



EUROPEAN COMMISSION

DG Competition

*Case M.8480 –
Praxair / Linde*

Only the English text is available and authentic.

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

Decision on the implementation of the commitments -
Purchaser approval

Date: 19.12.2018



EUROPEAN COMMISSION

Brussels, 19.12.2018
C(2018) 9176 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 MG Industries as purchaser of the First Part of the Helium Sourcing Divestment Business

I. FACTS AND PROCEDURE

1. By decision of 20 August 2018 adopted in accordance with Article 8(2) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on European Economic Area² (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 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 as “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”,³ the “SIAD Commitments”⁴ and the “Helium Sourcing Commitments”.⁵

¹ OJ L 24, 29.1.2004, p. 1 (the “Merger Regulation”).

² OJ L 1, 3.1.1994, p. 3 (the ‘EEA Agreement’).

³ See Decision, Section 9 and Annex III.1. The EEA Commitments comprise a commitment to divest Praxair's entire gas business in the EEA, excluding its stake in Società Italiana Acetilene e Derivati S.p.A. (“SIAD”) (the “EEA Divestment Business”).

⁴ See Decision, Section 9 and Annex III.2. The SIAD Commitments provide for the divestment of Praxair's controlling shareholding in SIAD to the joint venture partner Flow Fin S.p.A. (of Italy).

4. The Helium Sourcing Commitments provide for the divestiture of helium sourcing assets and contracts other than those included in the EEA Commitments⁶ (either by way of transferring existing sourcing contracts or by way of entering into back-to-back supply arrangements) to the buyer(s) of the divestiture package(s), whose exact scope is to be agreed with competition authorities other than the Commission, in particular the United States Federal Trade Commission and the People's Republic of China State Administration for Market Regulation⁷ (i.e. the "Helium Sourcing Divestment Business").⁸
5. The assets included in the Helium Sourcing Commitments comprise in particular (i) Linde's helium production assets in the United States (notably, Linde's refinery located in Otis, Kansas), (ii) Linde's entire inventory held in the storage reservoir operated by the Bureau of Land Management ("BLM") and Linde's interests in the Cliffside Refiners Limited Partnership joint venture, and (iii) an adequate fleet of cryogenic portable tanks. In addition, the Helium Sourcing Commitments include certain personnel necessary to maintain the viability and competitiveness of the Helium Sourcing Divestment Business, including personnel of Linde's refinery in Otis.⁹
6. Under the Helium Sourcing Commitments, the overall helium sourcing portfolio divested globally as a result of the helium sourcing assets and contracts included in the Helium Sourcing Divestment Business, together with the helium sourcing contracts included in the EEA Divestment Business, shall be (i) equivalent to virtually all of Praxair's pre-merger helium sourcing portfolio in terms of volumes, and (ii) overall representative of Praxair's pre-merger helium sourcing portfolio in terms of diversity, reliability, competitiveness and duration.¹⁰
7. On 10 September 2018, the Notifying Parties informed the Commission that the Helium Sourcing Divestment Business would be split in two parts, to be divested to different purchasers: (i) first, the helium sourcing contracts and assets defined in agreement with the United States Federal Trade Commission (the "First Part of the Helium Sourcing Divestment Business"), which constitute the major part of the Helium Sourcing Divestment Business, and (ii) second, the helium sourcing contracts and assets defined in agreement with the People's Republic of China State Administration for Market Regulation (the "Second Part of the Helium Sourcing Divestment Business").¹¹
8. By letter of 27 September 2018, the Notifying Parties proposed [...] * Industries GmbH ("MG Industries" or the "Proposed Purchaser") for approval by the

⁵ See Decision, Section 9 and Annex III.3.

⁶ The helium sourcing contracts and assets forming part of the EEA Divestment Business are included in the EEA Commitments. By decision of 22 October 2018, the Commission approved Taiyo Nippon Sanso Corporation (of Japan) as purchaser of the EEA Divestment Business.

⁷ Paragraph 1(a) of the Schedule to the Helium Sourcing Commitments.

⁸ This includes the helium sourcing assets and contracts to be defined in agreement with other competition authorities, as well as all the assets that are explicitly identified in the Helium Sourcing Commitments, as described in paragraph 5 of the present decision.

