

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The Secretary of the Commission having thereafter withdrawn the matter from adjudication in accordance with §3.25(c) of its Rules; and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 for a period of thirty (30) days for the receipt and consideration of public comments, and having duly

- 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 marketed and sold prefilled with propane, and used for supplying fuel for propane barbecue grills and heaters, among other things. These tanks are commonly called “fill 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

- K. "Propane Refilling Agreement" means an agreement to (i) Refill Propane Tanks on behalf of a Competitor, or (ii) have a Competitor Refill Propane Tanks on behalf of ACE Respondents. A Propane Refilling Agreement may include ancillary transportation services; however, an agreement that includes goods and services in addition to Refilling and ancillary transportation services is not a Propane Refilling Agreement.
- L. "Refill" or "Refilling" means preparing and filling Propane Tanks that have been returned by an end user so that the cylinders can be reused. Refilling includes, but is not limited to, cleaning, refurbishing, repainting and/or filling the cylinders.
- M. "Restricted Employees" means employees, officers or agents whose duties include, in whole or part, determining the Fill Level for, or the sales, marketing or prof, Propane Tanks for a Propane Tank Exchange Business

II.

IT IS FURTHER ORDERED that in connection with ACE Respondents' Propane Tank Exchange Business

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 current 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 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
4. Respond to health, safety, emergency or regulatory matters so long as ACE Respondents disclose Competitively Sensitive Non-Public Information in the course of responding to such matters only to the extent reasonably necessary; and
5. Participate in industry-wide data exchange or market research so long as i) neither ACE Respondent or Competitors participate in collecting or aggregating Competitively Sensitive Non-Public Information; ii) ACE Respondents only provide Competitively Sensitive Non-Public Information that is at least three (3) months old; and iii) no Competitively Sensitive Non-Public Information is Communicated to ACE Respondent or any Competitor except as part of aggregated industry-wide data collected from at least five (5) firms, none of whose data accounts for more than 25% of the total data collected and Communicated

III.

IT IS FURTHER ORDERED that, within five (5) days of issuance of this Order:

- A. ACE Respondents shall establish and maintain an antitrust compliance program for their Propane Tank Exchange Business in the United States

V.

IT IS FURTHER ORDERED that ACE Respondents shall notify the Commission at least thirty (30) days prior to:

A. any proposed dissolution of ACE

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