

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,)	
)	Docket No. C- 4660
Praxair, Inc.)	File No. 171-0068
a corporation, and)	
)	
Linde PLC)	
a corporation.)	
)	
)	

**PETITION OF LINDE AG, PRAXAIR, INC., AND LINDE PLC FOR APPROVAL OF
THE PROPOSED DIVESTITURE OF THE HYCO LA PORTE ASSETS TO
LYONDELLBASELL ACETYLS, LLC**

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.4 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, “**Respondents**”) hereby petition the Commission to

approve the divestiture of the HyCO La Porte Assets¹ to LyondellBasell Acetyls, LLC (“Lyondell”).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.4 of the Decision and Order requires Respondents to divest the HyCO La Porte Assets as on-going businesses to Lyondell or to any other Person that receives the prior approval of the Commission. The Respondents intend to complete the proposed divestiture to Lyondell as soon as possible following Commission approval. The Respondents request that the Commission grant this petition and approve Lyondell as the buyer of the HyCO La Porte Assets as soon as practicable.

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

Subject to the Commission’s approval, Linde Gas North America LLC, LAG Methanol Corporation and Linde Aktiengesellschaft (solely with respect to Section 2.12, Section 2.14, Section 3.1, Section 3.3, Section 3.4, Section 10.8 and Section 10.18) entered into

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 Lyondell’s office and principal place of business is located at: LyondellBasell Acetyls, LLC, 1221 McKinney Street, Suite 700, Houston, Texas 77010. LyondellBasell Industries N.V. is the ultimate parent company of Lyondell.

an asset purchase and sale agreement (the “**La Porte APA**”) and additional ancillary agreements (together, the “**Divestiture Agreement**”) to sell the HyCO La Porte Assets to Lyondell.³ The Divestiture Agreement will accomplish the divestiture of the HyCO La Porte Assets consistent with the terms of the Decision and Order and the Hold Separate Order.

Paragraph II.A.4 of the Decision and Order requires the Respondents to divest the HyCO La Porte Assets as on-going businesses to Lyondell or to any other Person that receives the prior approval of the Commission. The scope of the Divestiture Agreement is consistent with this obligation. All Linde’s rights, title, and interests in the HyCO La Porte Assets will be acquired by Lyondell. The Divestiture Agreement 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 Lyondell and on terms consistent with the Decision and Order.⁴
- As required by Paragraph IV.A, Linde has worked cooperatively with Lyondell to allow Lyondell to conduct its due diligence of the HyCO La Porte Business. [Redacted from the Public Record Version].
- As required by Paragraph IV.B, Linde is working cooperatively with Lyondell to assist Lyondell with identifying and hiring any Active Employee whose responsibilities relate in any way to the HyCO La Porte Assets. [Redacted from the Public Record Version].

III. Lyondell is a Suitable Buyer for the HyCO La Porte 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 La Porte Assets

³ [Redacted from the Public Record Version].

⁴ [Redacted from the Public Record Version].

to Lyondell 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 and will be able to operate the facilities itself or contract with one of the firms with a nearby hydrogen pipeline. Lyondell also [Redacted from the Public Record Version]. Further, Lyondell is familiar with the assets, as its predecessor originally operated them successfully before selling the plant to Linde.

Lyondell is one of the largest plastics, chemicals and refining companies in the world. Its U.S. operations are headquartered in Texas and it has a nearly 70-year legacy of game-changing innovation, developing new products and technologies that serve as the bedrock of the chemical industry. In 2018, Lyondell was named in Fortune magazine's list of the "World's Most Admired Companies" and its net income for the twelve months ending September 30, 2018 was \$5.9 billion.

Lyondell has achieved considerable success in the Gulf Coast in recent years, and has broken ground on the first commercial Hyperzone polyethylene plant in La Porte, Texas. The company chose to build the new plant at its existing La Porte complex because of its proximity to price-advantaged U.S. feedstocks and the transportation infrastructure needed to ship product to markets across the globe.

There are no competitive issues posed by the divestiture to Lyondell. In its Complaint, the Commission alleged that the Transaction would significantly increase concentration levels in the on-site hydrogen and on-site carbon monoxide markets. The

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).

divestiture of the HyCO La Porte Assets to Lyondell 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 La Porte Assets to Lyondell 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 Transaction, 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, Lyondell, and Respondents. Respondents accordingly request that the Commission grant this petition by approving the divestiture of the HyCO La Porte Assets pursuant to the Divestiture Agreement 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 La Porte Assets. Disclosure of this information may prejudice the Respondents and Lyondell, cause harm to the ongoing competitiveness of the HyCO La Porte 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

PUBLIC RECORD VERSION

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 Lyondell, 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: December 19, 2018

Respectfully submitted,



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Confidential Appendix 2

[Redacted from the Public Record Version]