⁹ Paragraphs 1(b) to 1(e) of the Schedule to the Helium Sourcing Commitments.

¹⁰ Paragraph 2 of the Schedule to the Helium Sourcing Commitments.

¹¹ Notifying Parties' First Report on Divestment Process, dated 10 September 2018.

* Should read "Messer".

Commission as purchaser of the First Part of the Helium Sourcing Divestment Business (the “Proposed Agreement”).¹²

9. MG Industries is a newly created joint-venture company which, on completion of the Proposed Agreement, will be (indirectly) owned and jointly controlled by Messer Group GmbH (“Messer”, of Germany) and by CVC Fund VII (together with CVC Capital Partners SICAV-FIS S.A. and its subsidiaries, “CVC”, of Luxembourg). Messer and CVC will respectively hold [...] % and [...] % of the shares in MG Industries.¹³
10. On 14 December 2018, the Trustee submitted an assessment of MG Industries' suitability as a purchaser and, in particular, indicated that MG Industries fulfils the purchaser requirements set out in Section D of the Helium Sourcing Commitments attached to the Decision. In this assessment, the Trustee also indicated that, based on the Proposed Agreement, the First Part of the Helium Sourcing Divestment Business would be sold in a manner consistent with the Helium Sourcing Commitments.
11. It should be noted that the First Part of the Helium Sourcing Divestment Business is being acquired by MG Industries as part of a wider package, which also comprises industrial gas assets in North and South America (the “Americas package”).¹⁴

II. ASSESSMENT OF THE PROPOSAL

12. According to Section D of the Helium Sourcing Commitments, in its assessment of the Proposed Agreement, the Commission shall verify that the purchaser(s) fulfil the purchaser criteria and that the Helium Sourcing Divestment Business is being sold in a manner consistent with the Helium Sourcing Commitments.
13. In particular, as set out in Section D of the Helium Sourcing Commitments, in order to be approved by the Commission, the Purchaser(s) of the Helium Sourcing Divestment Business must fulfil the following criteria (the "Purchaser Criteria"):
 - a) the Purchaser(s) 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(s) shall have the financial resources, proven expertise and incentive to maintain and develop the Helium Sourcing Divestment Business as viable and active competitive force in competition with the Notifying Parties and other competitors;
 - c) the acquisition of the Helium Sourcing Divestment Business by the Purchaser(s) 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

¹² The Proposed Agreement includes the sale and purchase agreement and the ancillary agreements entered into by the Notifying Parties and MG Industries on 16 July 2018 as well as subsequent amendments.

¹³ See Commission decision of 19 October 2018 in case M.9059 – *CVC/Messer Group/Divestment Business*, para. 5.

¹⁴ In particular, the Americas package includes [...].

particular, the Purchaser(s) must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Helium Sourcing Divestment Business.

14. This section provides: (i) a short description of the Proposed Purchaser for the First Part of the Helium Sourcing Divestment Business¹⁵, (ii) an assessment of its suitability in view of the Purchaser Criteria, and (iii) an assessment of the consistency of the Proposed Agreement with the Helium Sourcing Commitments.

(i) Description of the Proposed Purchaser for the First Part of the Helium Sourcing Divestment Business

15. As explained in paragraph (9), MG Industries is a newly created company, which is jointly controlled by Messer and CVC. Messer and CVC will respectively hold [...] % and [...] % of the shares in MG Industries.

16. Messer is a supplier of gases used in a variety of industries. It is headquartered in Germany and its operations are focused primarily on Europe and Asia. Messer is ultimately controlled by the Adolf Messer Foundation and by [...] members of the Messer family. In 2017, Messer reported a worldwide turnover of EUR 1.8 billion.

17. CVC is a large private equity company based in Luxembourg and active globally. CVC has USD 69 billion of assets under management and USD 109 billion of funds committed. CVC is majority-owned by its employees.

(ii) The Proposed Purchaser satisfies the criteria as set out in the Helium Sourcing Commitments

(a) Independence from the Notifying Parties

18. The ultimate owners of Messer are the Adolf Messer Foundation and certain members of the Messer family, whilst CVC is majority-owned by its employees.

