



EUROPEAN COMMISSION

DG Competition

*Case M.8480 – Praxair /  
Linde*

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERCER PROCEDURE**

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Decision on the implementation of the commitments -  
Purchaser approval

Date: 22.10.2018



Brussels, 22.10.2018  
C(2018) 7038 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

**To the notifying parties:**

Dear Sir/Madam,

**Subject: Case M.8480 – PRAXAIR/LINDE**  
**Approval of Taiyo Nippon Sanso Corporation as purchaser of the EEA Divestment Business following your letter of 30 August 2018 and the Trustee's opinion of 18 October 2018**

## **I. FACTS AND PROCEDURE**

1. By decision of 20 August 2018 adopted in accordance with Article 2(2) and Article 8(2) of Council Regulation No 139/2004<sup>1</sup> and Article 57 of the Agreement on European Economic Area<sup>2</sup> (the "Decision"), the Commission declared the operation by which Linde AG (Germany) and Praxair, Inc. (United States) enter into a full merger within the meaning of Article 3(1)(a) of the Merger Regulation, by way of a purchase of shares in a newly created company, compatible with the internal market following modification by Praxair, Inc. and Linde AG, subject to conditions and obligations (the "Commitments").
2. The undertaking comprising Praxair, Inc. and its subsidiaries and the undertaking comprising Linde AG and its subsidiaries are hereinafter referred to "Praxair" and "Linde", respectively. Linde and Praxair are hereinafter collectively referred to as "the Notifying Parties".
3. In particular, the Commitments consist of three components: the "EEA Commitments", the "SIAD Commitments" and the "Helium Sourcing Commitments".
4. The EEA Commitments provide for the divestiture of Praxair's entire gas business in the EEA, including Praxair's European engineering capabilities, and excluding Società Italiana Acetilene e Derivati S.p.A. ("SIAD") (the "EEA Divestment Business") to one single suitable purchaser. The EEA Divestment Business

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the EEA Divestment Business, in particular:

- a) The production, filling and transfilling facilities, including dry ice plants and remote operating centres and all production machinery, equipment and tooling;<sup>3</sup>
- b) Tankers, containers, dewars, cylinders, pipelines, storage tanks, loading facilities, ship terminals, distribution equipment and vehicles (including [...]), finished goods inventories and other materials pertaining (in full or in part) to the EEA Divestment Business;<sup>4</sup>
- c) All intellectual property rights (by way of assignment, non-assertion or [...] licence) owned by Praxair, which are used in conducting the EEA Divestment Business. Trademarks which are currently used by both the EEA Divestment Business and Praxair outside the EEA will be subject to a [...] licence for [...];<sup>5</sup>
- d) All relevant data, books and records, including but not limited to third-party supply and customer records pertaining (in full or in part) to the EEA Divestment Business;<sup>6</sup>
- e) The personnel employed by the EEA Divestment Business;<sup>7</sup>
- f) All governmental licences, permits and authorisations related to the EEA Divestment Business, including but not limited to marketing authorisations, manufacturing licences, certificates for the distribution of medicinal products/medical devices and environmental licences;<sup>8</sup>
- g) All customers contracts, framework agreements and orders pertaining to the EEA Divestment Business (including, among all other relevant contracts, helium wholesale supply agreements and Praxair's tonnage contracts related to the EEA Divestment Business);<sup>9</sup>
- h) In relation to helium sourcing:<sup>10</sup>
  - Praxair's sourcing contract with [...];
  - Praxair's back-to-back agreement with [...];
  - an option to acquire a [...] of Praxair's back-to-back supply agreement with [...] for [...];

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<sup>3</sup> Paragraphs 4(a)(i) and 4(a)(ii) of the Schedule to the EEA Commitments.

<sup>4</sup> Paragraphs 4(a)(iii) to 4(a)(v) of the Schedule to the EEA Commitments.

<sup>5</sup> Paragraph 4(b) of the Schedule to the EEA Commitments.

<sup>6</sup> Paragraph 4(c) of the Schedule to the EEA Commitments.

<sup>7</sup> Paragraphs 4(d) and 4(e) of the Schedule to the EEA Commitments.

<sup>8</sup> Paragraph 4(f) of the Schedule to the EEA Commitments.

<sup>9</sup> Paragraph 4(g) of the Schedule to the EEA Commitments.

