



EUROPEAN COMMISSION
DG Competition

***Case M.9059 - CVC / MESSER GROUP / DIVESTMENT
BUSINESS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/10/2018

***In electronic form on the EUR-Lex website under
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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 19.10.2018
C(2018) 7010 final

PUBLIC VERSION

To the notifying parties:

**Subject: Case M.9059 - CVC / Messer Group / Divestment Business
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²**

Dear Sir or Madam,

- (1) On 14 September 2018, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which CVC Capital Partners SICAV-FIS S.A. ("CVC") (of Luxembourg) and Messer Group GmbH ("Messer") (of Germany) would acquire joint control of the Divestment Business, by way of purchase of shares (the "Transaction").³ The Divestment Business consists of industrial gas assets and businesses of Praxair, Inc. ("Praxair") and Linde AG ("Linde") in North and South America, as well as global helium sourcing contracts of Linde and Praxair and related assets. CVC and Messer are designated hereinafter as the "Notifying Parties" and, together with the Divestment Business, the "Parties".

1. THE PARTIES

- (2) **Messer** is a supplier of gases used in a variety of industries (including the steel, chemical, healthcare, food, and electronics industries). Messer is based in Germany and mainly active in Europe and Asia.
- (3) **CVC** is a private equity and investment advisory firm based in Luxembourg.

¹ OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

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

³ Publication in the Official Journal of the European Union No C 335, 20.9.2018, p. 23.

- (4) The **Divestment Business** (the "Target") consists of industrial gas assets and businesses of Praxair and Linde in North and South America, as well as global helium sourcing contracts to which Linde or Praxair are a party and related assets. These assets are divested in the context of the proposed merger between Praxair and Linde. In particular, the helium sourcing contracts and related assets included in the Divestment Business are divested as part of the commitments submitted to the Commission in Case M.8480 – *Praxair/Linde*.⁴

2. THE OPERATION

- (5) The Transaction consists of the acquisition of 100% of the shares in each of the companies that together constitute the Divestment Business by Messer and CVC through a newly-created company, Messer Industries GmbH ("Messer Industries").⁵ Post-Transaction, CVC and Messer will respectively (indirectly) hold [...] % and [...] % of the shares in Messer Industries.⁶ Pursuant to the agreed Term Sheet, the shareholders will jointly develop a common roadmap on how Messer Industries will be operated, defining key strategic matters for Messer Industries, including the corporate strategy, the business plan and the management structure. Moreover, [description of the governance structure in relation to the adoption of strategic decisions].⁷ It follows that, post-Transaction, Messer and CVC will exercise joint control over the Divestment Business.
- (6) The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁸ (CVC: EUR [...] million; Messer: [...] million; Divestment Business: EUR 1 485 million). Two of them have an EU-wide turnover in excess of EUR 250 million (CVC: EUR [...] million; Messer: EUR [...] million). The undertakings concerned do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

⁴ See the Commitments annexed to the Commission decision of 20 August 2018 in case M.8480 – *Praxair/Linde*. The Commitments provide for the divestment of (i) Praxair's entire gas business in the EEA (excluding its stake in SIAD), (ii) Praxair's controlling shareholding in SIAD to the joint venture partner Flow Fin S.p.A. (of Italy), and (iii) helium sourcing contracts and related assets to one or more buyers to be agreed with competition authorities other than the European Commission (in particular the US Federal Trade Commission and the Chinese State Administration for Market Regulation) (the "Helium Sourcing Commitments"). The helium sourcing contracts and related assets included in the Divestment Business constitute the lion share of the Helium Sourcing Commitments.

⁵ On 16 July 2018, Messer Industries entered into a sale and purchase agreement with Linde and Praxair, pursuant to which it agreed to acquire 100% of the shares in each of the companies that together constitute the Divestment Business. In addition, following further discussions with regulatory authorities in relation to the merger between Linde and Praxair, the above sale and purchase agreement was subsequently amended on 22 September 2018 to include additional assets in the Divestment Business.

