

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.)
a corporation, and)
)
Linde PLC)
a corporation.)
_____)

Docket No. C- 4660
File No. 171-0068

**PETITION OF LINDE AG, PRAXAIR, INC., AND LINDE PLC FOR APPROVAL OF
THE PROPOSED 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) (2016), and Paragraph II.A. of the Decision and Order contained in the Agreement Containing Consent Orders accepted for public comment in this matter (“**Decision and Order**”), Linde AG (“**Linde**”), Praxair, Inc. (“**Praxair**”), and Linde PLC (together, the “**Respondents**”) hereby petition the Commission to approve the divestiture of the Industrial Gases Assets and Helium Assets¹ to Messer Industries, GmbH

¹ All capitalized terms not defined herein have the meanings given to them in the Decision and Order, accepted by the Federal Trade Commission for public comment on October 22, 2018.

(formerly MG Industries GmbH) (“**Messer Industries**”), a corporation organized under the laws of the Federal Republic of Germany.²

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**”). On October 22, 2018, the Commission accepted the Consent Agreement for public comment. The Respondents completed the Transaction on October 31, 2018. The Order to Hold Separate and Maintain Assets (the “**Hold Separate Order**”) requires the Respondents to operate Linde and Praxair independently until the Industrial Gases Assets and HyCO SMR Assets have been divested. Paragraph II.A.1 of the Decision and Order requires the Respondents to divest the Industrial Gases Assets and Helium Assets as on-going businesses to Messer Industries or to any other Person that receives the prior approval of the Commission.

The Respondents intend to complete the proposed divestiture to Messer Industries as soon as possible following Commission approval. The Respondents are eager to satisfy their obligations under the Hold Separate Order so that they may integrate their operations. A prompt closing will also allow Messer Industries to begin executing on its business plans for the Industrial Gases Assets and the Helium Assets. The Respondents request that the Commission grant this petition and approve Messer Industries as the buyer of the Industrial Gases Assets and Helium Assets as soon as practicable.

² Messer Industries’ office and principal place of business is located at Messer-Platz 1, 65812 Bad Soden/Taunus, Germany.

II. The Divestiture Agreements Satisfy the Requirements of the Decision and Order.

Subject to the Commission's approval, the Respondents entered into the Americas Sale and Purchase Agreement (the "**Americas SPA**") and additional ancillary agreements (together, the "**Divestiture Agreements**") to sell the Industrial Gases Assets and the Helium Assets to Messer Industries.³ The Divestiture Agreements will accomplish the divestiture of the Industrial Gases Assets and the Helium Assets consistent with the terms of the Decision and Order and the Hold Separate Order.

Paragraph II.A.1. of the Decision and Order requires the Respondents to divest the Industrial Gases Assets and the Helium Assets as on-going businesses to Messer Industries or to any other Person that receives the prior approval of the Commission. The scope of the Divestiture Agreements is consistent with this obligation. All the Respondents' rights, title, and interests in the Industrial Gases Assets and the Helium Assets will be acquired by Messer Industries. The Divestiture Agreements are also consistent with the additional provisions of the Decision and Order. In particular:

- As required by Paragraph II.B.1, the Respondents will grant Messer Industries the ability to use any Intellectual Property required to operate the Helium Business, anywhere in the world, in a manner consistent with the operation of the Helium Business as of the closing of the Transaction and with the freedom to extend the existing products and services and develop new products and services. [Redacted from the Public Record Version].
- As required by Paragraph II.C, Messer Industries will acquire customer Contracts with a volume of business equal to the historical volume of each relevant business and location and of quality and terms substantially similar to those retained by the Respondents.

³ [Redacted from the Public Record Version].

