

Complaint

IN THE MATTER OF

**AMERIGAS PROPANE, L.P.,
AMERIGAS PROPANE, INC.,
ENERGY TRANSFER PARTNERS, L.P.,
AND
ENERGY TRANSFER PARTNERS, GP, L.P.**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

*Docket No. C-4346; File No. 121 0022
Complaint, January 10, 2012 – Decision, February 24, 2012*

This consent order addresses the \$2.9 billion acquisition by AmeriGas Propane, L.P. of four entities owned by ETP, Heritage Operating, L.P., Heritage GP, LLC, Titan Energy Partner, L.P., and Titan Energy GP, L.L.C. The complaint alleges that the acquisition, as originally proposed, would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act by substantially lessening competition in the market for preparing, filling, distributing and selling propane exchange cylinders in the United States and in certain regional areas within the United States. The consent order requires the Respondents to comply with all the terms of Amendment 2, including all terms pertaining to the provision of transition services by AmeriGas to Heritage Propane Express, LLC until such time as Heritage Propane Express, LLC is sold to another entity, or, barring a sale, for a period of one year. The Order also requires that, for a period of two years, ETP cannot sell the Heritage Propane Express assets without prior written approval of the Commission.

Participants

For the *Commission*: Tom Dahdouh, Susan Huber and Erika Wodinsky.

For the *Respondents*: Alan D. Rutenberg and Jay Varon, Foley & Lardner LLP; William D. Vigdor, Vinson & Elkins.

COMPLAINT

Pursuant to the Clayton Act and Federal Trade Commission Act (“FTC Act”), and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent AmeriGas Propane, L.P. (“AmeriGas”), intends to

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acquire the assets of Heritage Operating, L.P., Heritage GP, LLC, Titan Energy Partners, L.P., and Titan Energy GP, L.L.C., from Respondent Energy Transfer Partners, L.P. (“ETP”), a company subject to the jurisdiction of the Commission, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and that such acquisition, if consummated, would violate 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, 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. RESPONDENTS

1. Respondent AmeriGas is a 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 19406. Respondent AmeriGas is engaged in the marketing and sale of propane and propane supply related services, including the distribution and supply of bulk propane to residential, commercial, and agricultural customers, and the preparing, filling, distributing, marketing, and sale of 20 lb. portable cylinders prefilled with propane, typically used by consumers for barbeque grills or other purposes (hereinafter referred to as “propane exchange cylinders”).

2. Respondent AmeriGas Propane, Inc. 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 19406. Respondent AmeriGas Propane, Inc., is the general partner of Respondent AmeriGas, and is a wholly-owned subsidiary of UGI Corporation, a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania.

3. Respondent ETP is a 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 3738 Oak Lawn Avenue, Dallas, Texas 75219. Respondent ETP is engaged in, among other things, the marketing

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and sale of propane and propane supply related services, including the distribution and supply of bulk propane to residential, commercial, and agricultural customers, and the preparing, filling, distributing, marketing, and sale of propane exchange cylinders.

4. Respondent Energy Transfer Partners GP, L.P. (“ETP GP”) is a 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 8801 South Yale Ave., Suite 310, Tulsa, OK 74137. Respondent ETP GP is the general partner of Respondent ETP.

5. The office and principal place of business of the four entities to be acquired, Heritage Operating, L.P., Heritage GP, LLC, Titan Energy Partners, L.P., and Titan Energy GP, L.L.C., is 8801 South Yale Avenue, Suite 310, Tulsa, Oklahoma 74137. These four entities are subsidiaries of ETP.

6. Heritage Operating, L.P. has done business as Heritage Propane Express. ETP has engaged in the preparing, filling, distribution, marketing, and sale of propane exchange cylinders primarily or exclusively through this Heritage Propane Express division.