<sup>10</sup> Paragraph 4(h) of the Schedule to the EEA Commitments.

- a back-to-back agreement to be entered with Praxair for up to [...] of helium sourced from [...] until [...], with the option to replace such back-to-back agreement with Linde's sourcing contract with [...] for [...] due to commence in [...]; and
  - a fleet of helium cryogenic portable tanks (at least [...]) sufficient to operate the EEA Divestment Business on a standalone basis, and representative of Praxair's current global fleet in terms of age and quality profile.
- i) Praxair's European engineering capabilities in relation to the on-site, bulk and cylinder activities currently relevant to the EEA Divestment Business, including:<sup>11</sup>
- Praxair's European engineering team;
  - Access to all of Praxair's plant and plant equipment designs used by the EEA Divestment Business, including, but not limited to, plant and plant equipment designs for Air Separation Units ("ASUs") and Vacuum Pressure Swing Absorption ("VPSAs");
  - A [...] EEA-wide license to use Praxair's software tools that are currently used by its European commercial, operational and engineering teams; and
  - A [...] license to use in the EEA the current version of all of Praxair's design and safety standards used in the design of Praxair's gas plants and filling stations used by the EEA Divestment Business.
- j) All third-party procurement and sourcing contracts (including swap agreements and contracts with carbon dioxide feed gas suppliers) concluded by the EEA Divestment Business.<sup>12</sup>
5. In addition, the EEA Commitments provide for a number of transitional arrangements for the supply of:
- a) the gases that are currently sourced by the EEA Divestment Business from Praxair for a period of [...], extendable by up to[...] at the option of the Purchaser;<sup>13</sup>
  - b) the gases and other input materials that are currently sourced from third parties on the basis of contracts concluded by Praxair at global level for a period of [...];<sup>14</sup>
  - c) the provision of services, including technical assistance, that are currently supplied by Praxair to the EEA Divestment Business for a period of [...];<sup>15</sup>

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<sup>11</sup> Paragraphs 4(i)(i) to 4(i)(iv) of the Schedule to the EEA Commitments.

<sup>12</sup> Paragraph 4(j) of the Schedule to the EEA Commitments.

<sup>13</sup> Paragraph 4(k) of the Schedule to the EEA Commitments.

<sup>14</sup> Paragraph 4(m) of the Schedule to the EEA Commitments.

<sup>15</sup> Paragraph 4(l) of the Schedule to the EEA Commitments.

- d) [...] and other ancillary products and services for a term of [...], extendable at the Purchaser's option by [...];<sup>16</sup>
  - e) [...] for a period of [...], extendable by up to [...] at the option of the Purchaser;<sup>17</sup>
  - f) process plant components and/or spare parts for process plants included in the EEA Divestment Business, which cannot be bought and sourced elsewhere; for a period (i) at least equal to the duration of existing tonnage/small on-site plant customer contracts, in relation to the process plants used to supply tonnage/small on-site plant customers; or (ii) [...], unless it can be proven to the Monitoring Trustee that a shorter period would be sufficient, in relation to all other process plants included in the EEA Divestment Business.<sup>18</sup>
6. In relation to the purification of the EEA Divestment Business' krypton and xenon, [...], the Notifying Parties committed [...], unless otherwise agreed with the Purchaser.<sup>19</sup>
  7. By letter of 30 August 2018, the Notifying Parties proposed Taiyo Nippon Sanso Corporation ("TNSC" or the "Proposed Purchaser") for approval by the Commission as purchaser of the EEA Divestment Business (the "Proposed Agreement").<sup>20</sup>
  8. On 18 October 2018, the Trustee submitted an assessment of TNSC's suitability as a purchaser and, in particular, indicated that TNSC fulfils the purchaser requirements set out in Section D of the EEA Commitments attached to the Decision. In this assessment, the Trustee also indicated that, on the basis of the Proposed Agreement, the EEA Divestment Business would be sold in a manner consistent with the EEA Commitments.

## **II. ASSESSMENT OF THE PROPOSAL**

9. According to Section D of the EEA Commitments, in its assessment of the Proposed Agreement, the Commission shall verify that the purchaser fulfils the purchaser criteria and that the EEA Divestment Business is being sold in a manner consistent with the EEA Commitments.
10. In particular, as set out in Section D of the EEA Commitments, in order to be approved by the Commission, the Purchaser of the EEA Divestment Business must fulfil the following criteria (the "Purchaser Criteria"):

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<sup>16</sup> Paragraph 4(n) of the Schedule to the EEA Commitments.

