Industries, Inc. (“MGI”) to Respondent American Air Liquide, Inc., a corporation subject to the jurisdiction of the Commission, is in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 and Section 5 of the Federal Trade Commission Act (“FTC Act”), as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent American Air Liquide, Inc. is a wholly-owned subsidiary of L’Air Liquide, and is a corporation existing under and by virtue of the laws of the United States, with its principal executive offices located at 46409 Landing Parkway, Fremont, California, 94538. American Air Liquide operates in the United States both directly and through its wholly-owned subsidiary, Air Liquide America L.P.

2. Respondent, through its subsidiary Air Liquide America L.P., is engaged in, among other things, the production and sale of industrial gases including, but not limited to, liquid oxygen, liquid nitrogen and liquid argon.

3. Respondent is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a

corporation whose business is in or affects commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. ACQUIRED COMPANY

4. Messer Griesheim GmbH is a wholly-owned indirect subsidiary of Messer Griesheim Group GmbH & Co. KGaA (“Messer Griesheim Group”). Messer Griesheim Group is a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Fuetingsweg 34, 47805 Krefeld, Germany. Messer Griesheim Group operates in the United States through MGI, a wholly-owned subsidiary existing under and by virtue of the laws of the United States and with its principal executive offices located at 3 Great Valley Parkway, Malvern, Pennsylvania, 19355.

5. Messer Griesheim Group and MGI are engaged in, among other things, the production and sale of industrial gases including, but not limited to, liquid oxygen, liquid nitrogen, and liquid argon.

6. MGI is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

III. THE ACQUISITION

7. Pursuant to a sale and purchase agreement dated January 19, 2004, L’Air Liquide agreed to acquire the entire share capital of Messer Griesheim GmbH for an aggregate purchase price of approximately \$3.5 billion and subsequently transfer MGI to Respondent American Air Liquide.

IV. THE RELEVANT MARKETS

8. For purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the acquisition are the manufacture and sale of:

- a. liquid nitrogen;
- b. liquid oxygen; and
- c. liquid argon.

9. For purposes of this Complaint, the relevant geographic areas in which to analyze the effects of the acquisition on the liquid oxygen and liquid nitrogen markets are:

- a. Northern California;

- b. Southern California;
- c. Southern Texas;
- d. Western Louisiana; and
- e. the Central Gulf Coast.

10. For purposes of this Complaint, the relevant geographic area in which to analyze the effects of the acquisition on the liquid argon market is the United States, and narrower markets contained therein, including the Western United States.

V. THE STRUCTURE OF THE MARKETS

11. The relevant markets are highly concentrated whether measured by Herfindahl-Hirschman Indices (“HHI”) or two-firm and four-firm concentration ratios. In addition, the closest competing facilities, geographically, to MGI’s San Antonio, Texas plant are Respondent’s Ingleside and Victoria, Texas plants, and MGI’s Westlake plant is the closest competing facility, geographically, to Respondent’s Beaumont, Texas plant.

12. Respondent and MGI are actual competitors in the relevant markets.

VI. BARRIERS TO ENTRY

13. New entry into the relevant markets would not occur in a timely manner sufficient to deter or counteract the adverse competitive effects of the acquisition because it would take over two years for an entrant to accomplish the steps required for entry and achieve a significant market impact. These steps include planning, designing and building a new air separation plant, as well as securing contracts with enough customers to justify the investment.

14. Entry into the relevant markets is costly, difficult and unlikely because of, among other things, the time and cost required to construct the air separation units that produce liquid oxygen, liquid nitrogen, and liquid argon. Constructing one air separation unit large enough to be viable in the market would cost at least \$30 to \$40 million, most of which is sunk. Moreover, it is not economically justifiable to build an air separation unit unless a sufficient amount of the plant’s capacity has been pre-sold prior to construction, either to an on-site customer or to liquid customers with commitments under contract. Such pre-sale opportunities occur infrequently and unpredictably.

VII. EFFECTS OF THE ACQUISITION

15. The effects of the acquisition may be to substantially lessen competition and to tend to create a monopoly in the relevant markets as set forth above in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, in the following ways, among others:

- a. By eliminating direct actual competition between Respondent and MGI;
- b. By enhancing the likelihood of collusion or coordinated action between or among the remaining firms in the Northern California, Southern California, and Central Gulf Coast liquid oxygen and liquid nitrogen markets;
- c. By enhancing the likelihood of collusion or coordinated action between or among the remaining firms in the liquid argon market;
- d. By eliminating competition between the two closest competitors, geographically, in the Southern Texas and Western Louisiana liquid oxygen and nitrogen markets;
- e. By increasing the likelihood that Respondent would unilaterally exercise market power in the Southern Texas and Western Louisiana liquid oxygen and nitrogen markets; and
- f. By increasing the likelihood that consumers would be forced to pay higher prices for liquid oxygen, liquid nitrogen and liquid argon in the relevant geographic areas.

VIII. VIOLATIONS CHARGED

16. The Acquisition agreement described in Paragraph 7 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

17. The Acquisition described in Paragraph 7, if consummated, would constitute 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 twenty-ninth day of April, 2004, issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: