



FINAL REPORT OF THE HEARING OFFICER¹

(M.8480 – PRAXAIR/LINDE)

1. On 12 January 2018, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation² pursuant to which Praxair, Inc. (“Praxair”) and Linde AG (“Linde”) enter into a full merger within the meaning of Article 3(1)(a) of the Merger Regulation (“the Transaction”). Linde and Praxair are hereafter collectively referred to as the “Parties”. The core business of the Parties is the production and distribution of gases.
2. The Commission's first phase investigation raised serious doubts as to the compatibility of the Transaction with the internal market and with the functioning of the EEA Agreement. On 16 February 2018, the Commission adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation (the “Article 6(1)(c) Decision”).
3. On 22 February 2018, the second phase investigation period was extended by ten working days at the request of the Parties pursuant to the second subparagraph, first sentence, of Article 10(3) of the Merger Regulation.
4. While the Parties chose not to respond to the 6(1)(c) Decision as such, on 9 and 15 March 2018, they submitted written observations on aspects for which they requested the Commission to reconsider its preliminary conclusions.
5. On 15 March 2018, the Commission adopted a decision pursuant to Article 11(3) of the Merger Regulation, following Linde's failure to provide complete information in response to an information request from the Commission. This decision suspended the time limits referred to in the first subparagraph of Article 10(3) of the Merger Regulation. The suspension of the time-limit expired on 19 March 2018 following the submission by Linde of the required information.
6. On 31 May 2018, the Commission adopted a Statement of Objections (“SO”) setting out its preliminary view that the Transaction would significantly impede effective competition in a substantial part of the internal market within the meaning of Article 2(3) of the Merger Regulation and the territory within the meaning of Article 57 of the EEA Agreement for the supply of a wide range of gases (industrial gases,

¹ Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29 (the “Terms of Reference”).

² Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1 (the “Merger Regulation”).

- medical gases, speciality gases, noble gases and helium) and related services due to horizontal and vertical non-coordinated effects.
7. The Parties were granted access to the file on 1 June 2018 and thereafter on a rolling basis. Access to confidential data and information was granted to the Parties' economic advisors following a data room procedure. I did not receive any requests for access to file on the basis of Article 7 of the Terms of Reference.
 8. The Parties submitted their response to the SO on 14 June 2018. They did not request the opportunity to develop their arguments in a formal oral hearing.
 9. I have admitted Air Liquide, a competitor of the Parties, as interested third person in these proceedings. Air Liquide was provided with a non-confidential version of the SO and given a time-limit to submit its views.
 10. On 20 June 2018, the Commission extended the procedure by a total of ten working days in accordance with Article 10(3) second subparagraph, third sentence, of the Merger Regulation. On the same day, the Parties submitted a set of formal commitments to address the concerns raised by the Commission. On the basis of feedback obtained from the market test of these commitments, the Parties submitted an amended set of commitments on 4 July 2018 and a further one on 10 July 2018 (the "Final Commitments").
 11. In the draft Decision, the Commission finds that the Final Commitments are sufficient in scope and suitable to remove entirely the significant impediment to effective competition which the Transaction as notified would otherwise give rise to and that, therefore, the Final Commitments render the Transaction compatible with the internal market and the EEA Agreement.
 12. I have reviewed the draft Decision pursuant to Article 16(1) of Decision 2011/695/EU and I conclude that it deals only with objections in respect of which the Parties have been afforded the opportunity of making known their views.
 13. Overall, I consider that the effective exercise of procedural rights has been respected throughout the proceedings in this case.

Brussels, 7 August 2018

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