

Linde PLC (together, “**Respondents**”) hereby petition the Commission to approve the divestiture of the HyCO Clear Lake Assets¹ to Celanese Ltd. (“**Celanese**”).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.3 of the Decision and Order requires Respondents to divest the HyCO Clear Lake Assets as on-going businesses to Celanese or to any other Person that receives the prior approval of the Commission. The Respondents intend to complete the proposed divestiture to Celanese as soon as possible following Commission approval. The Respondents request that the Commission grant this petition and approve Celanese as the buyer of the HyCO Clear Lake Assets as soon as practicable.

II. The APA is Consistent with the Requirements of the Decision and Order.

Subject to the Commission’s approval, Linde Gas North Americas LLC (“**LGNA**”) entered into an asset purchase agreement and additional ancillary agreements to sell

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

² Celanese’s office and principal place of business is located at 222 W. Las Colinas Blvd., Irving, Texas 75229. Celanese is a Texas Limited Partnership, and Celanese International Corporation is its general partner.

the HyCO Clear Lake Assets to Celanese (the “APA”).³ The APA will accomplish the divestiture of the HyCO Clear Lake Assets consistent with the terms of the Decision and Order and the Hold Separate Order.

Paragraph II.A.3 of the Decision and Order requires the Respondents to divest the HyCO Clear Lake Assets as on-going businesses to Celanese or to any other Person that receives the prior approval of the Commission. The scope of the APA is consistent with this obligation. All Linde’s rights, title, and interests in the HyCO Clear Lake Assets will be acquired by Celanese. The APA is also consistent with the additional provisions of the Decision and Order. In particular:

- As required by Paragraphs II.D.1-2, the Respondents will provide Transitional Assistance at the option of Celanese and on terms consistent with the Decision and Order.⁴
- As required by Paragraph IV.A, Linde has worked cooperatively with Celanese to allow Celanese to conduct its due diligence of the HyCO Clear Lake Business. [Redacted From the Public Record Version].
- As required by Paragraph IV.B, Linde is working cooperatively with Celanese to assist Celanese with identifying and hiring any Active Employee whose responsibilities relate in any way to the HyCO Clear Lake Assets. [Redacted From the Public Record Version].

III. Celanese is a Suitable Buyer for the HyCO Clear Lake Assets.

The Commission has observed that “the most successful buyers appear to be ones that know the most about what they are buying.”⁵ The divestiture of the HyCO Clear Lake Assets

³ [Redacted From the Public Record Version]

⁴ [Redacted From the Public Record Version]

⁵ Staff of the Bureau of Competition of the Federal Trade Commission, *A Study of the Commission’s Divestiture Process* (1999), p.34 (available at https://www.ftc.gov/sites/default/files/documents/reports/study-commissions-divestiture-process/divestiture_0.pdf).

to Celanese creates a substantial incentive for the assets to be exploited to their highest value use in the future to maximize output and benefit consumers, by putting the facilities in the hands of the company that can maximize their use. In this instance, the customer will become the owner, which can make the assets available to potential bidders for new plants, renewals, or expansions. Celanese is familiar with the assets, as its predecessor originally operated them successfully before selling the plant to a Linde predecessor.

Celanese, headquartered in Texas, is a global technology leader with a 100 year history of excellence in acetyl products and industrial specialties. It is ranked among the Fortune 500 with net sales of over \$6 billion in 2017. It has 2600 employees in the US and 7600 worldwide. Celanese has achieved considerable success in the Gulf Coast in recent years, in particular through the strong results of its methanol plant at Clear Lake, TX, its largest facility in the world, which produces acetic acid chain products, including vinyl acetate monomer (VAM). Moreover, as noted above, Celanese previously operated the HyCO Clear Lake Assets to good effect, and it continues to have the business expertise and world-class engineers and professionals to do so in the future.

There are no competitive issues posed by the divestiture to Celanese. In its Complaint, the Commission alleged that the Merger would significantly increase concentration levels in the on-site hydrogen and on-site carbon monoxide markets. The divestiture of the HyCO Clear Lake Assets to Celanese decreases concentration levels in each of the on-site hydrogen and on-site carbon monoxide markets, and in particular in the Gulf Coast region that has been identified by the Commission as a distinct submarket.

IV. Conclusion.

The proposed divestiture of the HyCO Clear Lake Assets to Celanese will facilitate the remedying of any lessening of competition in the on-site hydrogen and on-site carbon monoxide markets in the Gulf Coast region resulting from the Merger, as alleged in the Commission's Complaint. Respondents wish to complete the proposed divestiture as soon as possible following Commission approval. Prompt consummation will further the purposes of the Decision and Order and is in the interests of the Commission, the public, Celanese, and Respondents. Respondents accordingly request that the Commission grant this petition by approving the divestiture of the HyCO Clear Lake Assets pursuant to the APA as soon as practicable.

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 HyCO Clear Lake Assets. Disclosure of this information may prejudice the Respondents and Celanese, cause harm to the ongoing competitiveness of the HyCO Clear Lake 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 Celanese, 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.

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Respectfully submitted,



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Confidential Appendix 2

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