7. Respondents AmeriGas, AmeriGas Propane, Inc., ETP, and ETP GP are, and at all times relevant herein, have been engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are partnerships or corporations whose businesses are in or affect commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

8. Pursuant to a Contribution and Redemption Agreement dated October 15, 2011, AmeriGas proposed to acquire all of the noncorporate assets of Heritage Operating, L.P., Heritage GP, LLC, Titan Energy Partners, L.P., and Titan Energy GP, L.L.C.

9. In November 2011, Commission staff advised Respondents of potential competitive issues and concerns in connection with AmeriGas’s proposed acquisition of certain

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propane assets of Heritage Operating, L.P., Heritage GP, LLC, Titan Energy Partners, L.P., and Titan Energy GP, L.L.C., used in connection with the preparation, filling, distributing, marketing and sale of propane exchange cylinders. These assets included, but were not limited to production facilities, depots, district offices, employees, cylinders, delivery trucks, cages used by retail locations to display and dispense exchange cylinders, customer contracts, trademarks, computer and information technology systems, and contracts providing for access to the supply of bulk propane necessary to fill propane exchange cylinders (hereinafter referred to as “exchange cylinder assets”).

10. After being advised by Commission staff of potential competitive concerns regarding the exchange cylinder assets, Respondents informed Commission staff of their willingness to enter into an amendment to the Contribution and Redemption Agreement, referred to in Paragraph 8 above, to exclude the exchange cylinder assets from the proposed acquisition.

11. Amendment 2 to the Contribution and Redemption Agreement (“Amendment 2”) excludes the exchange cylinder assets from the assets that Respondent AmeriGas will acquire from Respondents ETP and ETP GP. In addition, it requires that Respondents ETP and ETP GP will continue to own and operate the exchange cylinder assets through Heritage Propane Express, LLC, a Delaware limited liability corporation and wholly-owned subsidiary of ETP. Amendment 2 also requires AmeriGas to temporarily provide to Heritage Propane Express, LLC certain specified transition services currently provided by the businesses that AmeriGas is acquiring so that the exchange cylinder assets of Heritage Propane Express, LLC can continue to be used in the preparing, filling, distributing, marketing and sale of propane exchange cylinders.

III. THE RELEVANT MARKETS

12. For purposes of this Complaint, the relevant line of commerce in which to analyze the effects of this acquisition is the preparing, filling, distributing, marketing and sale of propane exchange cylinders for large multi-state retail chains.

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13. For purposes of this Complaint, the relevant geographic areas in which to analyze the effects of the acquisition are the United States and smaller regional areas.

IV. THE STRUCTURE OF THE MARKET

14. Consumers and commercial users of propane exchange cylinders typically utilize these cylinders for barbeque grills, patio heaters, and uses requiring the availability of propane in relatively small, portable tanks. Propane exchange cylinders offer consumers a way to obtain prefilled tanks. Many consumers prefer the convenience of obtaining prefilled cylinders rather than transporting the cylinders to commercial propane filling stations and refilling those cylinders. Many retailers also prefer the convenience and safety of selling properly prefilled exchange cylinders rather than maintaining large tanks of propane on retail premises, training employees to fill cylinders, and arranging for certifications usually required in connection with the inspection and filling of propane cylinders. In the past decade, the use of propane exchange cylinders has grown steadily, while refilling cylinders has declined. As a consequence, refilling cylinder services do not act as a competitive constraint on the price of propane cylinder exchange.

15. Prefilled cylinders for cylinder exchange purposes are generally delivered on a regular basis to cages located outside large national or regional retail establishments, as well as grocery, convenience, home improvement and hardware stores. These retail establishments then sell the prefilled cylinders to consumers. In most situations, consumers can choose whether to either purchase a cylinder that is prefilled with propane outright, or to exchange a used, empty exchange cylinder for another exchange cylinder that is prefilled with propane.

16. Many large multi-state retail chains require that their propane exchange cylinder suppliers have the scale and geographic scope of coverage to handle significant portions of their business. These chains also require that their propane exchange cylinder suppliers offer “just in time” deliveries to ensure that cages are continuously stocked with prefilled cylinders, particularly during peak holiday periods and weekends.