<sup>17</sup> Paragraph 4(o) of the Schedule to the EEA Commitments.

<sup>18</sup> Paragraph 4(i)(v) of the Schedule to the EEA Commitments.

<sup>19</sup> Paragraph 8 of the EEA Commitments.

<sup>20</sup> The Proposed Agreement includes the sale and purchase agreement and the ancillary agreements entered into by the Notifying Parties and TNSC on 5 July 2018 as well as subsequent amendments, including a side letter signed on 18 October 2018.

- a) the Purchaser shall be independent of and unconnected to the Notifying Parties and their affiliated undertakings (this being assessed having regard to the situation following the divestiture);
  - b) the Purchaser shall be an established industrial gas company with a proven capacity and track record in running a significant industrial gases business or a consortium where such company exerts a decisive influence on all aspects concerning the operation of the EEA Divestment Business;
  - c) the Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the EEA Divestment Business as viable and active competitive force in competition with the Notifying Parties and other competitors;
  - d) the acquisition of the EEA Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the EEA Divestment Business.
11. This section provides (i) a short description of the Proposed Purchaser and (ii) an assessment of its suitability in view of these criteria, as well as (iii) an assessment of the consistency of the Proposed Agreement with the EEA Commitments.

**(i) Description of the Proposed Purchaser**

12. TNSC is a multinational supplier of gases used in a variety of industries (including the steel, chemical, healthcare, food, and electronics industries). TNSC is headquartered in Japan and its operations are focused primarily on Asia and North America, with very limited operations in the EEA. Matheson Tri-Gas (“MTG”) is a wholly owned subsidiary of TNSC and is TNSC’s operating entity in North America.
13. TNSC is directly and solely controlled by Mitsubishi Chemical Holdings Corporation (“MCHC”), which is also based in Japan. MCHC has four core operating businesses: (i) Mitsubishi Chemical, (ii) Mitsubishi Tanabe Pharma, (iii) Life Science Institute, and (iv) TNSC. Through these companies, MCHC provides a wide range of products and services, including industrial chemicals and gases, pharmaceutical research and development, and chemistry-based solutions for environmental applications.
14. In 2017, TNSC reported a worldwide turnover of EUR 4.59 billion and a core operating income of EUR [...].

**(ii) The Proposed Purchaser satisfies the criteria as set out in the EEA Commitments**

**(a) Independence from the Notifying Parties**

15. TNSC is a public company listed on the Tokyo Stock Exchange, and is directly and solely controlled by MCHC. MCHC holds [...] % of TNSC's shares. No other shareholder holds more than [5-10] % of TNSC’s shares. MCHC is also a publicly-

traded company registered in Japan. No shareholder of MCHC holds more than [5-10]% of the shares.

16. The Trustee's review of the relationships between the Notifying Parties and TNSC/MCHC has shown that there are no significant corporate or structural links between (i) any of the entities which belong to MCHC/TNSC and their affiliated undertakings on the one hand, and (ii) any of the entities which belong to the Notifying Parties and their affiliated undertakings on the other hand.<sup>21</sup>
17. In addition, while there are a number of ongoing commercial relationships between the Notifying Parties and MCHC/TNSC, the Trustee's review has shown that these commercial arrangements (i) have been concluded in the ordinary course of business and at arm's length, (ii) are common in the industry to efficiently manage supply chains, and (iii) are not material as they represent a limited volume of business.
18. In view of the above, the Commission considers that the Proposed Purchaser is independent of and unconnected to the Notifying Parties.