⁶ Messer will contribute to Messer Industries some assets including notably its Western European operations. Based on the signed agreements, Messer's operations in Asia, Central and Eastern Europe will not be transferred ([...]) to Messer Industries.

⁷ [Detailed information on the governance structure].

⁸ Turnover calculated in accordance with Article 5 of the Merger Regulation.

- (8) The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

- (9) Given the different geographic footprint of Messer and the Divestment Business,⁹ the overlaps between the Parties' activities are very limited and only concern the supply of helium.

4.1. Product Markets

- (10) Helium is a scarce and high value product, with a very specific sourcing modality. It is a by-product of natural gas extraction from a very limited number of sources worldwide, located in the US, Qatar, Algeria, Poland, Russia, Canada, and Australia. Helium producers are, consequently, natural gas producers, which are typically not active in the commercialisation of helium but rather enter into long-term contracts or joint-ventures with integrated gas companies (such as Messer) that bring helium to the market. Helium is used in a wide range of industries, including the medical, research, diving, automotive, electronics, balloon and aerospace industries.
- (11) Helium is sourced globally and then supplied at wholesale and retail levels:
- i. at **wholesale level**, helium is transported worldwide, from the production site to transfill centres located in the areas of consumption, in liquid form in special low temperature containers ("cryogenic portable tanks");
 - ii. at **retail level**, the supply of helium to end-customers is made from transfill centres by retailers that are either (i) vertically integrated with wholesalers or (ii) independent players which buy helium on the wholesale market. At a transfill centre, helium is removed from the cryogenic portable tanks and transferred into smaller containers called cryogenic dewars for deliveries of liquid helium to end-customers, or into high-pressure cylinders or tube trailers for supplies of helium in compressed gaseous form. At retail level, helium may also, to a much more limited extent, be delivered in cryogenic portable tanks to end-customers.
- (12) In previous decisions¹⁰, the Commission found that the wholesale and retail supply of helium constitute distinct product markets. The Commission considered that the market for the wholesale supply of helium also included the sourcing of helium. At retail level, the Commission envisaged to further segment the market depending on the modes of supply (cryogenic portable tanks, tube trailers, dewars, and cylinders) and also considered the existence of a distinct retail market

⁹ The activities of CVC (and its portfolio companies) do not horizontally overlap with the activities of Messer and the Divestment Business. There may be potential vertical links between Messer's activities in the supply of medical gases in the EEA and the activities of two portfolio companies of CVC (namely [...]), which are private hospital operators. However, any such relationships would only have a marginal nature (i.e. with market shares well below 30%) and, thus, would not give rise to vertically affected markets.

¹⁰ Commission's decision of 20 August 2018 in case M.8480 – *Praxair/Linde*, Commission's decision of 6 June 2006 in Case M.4141 – *Linde/BOC*, and Commission's decision of 28 November 2007 in Case M.4823 – *Yara/Praxair/JV*.

for the supply of high purity helium (that is to say helium with a purity grade of 6.0 and above¹¹), but ultimately left open the exact scope of the market in this respect.

- (13) The Notifying Parties agree with the previous assessment of the Commission, which is also in line with the results of the in-depth investigation recently carried out by the Commission in case M.8480 – *Praxair/Linde*.¹²
- (14) In light of the above, and given that the Transaction does not give rise to competition concerns under any plausible market definitions, the Commission considers that, for the purposes of the assessment of this case, there is no reason to depart from the product market definitions retained in previous decisions as regards the helium wholesale market and that the exact scope of the helium retail market can be left open.

4.2. Geographic Markets

- (15) The in-depth investigation recently carried out by the Commission in case M.8480 – *Praxair/Linde* has largely confirmed the geographic market definitions retained in previous decisions as regards the supply of helium.¹³ The latter are not contested by the Notifying Parties and can be summarized as follows:
- i. **national** scope for the retail supply of helium (with the exception of the retail supply of helium in cryogenic portable tanks);
 - ii. **global** scope for the wholesale supply of helium, as well as for the potential market for the retail supply of helium in cryogenic portable tanks.
- (16) In light of the above, the Commission considers that, for the purposes of the assessment of the Transaction, there is no reason to depart from the geographic market definitions retained in previous decisions.