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17. The market for propane exchange cylinders suppliers that can service large multi-state retail chains is highly concentrated. There are three large propane exchange cylinder competitors in the United States. Ferrellgas Partners, L.P.'s "Blue Rhino" division is the largest supplier of propane exchange cylinders. AmeriGas is currently the second largest supplier of propane exchange cylinders in some or all of the relevant geographic areas through its AmeriGas Cylinder Exchange or "ACE" division.

18. ETP, through its Heritage Propane Express division, is the third largest supplier of propane exchange cylinders in some or all of the relevant geographic areas, providing propane exchange cylinders in 37 states. Heritage Propane Express is a maverick in the market for the distribution and sale of propane exchange cylinders by competing aggressively with Blue Rhino and ACE in terms of price and other terms and conditions. In some or all of the relevant geographic areas, Heritage Propane Express is the only viable alternative to Blue Rhino and ACE for a significant set of large multi-state retail chains.

19. If consummated, AmeriGas's initial proposed acquisition of ETP's propane assets, including the Heritage Propane Express division, pursuant to the original Contribution and Redemption Agreement, would reduce the number of cylinder exchange companies that can service multi-state chain retailers in all or a substantial part of the relevant geographic markets from three to two. It would also eliminate Heritage Propane Express, a low-priced competitor that has brought greater competition to the propane exchange cylinder marketplace for multi-state chain retailers. The current proposed acquisition pursuant to the terms set forth in Amendment 2 does not result in an increase in market concentration because it does not involve AmeriGas acquiring the Heritage Propane Express assets from ETP.

V. ENTRY CONDITIONS

20. Entry into the relevant market would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. Entry into cylinder exchange involves two issues: the general cost of entry and the cost of entering at a sufficiently large scale to service large regional or national retailers. Timely entry at a

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scale that would be sufficient to provide services to a large regional or national customer is unlikely.

VI. EFFECTS OF THE PROPOSED ACQUISITION

21. Heritage Propane Express competes head-to-head with AmeriGas's ACE division in the market for the preparing, filling, distributing, marketing, and sale of propane exchange cylinders. The effects of the acquisition of the Heritage Propane Express assets by Respondent AmeriGas pursuant to the Contribution and Redemption Agreement, if consummated as originally proposed, may be to substantially lessen competition and to tend to create a monopoly in the relevant market in 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, in the following ways:

- a. by eliminating actual, direct and substantial competition between ACE and Heritage Propane Express in the market for propane exchange cylinders;
- b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between Blue Rhino and ACE in the relevant market by removing Heritage Propane Express, a maverick, from the marketplace;
- c. by increasing the likelihood that the merged entity will exercise market power unilaterally in the market for the provision of exchange cylinders to multi-state retail chains that sell these products to consumers; and
- d. by increasing the likelihood that consumers will be forced to pay higher prices for propane exchange cylinders due to the decrease in competition or the exercise of market power.

VII. VIOLATIONS CHARGED

22. AmeriGas's agreement to acquire Heritage Propane Express, as originally proposed in the Contribution and Redemption Agreement described in Paragraph 8, violates Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and if

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consummated, constitutes 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 tenth day of January, 2012, issues its Complaint against said Respondents.

By the Commission.

DECISION AND ORDER
[Redacted Public Version]

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent AmeriGas Propane, L.P. of certain assets of Respondent Energy Transfer Partners L.P. and Energy Transfer Partners GP, L.P., hereinafter referred to as Respondents, and Respondents 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 Respondents 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents 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 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

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The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent AmeriGas Propane, 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 office and principal place of business at 460 North Gulph Road, King of Prussia, PA 19406.
2. Respondent AmeriGas Propane, Inc. 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 at 460 North Gulph Road, King of Prussia, PA 19406. AmeriGas Propane, Inc. is general partner of AmeriGas Propane, L.P. and a wholly-owned subsidiary of UGI Corporation. UGI Corporation is a publically-traded 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 at 460 North Gulph Road, King of Prussia, PA 19406.
3. Respondent Energy Transfer Partners, L.P. is a publicly traded 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 at 3738 Oak Lawn Avenue, Dallas, TX 75219.
4. Respondent Energy Transfer Partners GP, L.P. is a limited partnership, organized, existing and doing

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business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 8801 South Yale Ave., Suite 310, Tulsa, OK 74137. Energy Transfer Partners GP, L.P. is the general partner of Energy Transfer Partners, L.P.