(b) Established industrial gas company with a proven capacity and track record

19. TNSC has an established footprint in the United States and Asia. TNSC is active across the whole supply chain of gases and has a broad product portfolio (including industrial, medical, and specialty gases, as well as helium). It manufactures and supplies gases to a wide range of industries such as the steel, chemical production, electronics, automobile, construction, shipbuilding, and food industries.<sup>22</sup>
20. Moreover, TNSC has the ability to bid for the largest tonnage projects, having the required in-house engineering and financial capabilities. TNSC has built and installed over [...] plants throughout Japan, South-East Asia, the Middle East and North America over the last 65 years. It has a plant engineering centre in Japan and three research and development centres worldwide.<sup>23</sup>
21. In 2017, TNSC's industrial gas business in Japan accounted for approximately [...] % of its total worldwide turnover in 2017, while TNSC's industrial gas businesses in the United States and in the rest of Asia accounted for approximately [...] % and [...] %, respectively.<sup>24</sup>
22. In view of the above, the Commission considers that the Proposed Purchaser is an established industrial gas company with a proven capacity and track record in running a significant industrial gases business.

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<sup>21</sup> Trustee's Reasoned Opinion, page 32.

<sup>22</sup> Trustee's Reasoned Opinion, page 40.

<sup>23</sup> Trustee's Reasoned Opinion, page 40.

<sup>24</sup> Trustee's Reasoned Opinion, page 35.

(c) Financial capabilities, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

23. The Trustee's analysis of TNSC's financial documentation suggests that TNSC has a good level of structural profitability and sound financing structures. TNSC's business appears to be profitable with a sustained history of growth. Taking into account the strong financial position of TNSC and the continuing support of a long term lender, the Trustee considers that TNSC has access to sufficient funds to support the purchase of the EEA Divestment Business and invest in the business as is required to maintain its competitiveness.<sup>25</sup>
24. In addition, the Trustee points out that the EEA Divestment Business is a highly profitable business with strong historical performance and forecast growth, which in itself would provide sufficient profits to cover the financing costs of acquisition. Therefore, the Trustee considers that the EEA Divestment Business represents an attractive investment and strategic opportunity, and that TNSC is highly incentivised to deliver on its strategy and ensure the success of the acquired business.<sup>26</sup>
25. The Commission considers that TNSC has a deep understanding of the EEA Divestment Business due to the fact that TNSC operates in the exact same business sector outside Europe (see section II(b)). In particular, industrial gases are overall homogeneous products that do not differ significantly across geographies. TNSC also has experience integrating businesses similar to the EEA Divestment Business; for example, in 2016, it acquired assets in the USA, which have been divested in the context of the Air Liquide/Airgas transaction. In consideration of these factors, the Commission regards TNSC as a suitable purchaser in terms of knowledge and expertise required to operate in the gas industry.
26. As already indicated, TNSC has an established industrial gas footprint in the USA and Asia. The acquisition of the EEA Divestment Business is in line with TNSC's strategy of becoming a global market leader through expansion into Europe, where it currently has a very limited presence.
27. In view of the above, the Commission concludes that the Proposed Purchaser has the financial capabilities, proven expertise and incentive to maintain and develop the EEA Divestment Business as a viable and active competitive force in competition with the Notifying Parties and other competitors.

(d) Absence of *prima facie* competition problems

28. The acquisition of the EEA Divestment Business by TNSC is in itself a concentration falling within the scope of the Merger Regulation. Pursuant to Article 4 thereof, the operation was notified to the Commission on 11 September 2018. By a decision adopted on 16 October 2018 pursuant to Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement, the Commission has decided not to oppose the concentration and to declare it compatible with the internal market. As no other competition authority has jurisdiction to review the

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<sup>25</sup> Trustee's Reasoned Opinion, pages 37-39.

<sup>26</sup> Trustee's Reasoned Opinion, page 46.



Proposed Purchaser's acquisition of the EEA Divestment Business in the EEA<sup>27</sup>, there is no implementation risk related to obtaining antitrust regulatory approvals.

29. In view of the above, the Commission considers that the Proposed Purchaser is neither likely to create *prima facie* competition concerns, nor give rise to a risk that the implementation of the Commitments will be delayed.

