



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: 3.2.2020



EUROPEAN COMMISSION

Brussels, 3.2.2020
C(2020) 640 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Dear Sir/Madam,

Subject: Case M.8480 – PRAXAIR/LINDE
Approval of Guangzhou Guanggang Gases & Energy as purchaser of the Second Part of the Helium Sourcing Divestment Business following your letter of 17 December 2019 and the Trustee’s opinion of 20 December 2019

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 (the “Transaction”), 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 “Parties”.

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. In particular, the Commitments consist of three components: the “EEA Commitments”,³ the “SIAD Commitments”⁴ and the “Helium Sourcing Commitments”.⁵
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. Under paragraph 2 of the Helium Sourcing Commitments, the Parties committed to divest or procure the divestiture of the Helium Sourcing Divestment Business to (a) suitable purchaser(s) and, for this purpose, to enter into (a) final binding sale and purchase agreement(s) within the period of [...] from the date of adoption of the Decision (the “First Divestiture Period”). It follows that the First Divestiture Period initially expired on [...].

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”). By decision of 22 October 2018, the Commission approved Taiyo Nippon Sanso Corporation (of Japan) as purchaser of 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). By decision of 22 October 2018, the Commission approved the transitional supply agreements related to the SIAD Commitments.

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.

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.

8. On 10 September 2018, the 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,¹¹ and (ii) second, the helium sourcing contracts and assets defined in agreement with the State Administration for Market Regulation (“SAMR”) of the People’s Republic of China (the “Second Part of the Helium Sourcing Divestment Business”).¹²
9. By decision of 19 December 2018,¹³ the Commission approved Messer Industries GmbH (“MG Industries”) as purchaser of the First Part of the Helium Sourcing Divestment Business and concluded, on the basis of the relevant agreement, that the First Part of the Helium Sourcing Divestment Business was being sold in a manner consistent with the Helium Sourcing Commitments. The transfer of the First Part of the Helium Sourcing Divestment Business to MG Industries occurred on 1 March 2019.¹⁴
10. By letter of [...], the Parties requested an extension of the First Divestiture Period in relation to the Second Part of the Helium Sourcing Divestment Business until [...] (the “First Extension Request”). The Parties explained that [...] and that more time than initially foreseen was needed. On [...], the Trustee submitted an opinion endorsing the Parties’ First Extension Request. By decision of [...], the Commission extended the First Divestiture Period until [...].
11. By letter of [...], the Parties requested an additional extension of the First Divestiture Period until [...] (the “Second Extension Request”). The Parties explained that [...] there was a material risk that they would not be able to execute the relevant agreements by [...]. On [...], the Trustee submitted an opinion endorsing the Parties’ Second Extension Request. By decision of [...], the Commission extended the First Divestiture Period until [...].
12. By letter of 17 December 2019, the Parties proposed Guangzhou Guanggang Gases & Energy (“GGGE” or the “Proposed Purchaser”) for approval by the Commission as purchaser of the Second Part of the Helium Sourcing Divestment Business and submitted to the Commission a copy of the agreement entered into with GGGE (the “Proposed Agreement”).¹⁵
13. On 20 December 2019, the Trustee submitted an assessment of GGGE’ suitability as a purchaser and, in particular, indicated that GGGE 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 Second Part of the Helium Sourcing Divestment Business would be sold in a manner consistent with the Helium Sourcing Commitments.

¹¹ The First Part of the Helium Sourcing Divestment Business notably includes all the assets explicitly identified in the Helium Sourcing Commitments, as described in paragraph 5 of the present decision.

¹² Parties’ First Report on Divestment Process, dated 10 September 2018.

¹³ See Commission decision C(2018) 9176 of 19 December 2018 in case M.8480 – *Praxair/Linde*.

¹⁴ The First Part of the Helium Sourcing Divestment Business acquired by MG Industries is part of a wider package, which also comprises industrial gas assets in North and South America.

¹⁵ The Proposed Agreement consists of a Master Purchase Agreement that was entered into by the Parties and GGGE on [...].

14. It should be noted that the Second Part of the Helium Sourcing Divestment Business is being acquired by GGGE as part of a wider package, which also comprises various assets relating to the distribution of helium in China and customer contracts (the “China Helium package”).¹⁶

II. ASSESSMENT OF THE PROPOSAL

15. 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.
16. 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 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 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 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.
17. This section provides: (i) a short description of the Proposed Purchaser for the Second Part of the Helium Sourcing Divestment Business,¹⁷ (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.