5. The Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “AmeriGas” means AmeriGas Propane, L.P. and/or AmeriGas Propane, Inc. the directors, partners, officers, employees, agents, representatives, successors, and assigns of each; and their joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by AmeriGas Propane, L.P. or AmeriGas Propane, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each, and includes UGI Corporation, the parent of AmeriGas Propane, Inc.
- B. “ETP” means Energy Transfer Partners, L.P. and/or Energy Transfer Partners GP, L.P., the directors, partners, officers, employees, agents, representatives, successors, and assigns of each; and their joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Energy Transfer Partners, L.P. or Energy Transfer Partners GP, L.P., including but not limited to Heritage ETC and Heritage Propane Express, LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.

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- D. “Acquisition” means the acquisition by AmeriGas of certain propane assets from ETP pursuant to the Contribution Agreement.
- E. “Amendment No. 2” means Amendment No. 2 to the Contribution Agreement, attached hereto as Confidential Appendix A, including the Cylinder Exchange Transition Services Agreement and all other annexes, schedules, exhibits, and amendments to the Amendment.
- F. “Buyer” means any person who, pursuant to the terms of this Order, acquires HPX from ETP.
- G. “Closing” means the consummation of the Acquisition under the Contribution Agreement.
- H. “Contribution Agreement” means the Contribution and Redemption Agreement, dated as of October 15, 2011, as amended, among Energy Transfer Partners, L.P., Energy Transfer Partners GP, L.P., Heritage ETC, L.P., and AmeriGas Partners, L.P., including Amendment No. 2.
- I. “Cylinder Exchange Business” means the business of preparing, distributing, marketing and selling 20-pound portable cylinders pre-filled with propane and collecting used 20-pound portable cylinders for refilling or disposal, within the territory of the United States. As used in this definition, 20-pound portable grill cylinders refer to cylinders that are designed to meet Department of Transportation specifications and are primarily used by consumers in barbeque grills.
- J. “Heritage Propane Express” or “HPX” means Heritage Propane Express, LLC, a limited liability company, 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 at 8801 South Yale Ave., Suite 310, Tulsa, OK 74137. Heritage Propane Express, LLC, is a wholly-owned indirect subsidiary of ETP. As used in this Order, “Heritage

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Propane Express” and “HPX” shall refer to all rights and assets related to or used in any Cylinder Exchange Business in the possession or control of ETP after Closing, including all rights of ETP pursuant to Amendment No. 2.

II.**IT IS FURTHER ORDERED** that:

- A. At or before Closing, Respondents shall amend the Contribution Agreement to include Amendment No. 2.
- B. Upon Closing, Amendment No. 2 shall be incorporated by reference into this Order and made a part hereof. Respondents shall comply with the terms of Amendment No. 2 and a breach by Respondents of any term of Amendment No. 2 shall constitute a violation of this Order. Further, Respondents shall not modify or amend Amendment No. 2 without the prior written approval of the Commission as provided in section 2.41(f) of the Commission’s Rules of Practice, 16 C.F.R. § 2.41(f). To the extent any term in Amendment No. 2 conflicts with the term in this Order such that Respondents cannot fully comply with both, Respondents shall comply with this Order.
- C. For a period lasting until two (2) years after Closing, Respondent ETP shall not sell, transfer or otherwise convey, directly or indirectly, any interest in HPX to any Person, in connection with the Acquisition or otherwise, without the prior approval of the Commission.
- D. For a period lasting ten (10) years after Closing, or until Respondent ETP no longer has an interest in a Cylinder Exchange Business, whichever comes first, Respondent ETP shall not acquire, directly or indirectly, any Cylinder Exchange Business, whether in connection with the Acquisition or otherwise, without providing prior written notification to the Commission before consummating any such

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transaction; *provided, however*, that prior written notification shall not be required for the acquisition of any business with annual net sales in the United States derived from the Cylinder Exchange Business under \$22 million. For the avoidance of doubt, revenue from any sales, operations, or line of business other than a Cylinder Exchange Business shall not be included in determining if the revenue figure in this Paragraph is met.