- As required by Paragraphs II.D.1-2, the Respondents will provide Transitional Assistance at the option of Messer Industries and on terms consistent with the Decision and Order.⁴
- As required by Paragraph II.D.3, the Respondents have agreed not to sell or provide Laser Gases produced at any facility owned or operated by Linde prior to the closing of the transaction between Praxair and Linde to any Person in the United States, other than Messer, during the period of the supply relationship regarding Laser Gases under the Product Supply Agreements up to a maximum period of five years.⁵
- As required by Paragraph II.D.4, the Respondents have agreed to establish a Construction Fund within 30 days from the date the Respondents divest the Laser Gases Assets.⁶
- As required by Paragraph II.D.5, the Respondents will provide EP&C Assistance at the option of Messer Industries and on terms consistent with the Decision and Order.⁷
- As required by Paragraph II.E, the Respondents are working cooperatively with Messer Industries to obtain any outstanding Governmental Authorizations and Consents prior to closing. [Redacted from the Public Record Version].
- As required by Paragraph IV.A, Linde has worked cooperatively with Messer Industries to allow Messer Industries to conduct its due diligence of the Industrial Gases Assets and the Helium Business Gases Businesses. [Redacted from the Public Record Version].⁸
- As required by Paragraph IV.B, Linde is working cooperatively with Messer Industries to assist Messer Industries with identifying and hiring any Active Employee whose

⁴ [Redacted from the Public Record Version]

⁵ [Redacted from the Public Record Version]

⁶ [Redacted from the Public Record Version]

⁷ [Redacted from the Public Record Version]

⁸ [Redacted from the Public Record Version]

responsibilities relate in any way to the Gases Assets to be divested to Messer Industries.

[Redacted from the Public Record Version].

III. Messer Industries Has the Ability and Incentive to Maintain Competition.

The operative question when evaluating a proposed divestiture buyer is whether the buyer is “ready, willing, and able to operate the assets in a manner that maintains or restores competition.”⁹ Put another way, a buyer must have both “(1) the financial capability and incentives to acquire and operate the assets, and (2) the competitive ability to maintain or restore competition in the market.”¹⁰ Messer Industries more than satisfies both of these requirements.

A. Background on Messer Industries.

Messer Industries is a joint venture established by Messer Group GmbH (“**Messer Group**”) and CVC Capital Partners (“**CVC**”) for the purpose of acquiring the Industrial Gases Assets and the Helium Assets.

Messer Group is an independent, family-owned company with over 120 years of experience in the design and operation of ASUs. Messer Group generates revenues in excess of €1.2 billion and is one of the leading industrial gas companies in Europe, China, and Vietnam. Since 2004, Messer Group has constructed eighteen ASUs in Europe and twenty-five ASUs in China.

CVC is a leading global private equity firm with \$65 billion of assets under management and offices in Europe, the Americas, and Asia. Since its inception in 1981, CVC has

⁹ MERGER CONSENT ORDER FAQs, Q. 15, <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/mergers/merger-faq> (hereinafter “Merger Consent Order FAQs”).

¹⁰ STATEMENT OF THE BUREAU OF COMPETITION OF THE FED. TRADE COMM’N, NEGOTIATING MERGER REMEDIES, at 10 (January 2012) (hereinafter “NEGOTIATING MERGER REMEDIES”), <https://www.ftc.gov/system/files/attachments/negotiating-merger-remedies/merger-remediesstmt.pdf>.

acquired more than 300 companies with a combined enterprise value of \$250 billion. Today, funds managed or advised by CVC are invested in 50 companies worldwide with a combined annual sales of over \$70 billion.

Messer Group will own a majority of Messer Industries and will take operational control of the new company. Messer Group will also contribute to Messer Industries: (i) its Western European industrial gas activities, with annual revenue of [Redacted from the Public Record Version] and an adjusted 2017 EDITDA of [Redacted from the Public Record Version]; (ii) [Redacted from the Public Record Version] in cash equity; (iii) the right to use the Messer Group trademarks; and (iv) full access to Messer Group's corporate functions, including its central engineering, applications, information technology, procurement, and logistics departments. CVC will contribute the remaining cash equity required for the purchase of the Industrial Gases Assets and the Helium Assets [Redacted from the Public Record Version].

