

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Timothy J. Muris, Chairman  
Mozelle W. Thompson  
Orson Swindle  
Thomas B. Leary  
Pamela Jones Harbour

In the Matter of	)	
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	)	
<b>American Air Liquide, Inc.,</b>	)	File No. 041-0020
a corporation.	)	
	)	
	)	
	)	

**AGREEMENT CONTAINING CONSENT ORDERS**

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by L’Air Liquide, Société Anonyme à Directoire et Conseil de Surveillance pour L’Etude et L’Exploitation des Procédés Georges Claude (“L’Air Liquide”) of Messer Griesheim GmbH, a subsidiary of Messer Griesheim Group GmbH & Co. KGaA, and the subsequent transfer of Messer Griesheim Industries, Inc. to Respondent American Air Liquide, Inc. (“AAL”), and it now appearing that Respondent AAL, hereinafter sometimes referred to as “Proposed Respondent,” is willing to enter into this Agreement Containing Consent Orders (“Consent Agreement”) to divest certain assets and providing for other relief:

**IT IS HEREBY AGREED** by and between Proposed Respondent, by its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent AAL is a corporation 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 46409 Landing Parkway, Fremont, CA 94538.
2. Proposed Respondent admits all the jurisdictional facts set forth in the draft of Complaint here attached.
3. Proposed Respondent waives:

- (a) any further procedural steps;
  - (b) the requirement that the Commission's Decision and Order and Order to Hold Separate and Maintain Assets, both of which are attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;
  - (c) all rights to seek judicial review or otherwise challenge or contest the validity of the Decision and Order or Order to Hold Separate and Maintain Assets entered pursuant to this Consent Agreement; and
  - (d) any claim under the Equal Access to Justice Act.
4. Because there may be interim competitive harm, the Commission may issue its Complaint and an Order to Hold Separate and Maintain Assets in this matter at any time after it accepts the Consent Agreement for public comment.
  5. Proposed Respondent shall submit an initial report within thirty (30) days of the date on which they execute this Consent Agreement and every thirty (30) days thereafter until the Decision and Order becomes final, pursuant to Section 2.33 of the Commission's Rules, 16 C.F.R. § 2.33, or the required divestiture is accomplished, whichever is earlier, signed by the Proposed Respondent and setting forth in detail the manner in which the Proposed Respondent has to date complied or has prepared to comply, is complying, and will comply with the Decision and Order and Order to Hold Separate and Maintain Assets. Such reports will not become part of the public record unless and until the Consent Agreement, Decision and Order, and Order to Hold Separate and Maintain Assets are accepted by the Commission for public comment.
  6. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it, together with the Complaint contemplated thereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and issue its Decision and Order, in disposition of the proceeding.
  7. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of Complaint here attached, or that the facts as alleged in the draft of Complaint, other than jurisdictional facts, are true.
  8. This Consent Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to Proposed Respondent: (1) issue and serve its Complaint corresponding in form with the draft of Complaint here attached and its

Decision and Order, (2) issue and serve its Order to Hold Separate and Maintain Assets, and (3) make information public with respect thereto.

9. When final, the Decision and Order and the Order to Hold Separate and Maintain Assets shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order and Order to Hold Separate and Maintain Assets shall become final upon service. Delivery of the Complaint, Decision and Order, and Order to Hold Separate and Maintain Assets to Proposed Respondent by any means provided in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a), shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. Proposed Respondent also waives any right it may otherwise have to service of any Appendices incorporated by reference into the Decision and Order, and agrees that it is bound to comply with and will comply with the Decision and Order to the same extent as if it had been served with copies of the Appendices, where Proposed Respondent is already in possession of copies of such Appendices.
10. The Complaint may be used in construing the terms of the Decision and Order and Order to Hold Separate and Maintain Assets, and no agreement, understanding, representation, or interpretation not contained in the Decision and Order, Order to Hold Separate and Maintain Assets or the Consent Agreement may be used to vary or contradict the terms of the Decision and Order or Order to Hold Separate and Maintain Assets.
11. By signing this Consent Agreement, Proposed Respondent represents and warrants that it can accomplish the full relief contemplated by the attached Decision and Order and Order to Hold Separate and Maintain Assets (including effectuating all required divestitures, assignments, and transfers and obtaining all necessary approvals from governmental authorities, leaseholders, and other third parties to effectuate the divestitures, assignments and transfers) and that all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement are parties to this Consent Agreement and are bound thereby as if they had signed this Consent Agreement and were made parties to this proceeding and to the Decision and Order.
12. Proposed Respondent has read the draft of Complaint, and the Decision and Order and Order to Hold Separate and Maintain Assets contemplated hereby. Proposed Respondent understands that once the Decision and Order and Order to Hold Separate and Maintain Assets have been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Decision and Order and Order to Hold Separate and Maintain Assets. Proposed Respondent agrees to comply with the proposed Decision and Order and proposed Order to Hold Separate and Maintain Assets from the date it signs this Consent Agreement. Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order and Order to Hold Separate and Maintain Assets after they become final.

**L'AIR LIQUIDE SA**

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Benoît Potier  
Chairman of  
the Management Board  
L'Air Liquide SA

**AMERICAN AIR LIQUIDE, INC.**

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Gregory B. Alexander  
Vice President and Treasurer  
American Air Liquide, Inc.

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Brian Byrne, Esq.  
Cleary, Gottlieb, Steen & Hamilton  
Counsel for L'Air Liquide SA and  
American Air Liquide, Inc.

**FEDERAL TRADE COMMISSION**

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Attorneys

**APPROVED:**

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Bureau of Competition

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Susan A. Creighton  
Director  
Bureau of Competition

Dated April \_\_\_\_, 2004