Further, the prior written notification required by this Paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as the Notification), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice, and Notification is required only of Respondent ETP and not of any other party to the transaction, unless otherwise expressly required by this Order. Respondent ETP shall provide the Notification to the Secretary of the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent ETP shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Commission's Bureau of Competition; *provided, however* that Respondent ETP shall not be required to provide prior notification pursuant to this paragraph of a transaction for which notification is required to be made, and has

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been made pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

- E. For a period lasting until ten (10) years after Closing, Respondent AmeriGas shall not acquire, directly or indirectly, any Cylinder Exchange Business, whether in connection with the Acquisition or otherwise, without providing prior written notification to the Commission before consummating any such transaction; *provided, however*, that prior written notification shall not be required for the acquisition of any business with annual net sales in the United States derived from the Cylinder Exchange Business under \$22 million. For the avoidance of doubt, revenue from any sales, operations, or line of business other than a Cylinder Exchange Business shall not be included in determining if the revenue figure in this Paragraph is met.

Further, the prior written notification required by this Paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as the Notification), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice, and Notification is required only of Respondent AmeriGas and not of any other party to the transaction, unless otherwise expressly required by this Order. Respondent AmeriGas shall provide the Notification to the Secretary of the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent AmeriGas shall not consummate the transaction until

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thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Commission's Bureau of Competition; provided, however that Respondent AmeriGas shall not be required to provide prior notification pursuant to this paragraph of a transaction for which notification is required to be made, and has been made pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

- F. For a period lasting until up to one (1) year after Closing, Respondent AmeriGas shall, at the request of ETP or the Buyer, provide the services required in Amendment No. 2 ("Transition Services") in a manner sufficient to permit ETP or the Buyer to operate HPX in the same manner in all material respects equivalent to the manner in which ETP operated its Cylinder Exchange Business prior to Closing. Further, if ETP sells HPX to a Buyer within a year of Closing, AmeriGas shall, at the request of the Buyer, provide such Buyer with Transition Services for a period of up to six months, which period may, at the option of the Buyer be extended for up to an additional six months (this sentence is intended to enable a Buyer to receive Transition Services for up to twelve (12) months).
- G. For a period lasting until two (2) years after Closing, or Respondent ETP retains no interest in a Cylinder Exchange Business, whichever comes first; Respondent ETP shall (i) operate HPX in a manner that maintains its full economic viability and marketability and minimizes the risk of any loss of competitive potential, and prevents the destruction, removal, wasting, deterioration or impairment of any assets of HPX; and (ii) upon the sale of HPX, transfer the HPX assets in a manner that retains their full economic viability and provide such services and assistance to the Buyer as are reasonably necessary to enable the Buyer to operate HPX in a manner at least

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equivalent to the manner in which it was operated by ETP.

- H. The purpose of this Decision and Order is to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint, and to assure that HPX remains viable, independent and competitive.

III.**IT IS FURTHER ORDERED** that

- A. Respondent AmeriGas shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:
1. Thirty (30) days after the Order becomes final;
 2. Six (6) months after the Order becomes final and every six months thereafter so long as Respondent AmeriGas is obligated to provide Transition Services pursuant to the Order; and
 3. Annually for ten (10) years after the Order becomes final.
- B. Respondent ETP shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:
1. Thirty (30) days after the Order becomes final;
 2. Six months (6) after the Order becomes final and every six months thereafter for two (2) years; and
 3. Annually, for ten (10) years after the Order becomes final.

