

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

_____)	
In the Matter of)	
Linde AG)	
a corporation,)	
Praxair, Inc.)	Docket No. C- 4660
a corporation, and)	File No. 171-0068
)	
Linde PLC)	
a corporation.)	
_____)	

PETITION FOR APPROVAL OF AMENDMENTS TO CERTAIN ANCILLARY AGREEMENTS RELATING TO THE DIVESTITURE OF THE INDUSTRIAL GASES ASSETS AND HELIUM ASSETS TO MESSER INDUSTRIES, GMBH

Pursuant to Section 2.41(f) of the Federal Trade Commission (“**Commission**”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2011), and Paragraphs II.E.2(b) and III.C of the Decision and Order contained in the Agreement Containing Consent Orders issued in this matter (the “**Decision and Order**”), Linde AG, Praxair, Inc. and Linde PLC (together, “**Respondents**”) hereby petition the Commission to approve amendments to certain ancillary agreements relating to the divestiture of the Industrial Gases Assets to Messer Industries, GmbH (“**Messer**”). Respondents and Messer have agreed to [Redacted from the Public Record Version] (the

PUBLIC RECORD VERSION

“**Amended Agreement**”). Subject to the Commission’s approval, Respondents and Messer have agreed to [Redacted from the Public Record Version].¹

Because, as described in more detail below, the Amended Agreement is unlikely under any plausible facts to affect achieving the remedial purposes of the Decision and Order, Respondents respectfully request that the Commission’s authorized delegates waive the requirement that this Application be approved, or else eliminate the comment period required for such approval, each as provided for under 16 C.F.R. § 2.41(f)(5)(ii).

I. Introduction

On October 1, 2018, Respondents executed an Agreement Containing Consent Orders (the “**Consent Agreement**”) to settle the Commission’s charges related to the proposed combination of Linde and Praxair (the “**Transaction**”) and issued a Decision and Order approving the Transaction subject, in pertinent part, to the divestiture of the Industrial Gases Assets to Messer or another suitable buyer. On February 26, 2019, the Commission issued a revised final Decision and Order.

On July 16, 2018 Respondents entered into the Americas Sale and Purchase Agreement and additional ancillary agreements and amendments (together, the “**Messer Divestiture Agreements**”) to sell the Industrial Gases Assets and the Helium Assets to Messer. The Commission approved the application from Respondents for the sale of the Industrial Gases Assets and the Helium Assets to Messer on February 26, 2019. On March 1, 2019, Respondents completed the divestiture of the Industrial Gases Assets and the Helium Assets to Messer. Respondents notified the Commission of the date the divestiture was completed on March 11,

¹ [Redacted from the Public Record Version]

2019, submitting complete Messer Divestiture Agreements consistent with Paragraph IX.A.2. of the Decision and Order.

II. Respondents and Messer’s Requested Amendments to the FPSA

Respondents and Messer have been impacted by the economic downturn in response to the COVID-19 pandemic. *[Redacted from the Public Record Version]*.

Subject to the Commission’s approval, Respondents and Messer have agreed to *[Redacted from the Public Record Version]*.^{2 3}

The requested amendments are minor, in the commercial interests of the Parties, and consistent with the Decision and Order. First, the requested amendments are in line with the requirements for Transitional Assistance under the Decision and Order. *[Redacted from the Public Record Version]*. In addition, the requested amendments also are consistent with the principles of the underlying FPSA already approved by the Commission as part of the Divestiture Agreement. *[Redacted from the Public Record Version]*.

III. Conclusion

As described above, the Amended Agreement reflects only minor changes that implement necessary revisions to account for the disruptions of COVID-19, while preserving the overall economics of the service consistent with the framework for Transitional Assistance under the Order. These changes are unlikely under any plausible facts to affect achieving the remedial purposes of the divestiture of the Industrial Gases Assets and the Helium Assets. Accordingly, we request that the Commission’s authorized delegates waive the requirement that this Application be approved, or else eliminate the comment period required for such approval, each as provided for under 16 C.F.R. § 2.41(f)(5)(ii).

² *[Redacted from the Public Record Version]*

³ *[Redacted from the Public Record Version]*

IV. Request for Confidential Treatment

This Application and its attachments contain confidential and competitively sensitive business information relating to the Respondents and the divestiture of the Industrial Gases Assets and the Helium Assets. Disclosure of this information may prejudice the Respondents and Messer, cause harm to the ongoing competitiveness of the Industrial Gases Assets and the Helium Assets and impair the Respondents' ability to comply with their obligations under the Consent Agreement.

Pursuant to Section 4.2(d)(4) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.2(d)(4), the Respondents are submitting two versions of this Application. The confidential version contains nonpublic or commercially or competitively sensitive information. The public version redacts confidential information. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. §§ 2.41(f)(4) and 4.9(c), the Respondents request, on their own behalf and on behalf of Messer, that the confidential version of this petition and its attachments and the information contained herein be accorded confidential treatment under all applicable statutes and regulations.

Dated: June 16, 2020

Respectfully submitted,



Thomas A. McGrath
Linklaters LLP
1345 Avenue of the Americas
New York, NY 10105
Telephone: (212) 903-9000
Counsel for Respondents

PUBLIC RECORD VERSION

Schedule 1

[Redacted from the Public Record Version]

Confidential Appendix 1

[Redacted from the Public Record Version]

Confidential Appendix 2

[Redacted from the Public Record Version]