19. The Trustee's review of the relationships between the Notifying Parties, on the one hand, and MG Industries and its parent companies, on the other hand, has shown that there are no significant corporate or structural links.¹⁶

20. In addition, while there are a number of ongoing commercial relationships between the Notifying Parties and Messer, 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. CVC has two portfolio companies that are [...] and could purchase *de minimis* volumes of industrial gases from the Notifying Parties, but this would represent a negligible business for the Notifying Parties and the CVC portfolio companies.¹⁷

¹⁵ As explained in Section I of the present decision, the remaining part of the Helium Sourcing Divestment Business will be divested to (a) different purchaser(s), which will have to be approved by the Commission by separate decision.

¹⁶ Trustee's Reasoned Opinion, page 30.

¹⁷ Trustee's Reasoned Opinion, page 30. See also Commission decision of 19 October 2018 in case M.9059 – CVC/Messer Group/Divestment Business, footnote 9.

21. In view of the above, the Commission considers that the Proposed Purchaser is independent of and unconnected to the Notifying Parties.
 - (b) Financial capabilities, proven expertise and incentive to maintain and develop the First Part of the Helium Sourcing Divestment Business as a viable and active competitor
22. The First Part of the Helium Sourcing Divestment Business is being acquired by MG Industries as part of the wider Americas package for a consideration of USD 3.3 billion. The Americas package will be acquired by MG Industries through a combination of own funds (received by way of equity contribution from its shareholders) and bank loans. In particular, Messer will be contributing its operations in Western Europe to MG Industries.
23. The Trustee's analysis of financial documentation of MG Industries and its parent companies suggests that the joint venture will be supported by a solid financing structure that will enable it to make investments necessary to compete effectively in the market. On the one hand, Messer has a good level of structural profitability and sound financing structures. On the other hand, CVC has strong financial capabilities and a pattern of sustained growth.¹⁸
24. The Trustee further notes that the Proposed Purchaser has secured debt financing commitments on customary market terms from several banks to ensure that, together with its equity financing, it has the required funding in place for the operation.¹⁹
25. In addition, the Trustee points out that the First Part of the Helium Sourcing Divestment Business, along with the wider Americas package, is a profitable business with significant projected returns. The business' profitability will allow MG Industries to reduce significantly the leveraging of the business brought by the acquisition in the short/medium term, thereby securing the financial stability of the joint venture.²⁰
26. Therefore, the Trustee considers that the First Part of the Helium Sourcing Divestment Business represents an attractive investment and strategic opportunity for MG Industries.²¹
27. The Trustee noted that whilst Messer and CVC will be the joint owners, through MG Industries, of the First Part of the Helium Sourcing Divestment Business, [...]. In particular, [...].
28. The Commission considers that Messer has a significant understanding of the Helium Sourcing Divestment Business, and of its interaction with other gas businesses, because Messer already operates in the relevant gas markets, including helium sourcing, Messer being one of the few players with direct access to helium sources worldwide.

¹⁸ Trustee's Reasoned Opinion, page 8.

¹⁹ Trustee's Reasoned Opinion, page 8.

²⁰ Trustee's Reasoned Opinion, page 8.

²¹ Trustee's Reasoned Opinion, page 36.