Provided, however, that ETP shall not be required to provide reports under this Paragraph if it no longer

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owns, directly or indirectly, any interest in a Cylinder Exchange Business.

- C. For purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to a Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:
1. access, during business office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
 2. to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

IV.**IT IS FURTHER ORDERED** that

- A. Respondents shall notify the Commission at least thirty (30) days prior to:
1. any proposed dissolution of such Respondents;
 2. any proposed acquisition, merger or consolidation of Respondents; or

Analysis to Aid Public Comment

3. any other change in the Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

V.

IT IS FURTHER ORDERED that this Order shall terminate on January 10, 2022.

By the Commission.

CONFIDENTIAL APPENDIX A**Amendment No. 2 to the Contribution Agreement**

**[Redacted From the Public Record Version, But Incorporated
By Reference]**

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT****I. Overview**

The Federal Trade Commission has accepted an Agreement Containing Consent Order (“Proposed Order”) with AmeriGas Propane, L.P. (“AmeriGas”), AmeriGas Propane, Inc., Energy Transfer Partners, L.P. (“ETP”), and Energy Transfer Partners GP, L.P. (“ETP GP”), which is designed to guard against possible anticompetitive effects that would likely result from the transaction as originally proposed.

Analysis to Aid Public Comment

On October 15, 2011, AmeriGas entered into an agreement with ETP and ETP GP in which AmeriGas proposed to acquire ETP's Heritage Propane business through the approximately \$2.9 billion acquisition of four entities owned by ETP, Heritage Operating, L.P., Heritage GP, LLC, Titan Energy Partner, L.P., and Titan Energy GP, L.L.C. ETP's Heritage Propane business includes Heritage Propane Express, an entity that is engaged in the business of preparing, filling, distributing and selling portable cylinders prefilled with propane commonly used for barbeque grills (referred to herein as "propane exchange cylinders"). The AmeriGas Cylinder Exchange or "ACE" division is also engaged in the business of preparing, filling, distributing and selling exchange cylinders, and is the second largest provider of propane exchange cylinders in the United States. In response to competitive concerns raised by Commission staff regarding AmeriGas's purchase of the Heritage Propane Express Business, the parties subsequently proposed a modified transaction that excludes those assets. The Order, as accepted by the Commission, settles charges that the acquisition, as originally proposed, may have substantially lessened competition in the market for preparing, filling, distributing and selling propane exchange cylinders in the United States and in certain regional areas within the United States.

II. The Parties

AmeriGas, a limited partnership, is the largest propane distribution company in the United States. Its ACE division supplies prefilled propane exchange cylinders to retailers who then sell those cylinders to consumers. AmeriGas is the second largest supplier and marketer of propane exchange cylinders.

ETP GP is a publicly traded partnership and the general partner of ETP, which is also a publicly traded partnership. ETP is engaged in the business of supplying propane exchange cylinders through its Heritage Propane Express division. Heritage Propane Express is the third largest supplier and marketer of propane exchange cylinders in the country with operations in 37 states.

Analysis to Aid Public Comment

III. The Products and the Structure of the Market

Propane exchange cylinders, often referred to as 20 pound DOT cylinders,¹ are small, portable tanks that can be filled with propane, and that are used primarily for barbeque grills, patio heaters, and mosquito magnets. At one time, the only option for consumers who needed to purchase propane for these uses was to purchase empty cylinders and take them to locations where they could have the cylinders filled. Starting in the 1990's cylinder exchange became popular. This option allows consumers to purchase a prefilled cylinder which can then be exchanged for a clean prefilled cylinder when the fuel in the first cylinder has been used. The consumer exchanging an empty cylinder for a full one typically pays only for the propane. Exchange cylinders are available for purchase and exchange at various locations, including grocery stores, home improvement stores, hardware stores, big box stores, conveniences stores, and gas stations. Although consumers have the option of refilling these cylinders, many prefer the convenience of purchasing prefilled exchange cylinders that have been cleaned and safety tested by the supplier before they are sold. Many retailers also prefer the convenience and possible safety benefits of selling prefilled exchange cylinders rather than arranging to have large propane tanks on their premises and training employees to perform refilling services. For these reasons, the use of propane exchange cylinders has grown, and the refilling of cylinders has declined over the last ten years. As a consequence of these changes in demand, refilling cylinders does not provide a competitive constraint on the price of propane cylinder exchange services.