5. COMPETITIVE ASSESSMENT

- (17) As previously indicated, the overlaps between the activities of the Parties are very limited. Based on the Parties' estimates, the Transaction only gives rise to the following vertically affected markets:
- i. the (upstream) market for the wholesale supply of helium at global level; and
 - ii. the (downstream) market for the retail supply of helium in Latvia (and potential sub-markets).
- (18) The above markets have recently been reviewed by the Commission in case M.8480 – *Praxair/Linde*.¹⁴ Consequently, the assessment of the impact of the

¹¹ In the gas industry, purity is expressed by two digits separated by a dot to express the percentage of the relevant gas in the product. The first digit indicates the number of 9s, the second the digit after the 9s. Purity 6.0 means 99.9999%; purity 3.5 means 99.95%.

¹² Commission's decision of 20 August 2018 in case M.8480 – *Praxair/Linde*.

¹³ Commission's decision of 20 August 2018 in case M.8480 – *Praxair/Linde*, Commission's decision of 6 June 2006 in Case M.4141 – *Linde/BOC*, and Commission's decision of 28 November 2007 in Case M.4823 – *Yara/Praxair/JV*.

¹⁴ Commission's decision of 20 August 2018 in case M.8480 – *Praxair/Linde*.

Transaction in the affected markets will take into account the results of the in-depth investigation carried out by the Commission in that case.

- (19) Upstream, at wholesale level, the Parties have a moderate combined sales market share ([10-20]% in 2017) and net capacity share ([10-20]% in 2017), well below the 30% threshold.¹⁵ The Parties also face a number of competitors with higher sales/capacity shares (such as Linde/Praxair, Air Products, and Air Liquide). Moreover, the Divestment Business does not currently make any sales of helium in the EEA.
- (20) Downstream, among the Parties, only Messer is active at retail level in the EEA. Its market share exceeds 30% only in Latvia ([30-40]% on the overall helium retail market in 2017).¹⁶ Post-Transaction, the merged entity will face several actual and potential competitors on that market (including vertically integrated players with direct access to helium sources), such as the market leader, Linde ([50-60]%). While Messer's market share in Latvia is above the 30% threshold, it mainly reflects the small size of the market(s) concerned (e.g. Messer's sales were below [...] in 2017). Moreover, pre-Transaction, Messer is already vertically integrated to a large extent, sourcing most of its demand directly from helium producers, rather than on the wholesale market.
- (21) The Commission considers that the Transaction is unlikely to result in any risks of input or customer foreclosure. In particular, neither of the Parties appears to hold a sufficiently high degree of market power at upstream or downstream level. On the one hand, the existence of credible alternative upstream (wholesale) suppliers will limit the ability of the Parties to foreclose access to helium to downstream rivals and thus make any input foreclosure unlikely. On the other hand, the Transaction does not bring any meaningful change on the downstream retail markets since Messer is already vertically integrated pre-Transaction. Therefore, customer foreclosure is also unlikely to arise as a result of the Transaction.
- (22) In light of the above, the Commission concludes that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the vertical link between the global supply of helium at wholesale level (upstream) and the supply of helium at retail level in Latvia (downstream).

6. CONCLUSION

- (23) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.
- (24) This decision is without prejudice to the Commission's approval of CVC and Messer as suitable purchasers of the helium sourcing contracts and related assets

¹⁵ The Divestment Business' sales market share and net capacity share are based on the set of helium sourcing contracts and related assets to be transferred pursuant to the sale and purchase agreement dated 16 July 2018, subsequently amended on 22 September 2018.

¹⁶ To the best of the Parties' knowledge, the market shares of Messer on any potential retail sub-markets (depending on the purity level and mode of supply) in Latvia would not vary significantly.

included in the Divestment Business, which are divested as part of the commitments submitted in case M.8480 – *Praxair/Linde*, and of the Commission's assessment of whether the terms of the divestiture are consistent with the Commission's decision and the commitments in that case.

For the Commission

(Signed)

Margrethe VESTAGER
Member of the Commission