B. Messer Industries Has the Financial Capability and Commitment to Maintain Competition.

Messer Group and CVC have made a substantial financial commitment to purchase and grow the Industrial Gases Business and the Helium Business and have an incentive for Messer Industries to thrive. [Redacted from the Public Record Version].¹¹ Capex will subsequently be funded by Messer Group; there is no requirement for further capital. Messer Group has said that its long-term vision is to fully consolidate Messer Industries with Messer Group and become a strong global industrial gas player for years to come, and CVC will provide [Redacted from the Public Record Version] financial support for that goal. [Redacted from the Public Record Version]

¹¹ [Redacted from the Public Record Version]

C. Messer Industries Has the Experience and Ability to Maintain Competition.

Messer Group and CVC have the “experience, commitment, and incentives necessary” to achieve the divestiture’s remedial objective.¹² Messer Group has manufactured and supplied oxygen, nitrogen, argon, carbon dioxide, hydrogen, helium, specialty gases, and many other gas products and mixtures for more than 120 years. It operates a laser gases business in China. Its customer base spans almost all industrial sectors as well as healthcare and science. Messer Group also has experience with engineering, applications technology, and information technology, which when combined with the Industrial Gases Assets and the Helium Assets, will allow Messer Industries to become a strong U.S. competitor. Messer Group currently has operations in Europe, China, Vietnam, and other countries in Southeast Asia.¹³ Furthermore, Messer Industries will be assisted by the existing Linde U.S. management team that will be in place to run the Industrial Gases Business and the Helium Business. This management team has already prepared extensive business plans to run the divested businesses.

D. Messer Industries’ Acquisition of the Industrial Gases Assets and the Helium Assets Raises No Competitive Issues.

Messer Group has no U.S. commercial operations overlapping with the Industrial Gases Assets and the Helium Assets. CVC has no other investments or interest in companies involved in the production or distribution of industrial gases. Thus, while Messer Industries has the advantage of extensive expertise in the industrial gas industry, its acquisition of the Industrial

¹² NEGOTIATING MERGER REMEDIES, at 11.

¹³ Although CVC will not have operational control of Messer Industries, CVC brings to the table a proven track record of success in working with industrial players to grow their businesses and prepare them for public offerings. For example, in 2008, CVC acquired a 50% stake in Pilot Flying J, in the largest operator of truck-stops in North America, in partnership with the Haslam family. CVC contributed financial support and its experience in operational improvement through 2015. The Haslam family re-purchased CVC’s stake over time.

Gases Assets and Helium Assets does not raise any competitive issues. To the contrary, the Industrial Gases Assets and Helium Assets are highly complementary to Messer Group's existing operations in Europe and Asia and will transform Messer Group into a global industrial-gas competitor.

IV. Conclusion.

Divestiture of the Industrial Gases Assets and Helium Assets to Messer Industries will restore any lessening of competition in the United States threatened by the combination of Praxair and Linde. Messer Industries is a highly-capable buyer that will acquire a turn-key ready business that will be fully functional at closing. Thus, Messer Industries is positioned to maintain competition at its pre-merger state. Moreover, Messer Industries' acquisition of the Industrial Gases Assets and Helium Assets does not raise any competitive issues because the assets are highly complementary to Messer Group's existing footprint in Europe and Asia.

The proposed divestiture of the Industrial Gases Assets and Helium Assets to Messer Industries will accomplish the purposes of the Decision and Order and further the Commission's goals. Accordingly, the Respondents and Messer Industries seek expeditious Commission approval of this Application.

V. 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 Industries, cause harm to the ongoing competitiveness of the Industrial Gases Assets and the Helium Assets, and impair the Respondents' ability to comply with its obligations under the Consent Agreement.

PUBLIC RECORD VERSION

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), Praxair and Linde request, on their own behalf and on behalf of Messer Industries, 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: November 8, 2018

Respectfully submitted,



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Confidential Appendix 2

[Redacted from the Public Record Version]