



## **OPINION**

**of the ADVISORY COMMITTEE on MERGERS**

**given at its meeting of 6 August 2018**

**regarding a draft decision relating to**

**Case M.8480 – Praxair/Linde**

**Rapporteur: HUNGARY**

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### **Jurisdiction**

1. The Advisory Committee (8 Member States) agrees with the Commission that the notified transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings ("the Merger Regulation").<sup>1</sup>
2. The Advisory Committee (8 Member States) agrees with the Commission that the notified transaction has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

### **Market definition**

3. The Advisory Committee (8 Member States) agrees with the conclusions reached by the Commission in the draft Decision in relation to the definition of the relevant product and geographic markets for:
  - a. The supply of industrial gases;
  - b. The supply of medical gases;
  - c. The supply of specialty gases;
  - d. The supply of helium;
  - e. The supply of process plants and process plant components;
  - f. The supply of respiratory homecare services;
  - g. The supply of surface coating services.

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1.

**Competitive assessment**

4. The Advisory Committee (8 Member States) agrees with the Commission's assessment that the notified transaction would lead to a significant impediment of effective competition as a result of horizontal non-coordinated effects in:
  - a. Markets for the supply of industrial gases identified in Section 8.14 of the draft Decision;
  - b. Markets for the supply of medical gases identified in Section 8.14 of the draft Decision;
  - c. Markets for the supply of noble gases and noble gas mixtures identified in Section 8.14 of the draft Decision;
  - d. Markets for the supply of electronic specialty gases identified in Section 8.14 of the draft Decision;
  - e. Markets for the supply of chemical gases identified in Section 8.14 of the draft Decision;
  - f. Markets for the supply of calibration gases and other gas mixtures identified in Section 8.14 of the draft Decision;
  - g. The market for the wholesale supply of helium;
  - h. Markets for the retail supply of helium identified in Section 8.14 of the draft Decision;
  - i. The markets for the supply of respiratory homecare services in Portugal and in Spain.
5. The Advisory Committee (8 Member States) agrees with the Commission's assessment that the notified transaction would lead to a significant impediment of effective competition as a result of vertical non-coordinated effects in relation to the vertical links between the upstream market for the wholesale supply of helium and the downstream markets for the retail supply of helium.
6. The Advisory Committee (8 Member States) agrees with the Commission's assessment that the notified transaction is unlikely to lead to a significant impediment of effective competition as a result of:
  - a. Horizontal non-coordinated effects in markets other than those indicated at question 4;
  - b. Horizontal coordinated effects;
  - c. Vertical non-coordinated effects other than those related to the vertical links between the upstream market for the wholesale supply of helium and the downstream markets for the retail supply of helium.

**Commitments**

7. The Advisory Committee (8 Member States) agrees with the Commission that the final commitments offered by the Notifying Parties on 10 July 2018 remove the significant impediment to effective competition identified in the draft Decision.
8. The Advisory Committee (8 Member States) agrees with the Commission that, subject to the full compliance with the final commitments offered by the Notifying Parties on 10 July 2018, the notified transaction is not likely to significantly impede effective competition in the internal market or in a substantial part of it.

**Compatibility with the internal market and the EEA Agreement**

9. The Advisory Committee (8 Member States) agrees with the Commission that the notified transaction must therefore be declared compatible with the internal market and the functioning of the EEA Agreement in accordance with Article 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.

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