Companies that distribute and sell propane exchange cylinders typically provide the following services, either directly or indirectly: cylinder preparation (including cleaning, rust removal, repainting and valve repairs for the cylinders); refilling with a designated amount of propane; marketing and distribution

1 The metal cylinders can hold approximately 25 pounds of propane, but for safety reasons, can only be filled to 80% capacity, or approximately 20 pounds. In the marketplace at this point in time, most exchange cylinders are only filled with 15 to 17 or so pounds of propane. The reference in this Analysis is intended as a description of the size and type of cylinder, and is not a reference to actual fill levels.

Analysis to Aid Public Comment

(including delivery and retrieval of cylinders, and placement and maintenance of cages that display and dispense exchange cylinders at retail locations); and sale of exchange cylinders.

IV. The Complaint

The Complaint alleges that the market for propane exchange cylinder services that can serve large multi-state chain retailers is highly concentrated. Large multi-state retail chains generally require that their propane exchange cylinder suppliers have the scale and geographic scope of coverage to handle significant portions of their business. These retailers also require that their propane exchange cylinder suppliers offer “just in time” deliveries to ensure that cages are continuously stocked with prefilled cylinders, particularly during peak holiday periods and weekends. Currently, there are only three suppliers that can provide propane exchange cylinder services to such retailers: Ferrellgas Partners, L.P.’s “Blue Rhino” division, the largest provider of propane exchange cylinder services on a national and regional basis; AmeriGas’s ACE, the second largest provider of propane exchange cylinder services; and ETP’s Heritage Propane Express, the third largest provider of these services. The Complaint alleges that AmeriGas’s acquisition of the Heritage Propane Exchange assets, as originally proposed, would have reduced the number of companies that can supply these services to multi-state retail chains from three to two.

The Complaint further alleges that Heritage Propane Express played the role of a disruptive “maverick,” offering lower prices and better terms and conditions than the other two large players. In addition, the Complaint alleges that entry into the market for supply of propane exchange cylinder services to large multi-state chain retailers is not likely to be timely or sufficient to defeat a price increase due to the large scale of entry needed to service large national or regional retailers requiring reliable distribution services in many locations.

The Complaint alleges that the effect of the acquisition, as originally proposed, may be to substantially lessen competition by, *inter alia*, increasing the likelihood of collusion or coordinated interaction among the remaining two large

Analysis to Aid Public Comment

competitors by removing Heritage Propane Express, a disruptive force in the marketplace.

V. The Modified Transaction

AmeriGas, AmeriGas Propane, Inc., ETP and ETP GP have now entered into an amendment to their original agreement. Pursuant to this amendment (“Amendment 2”), AmeriGas will not acquire the Heritage Propane Express assets. Rather, they will continue to be operated by ETP through a new subsidiary, Heritage Propane Express, LLC, until such time as ETP decides to sell those assets. However, because Heritage Propane Express, LLC will no longer have access to certain back office and propane supply services that will be transferred to AmeriGas, AmeriGas is required to make such services available to Heritage Propane Express, LLC at cost for a specified period of time. This provision will allow Heritage Propane Express, LLC to continue to function as a viable entity. Amendment 2 contains a number of other provisions addressing the provision of transition services that are likely to be needed. Because Amendment 2 contains competitively sensitive information, the details of the transition services are not publicly available.

VI. The Order

The Order remedies the Commission’s competitive concerns raised by the original transaction, as proposed.

The Order incorporates Amendment 2, described above, into the Order and requires the Respondents to comply with all the terms of that document, including all terms pertaining to the provision of transition services by AmeriGas to Heritage Propane Express, LLC until such time as Heritage Propane Express, LLC is sold to another entity, or, barring a sale, for a period of one year. The specified transition services include access to propane supply under specified terms.