(e) Conclusion

30. In view of the above, the Commission considers that the Proposed Purchaser meets the Purchaser Criteria.

(iii) **Consistency between the Proposed Agreement and the EEA Commitments**

31. There are a few minor differences between the EEA Commitments and the Proposed Agreement, which are summarised below:

a) Deviations regarding the assets included in the EEA Divestment Business:

- [...], a legal entity to be divested under the EEA Commitments is not transferred to the Proposed Purchaser. This entity is a 100% holding company and is not operational. [...]. The Proposed Purchaser has confirmed to the Trustee that it does not require this entity;<sup>28</sup>
- The [...] license to use Praxair's software tools that are currently used by the commercial, operational and engineering teams of the EEA Divestment Business only includes [...] of the [...] software listed in the EEA Commitments. The remaining [...] software tools are not included for various reasons: (i) [...] relate to licences that the EEA Divestment Business will acquire directly from third parties as they cannot be assigned, (ii) [...] is a free-to-download tool, (iii) [...] are no longer used, and (iv) [...] are not required by the Proposed Purchaser. Accordingly, both the Trustee and the Proposed Purchaser consider that the EEA Divestment Business will continue to have access to the software tools it requires;<sup>29</sup>

b) Deviations regarding the scope of some transitional supply arrangements

- The transitional trademark licence granted to TNSC is limited to the use of Praxair's trademarks for sales of inventory for a period of [...], and to the use of Praxair's images in URLs for a period of [...]. Although the EEA Commitments do not provide for such restriction, the Proposed Purchaser confirmed that it will not require use of the licence beyond what is anticipated under the Proposed Agreement;<sup>30</sup>

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<sup>27</sup> Outside the EEA, the Proposed Agreement was only subject to merger control in [...], where the concentration was approved on [...].

<sup>28</sup> Trustee's Reasoned Opinion, page 14.

<sup>29</sup> Trustee's Reasoned Opinion, page 16.

<sup>30</sup> Trustee's Reasoned Opinion, page 15.

- The transaction documents do not provide for a transitional supply of the gases and other input materials that are currently sourced by the EEA Divestment Business from third parties on the basis of contracts concluded by Praxair at global level. Instead, the EEA Divestment Business is currently working to negotiate direct supply agreements with third party suppliers. In order to avoid the risk of supply disruption, Praxair has agreed to continue ordering the above products from third party suppliers on behalf of the EEA Divestment Business until either the conclusion of the direct supply agreements or the required period of time in the EEA Commitments.<sup>31</sup>
  - The Notifying Parties and the Proposed Purchaser have agreed an additional transitional supply agreement whereby Praxair will provide transitional support services related to helium sourcing (e.g. [...]) for [...] and supply of helium to the EEA Divestment Business until [...]. These services have been added at the request of the Proposed Purchaser to avoid supply disruptions.<sup>32</sup>
- c) Deviations regarding the duration of some transitional supply arrangements:
- The transitional supply of [...] will not exceed [...] which is below the duration set forth in the EEA Commitments (i.e. [...]);<sup>33</sup>
  - the duration of the transitional supply of some services currently provided by Praxair (for [...]) will slightly exceed the period provided for in the EEA Commitments (either [...], instead of [...]).<sup>34</sup>

32. The Proposed Purchaser is satisfied that the changes illustrated above have no detrimental effects on the EEA Divestment Business. The Trustee is also of the opinion that these minor changes will not impact the viability and the competitiveness of the Divestment Business.<sup>35</sup>

33. Given the nature and the scope of the changes, the Commission considers that these changes to the Commitments do not in any way affect the viability and competitiveness of the Divestment Business after the sale. The Commission therefore concludes that the EEA Divestment Business is being sold in a manner that is consistent with the EEA Commitments.

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<sup>31</sup> Trustee's Reasoned Opinion, page 60.

<sup>32</sup> Trustee's Reasoned Opinion, page 19.

<sup>33</sup> Paragraph 4(n) of the Schedule to the EEA Commitments.

<sup>34</sup> Paragraph 4(l) of the Schedule to the EEA Commitments.

<sup>35</sup> Trustee's Reasoned Opinion, pages 14-20.

### III. CONCLUSION

34. On the basis of the above assessment, the Commission approves the Proposed Purchaser as a suitable purchaser.
35. On the basis of the Proposed Agreement, the Commission further concludes that the EEA Divestment Business is being sold in a manner consistent with the EEA Commitments.
36. This decision only constitutes approval of the Proposed Purchaser identified herein and of the Proposed Agreement. This decision does not constitute a confirmation that the Notifying Parties have complied with the Commitments in general and the EEA Commitments in particular.
37. This decision is based on Section D of the EEA Commitments attached to the Commission Decision of 20 August 2018.

*For the Commission*

*(Signed)*

*Johannes LAITENBERGER  
Director-General*