29. In addition, the Trustee points out that both Messer and CVC have relevant experience in acquiring and integrating businesses. Messer integrated certain gas businesses of Praxair and Air Liquide in its operations, in 2014 and 2016, respectively. CVC is a private equity company with a track record of successful investments across a wide variety of industries.²²
30. As already indicated, the forecasts for the First Part of the Helium Sourcing Divestment Business demonstrate a positive contribution to the combined Americas package with steady CAGR²³ growth in the next five years.²⁴ Messer has an established industrial gas footprint notably in Europe and Asia. The acquisition of the First Part of the Helium Sourcing Divestment Business, together with the rest of the Americas package, is in line with Messer's strategy of becoming a global player through expansion into America, where it currently has a limited presence. In particular, the acquisition of the helium sourcing assets and contracts included in the First Part of the Helium Sourcing Divestment Business will [...], so as to guarantee a [...] management of the operations related to helium, as it was the case for both Praxair and Linde prior to their merger. The First Part of the Helium Sourcing Business, in combination with Messer's existing helium business, will also provide MG Industries with a strong platform for further helium growth globally.²⁵
31. CVC is likely to have a medium-term interest in the business, consistently with its nature of financial investor. In the medium term, it is intended that [...]. In particular, the Trustee reports that Messer has already shown and confirmed a clear strategic long-term commitment to the First Part of the Helium Sourcing Divestment Business.²⁶ This is notably corroborated by the fact that Messer's operations in Western Europe will be contributed to MG Industries. Accordingly, the Trustee considers that MG Industries appears to have the incentive, both from a financial and strategic perspective, to maintain and develop the First Part of the Helium Sourcing Divestment Business.²⁷
32. 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 Helium Sourcing Divestment Business as a viable and active competitive force in competition with the Notifying Parties and other competitors.

(c) Absence of *prima facie* competition problems

33. The acquisition of the First Part of Helium Sourcing Divestment Business, and the rest of the Americas package, by MG Industries 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 14 September 2018. By a decision adopted on 19 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.

²² Trustee's Reasoned Opinion, page 37.

²³ Compound Annual Growth Rate.

²⁴ Trustee's Reasoned Opinion, page 10.

²⁵ Trustee's Reasoned Opinion, page 10.

²⁶ Trustee's Reasoned Opinion, page 10.

²⁷ Trustee's Reasoned Opinion, pages 10 and 39 to 42.

34. The acquisition of the First Part of the Helium Sourcing Divestment Business, together with the rest of the Americas package, requires merger control clearance by competition authorities in different countries outside the EEA.²⁸ Based on the information submitted by the Notifying Parties and the Purchaser, the Trustee considers that there are no significant implementation risks related to obtaining antitrust regulatory approvals.²⁹
35. In view of the above, the Commission considers that the Proposed Purchaser is neither likely to create *prima facie* competition concerns, nor to give rise to a risk that the implementation of the Commitments will be delayed.

(d) Conclusion

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

(iii) **Consistency between the Proposed Agreement and the Helium Sourcing Commitments**

37. The review of the Trustee showed that the provisions included in the Proposed Agreement are consistent with the Helium Sourcing Commitments.³⁰
38. In particular, the Trustee verified and confirmed that the First Part of the Helium Sourcing Divestment Business, combined with the EEA Divestment Business, comprises an overall helium sourcing volume which is equivalent to virtually all of Praxair's existing global helium sourcing volume, even without taking into account the volumes to be divested as part of the Second Part of the Helium Sourcing Divestment Business.³¹ In addition, the helium sourcing contracts included in the First Part of the Helium Sourcing Divestment Business and the EEA Divestment Business are overall representative of the make-up of Praxair's pre-merger helium sourcing portfolio with respect to its diversity, reliability, competitiveness and duration.³²
39. In view of the above, the Commission concludes that the First Part of the Helium Sourcing Divestment Business is being sold in a manner that is consistent with the Helium Sourcing Commitments.

²⁸ [...] (Trustee's Reasoned Opinion, page 11).

²⁹ Trustee's Reasoned Opinion, page 46.

³⁰ Trustee's Reasoned Opinion, pages 13-17.

³¹ Trustee's Reasoned Opinion, page 60.

³² Trustee's Reasoned Opinion, page 60.

III. CONCLUSION

40. On the basis of the above assessment, the Commission approves the Proposed Purchaser as a suitable purchaser for the First Part of the Helium Sourcing Divestment Business.
41. On the basis of the Proposed Agreement, the Commission further concludes that the First Part of the Helium Sourcing Divestment Business is being sold in a manner consistent with the Helium Sourcing Commitments.
42. The present decision only constitutes approval of the Proposed Purchaser identified herein and of the Proposed Agreement. The present decision does not constitute a confirmation that the Notifying Parties have complied with the Commitments in general and the Helium Sourcing Commitments in particular.
43. The present decision is based on Section D of the Helium Sourcing Commitments attached to the Decision of 20 August 2018.

For the Commission

(Signed)
Johannes LAITENBERGER
Director-General