Section II.C of the Order requires that, for a period of two years, ETP cannot sell the Heritage Propane Express assets without prior written approval of the Commission. This ensures that the Commission will have an opportunity to review a future sale of these assets, particularly if the assets would not be

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reportable under the Hart-Scott-Rodino Antitrust Improvements Act. Section II.D requires ETP to provide prior notification to the Commission before acquiring any other cylinder exchange businesses for the next 10 years. Section II.E similarly requires AmeriGas to provide prior notification to the Commission before acquiring any other cylinder exchange businesses for the next 10 years. Both II.D and II.E provide that prior notification is not necessary for transactions that fall under a certain threshold in terms of the annual sales of propane exchange cylinders by any company that they propose to acquire.

Section II.F addresses the availability of the transition services outlined in Amendment 2. It requires that AmeriGas make these transition and supply services available to ETP for up to one year, so that Heritage Propane Express, LLC can be operated as a viable entity. If that company is sold within one year, Section II.F requires that AmeriGas provide transition and propane supply services to Heritage Propane Express's buyer for a period of six months, with an option to extend the arrangement for another six months. These provisions are designed to ensure that the Heritage Propane Express assets will continue to be viable as a stand-alone propane exchange cylinder business and that any new purchaser will have the necessary services and supply for a short transition period. Section II.G requires ETP to operate the Heritage Propane Express assets in a manner that maintains their economic viability for a period of two years or until ETP no longer holds an interest in the assets.

The remaining Order provisions are standard reporting requirements to allow the Commission to determine on-going compliance with the provisions of the Order.

Analysis to Aid Public Comment

VII. Opportunity for Public Comment²

The Final Order has been placed on the public record for 30 days to receive comments from interested parties. Comments received during this period will become part of the public record. After 30 days, the Commission will review the comments received and determine whether to take further action. The purpose of this analysis is to facilitate comment on the Consent Agreement and Order. This analysis does not constitute an official interpretation of the Consent Agreement or Order, nor does it modify its terms in any way. The Consent Agreement does not constitute an admission by AmeriGas, ETP or ETP GP that they have violated the law or that the facts as alleged in the Complaint, other than the jurisdictional facts, are true.

²The Commission normally will issue an order for public comment but not issue a final order until it considers all comments received during the comment period. Here, however, consistent with Commission Rule 2.34(c), 16 C.F.R. § 2.34(c), the Commission has issued the Final Order in advance of the comment period. The Commission took this step to avoid any unnecessary and potentially costly delay to the larger underlying transaction involving the sale of ETP's bulk propane business, which is not the subject of the Order, and is a highly seasonal business; that is, the market for bulk propane and related services is greatest during the winter and early spring. After the public comment period, the Commission will have the option to initiate a proceeding to reopen and modify the Decision and Order or commence a new administrative proceeding if the public comments lead it to believe that such action is appropriate.

Complaint

IN THE MATTER OF

SIGMA CORPORATIONCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4347; File No. 101 0080**Complaint, February 27, 2012 – Decision, February 27, 2012*

This consent order addresses Sigma Corporation's business methods, which made it easier to coordinate price levels through an entity known as the Ductile Iron Fittings Research Association. The complaint alleges that Sigma violated Section 5 of the Federal Trade Commission Act by inviting McWane and Star to collude with Sigma to increase DIPF prices in early 2009. The consent order prohibits Sigma from participating in or maintaining any combination or conspiracy between any competitors to fix, raise or stabilize the prices at which DIPF are sold in the United States, or to allocate or divide markets, customers, or business opportunities.

Participants

For the *Commission*: Christopher G. Renner.

For the *Respondent*: Douglas Jasinski, White & Case LLP.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Sigma Corporation ("Sigma") has violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges as follows:

NATURE OF THE CASE

1. This action concerns Sigma's unfair methods of competition relating to the marketing and sale of ductile iron pipe fittings ("DIPF").