¹⁶ The divestiture of the China Helium Package was required by the SAMR as a condition for approving the Transaction (the “SAMR Commitments”). The SAMR approved (i) GGGE as the suitable purchaser of the China Helium Package on [...] and (ii) the Master Purchase Agreement between the Parties and GGGE on [...]. The Master Purchase Agreement was executed on [...].

¹⁷ As explained in Section I of the present decision, the First Part of the Helium Sourcing Divestment Business was divested to a different purchaser (namely MG Industries) approved by the Commission in a separate decision on 19 December 2018.

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

18. GGGE is a Chinese industrial gas player, which is wholly-owned by Guangzhou Iron & Steel Enterprise Holdings, Ltd (“GISE”), a Chinese state-owned company.
19. The GISE group was founded in 1978, as the successor of Guangzhou Steel Factory. Following a business restructuring completed in 2013, the activities of the GISE group mainly focus on (i) modern service industry, (ii) materials and high-end manufacturing, which includes the production and supply of industrial gases, and (iii) real estate.
20. In 2017, the GISE group achieved a turnover of approximately EUR [...] and reported total profits of EUR [...].

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

(a) Independence from the Parties

21. As mentioned above, GGGE is a wholly owned subsidiary of GISE, a Chinese State-owned company.
22. There are currently four industrial gas joint-ventures active in China between GGGE and Linde. However, under the SAMR Commitments,¹⁸ Linde is required to divest its shares in each of these joint ventures to GGGE. As a result, these links will be removed and will not affect the independence of GGGE from the Parties.¹⁹
23. In addition, the Trustee’s review has shown that, apart from the above joint-ventures, there are no significant corporate, commercial or structural links between the Parties and the GISE group. While there are a number of ongoing commercial relationships between the Parties and the Proposed Purchaser, the Trustee found that these commercial arrangements (i) are not material as they represent a limited volume of business and (ii) will end with the divestment of Linde’s stake in the above-mentioned joint ventures.²⁰
24. In view of the above, the Commission considers that the Proposed Purchaser is independent of and unconnected to the Parties.

(b) Financial capabilities, proven expertise and incentive to maintain and develop the Second Part of the Helium Sourcing Divestment Business as a viable and active competitor

25. *First*, as regards the financial capabilities of the Proposed Purchaser, the Second Part of the Helium Sourcing Divestment Business is being acquired by GGGE as part of a wider China Helium Package for an overall consideration of EUR [...]. The China Helium Package will be acquired by GGGE through its own funds. In addition,

¹⁸ See footnote 16 above.

¹⁹ Trustee’s Reasoned Opinion, pages 7 and 39-40. The divestment of Linde’s stake in these joint-ventures will take place shortly after the transfer of the China Helium Package to GGGE. The four joint ventures are currently held separate from Linde and will continue to be until the divestment of Linde’s stake is completed.

²⁰ Trustee’s Reasoned Opinion, pages 7 and 39-40.

GGGE has the support of its parent company GISE and a credit line of EUR [...] from its bank to fund acquisition of [...]]²¹

26. The Trustee's analysis of the Proposed Purchaser's financial documentation also shows that GGGE's business is profitable (reporting profit before tax of EUR [...] in 2018), with a sustained history of growth (between 2015 and 2018, GGGE has achieved a CAGR²² of [...] % at the revenue level).²³
27. In addition, the Trustee points out that, subject to implementing the required distribution logistics and the related capital investment, the Second Part of the Helium Sourcing Divestment Business, along with the wider China Helium Package, is a profitable and self-funding business, including helium sources, distribution assets and customers.²⁴
28. *Second*, as regards the expertise of the Proposed Purchaser, the Trustee notes that GGGE is a well-established industrial gas company in China, with over 30 years of experience and a strong reputation on the Chinese market. The Trustee points out that GGGE already operates in the relevant gas markets. Its current activities includes notably the supply of industrial gases, electronic specialty gases and medical gases, as well as the supply of helium.²⁵ In view of the above, the Commission considers that GGGE appears to have a good understanding of the Helium Sourcing Divestment Business, and of its interaction with other gas businesses.
29. In addition, the Trustee points out that GGGE has relevant and sufficient experience in acquiring/integrating businesses and, thus, considers the integration risk to be limited.²⁶
30. *Finally*, the Trustee considers that the Proposed Purchaser has strong incentives to maintain and develop the Second Part of the Helium Sourcing Divestment Business as a viable and competitive force, both from a financial and strategic perspective. As detailed below, these conclusions are also supported by the fact that GGGE plans to [...].
31. From a financial point of view, the Trustee finds that the Second Part of the Helium Sourcing Divestment Business is a profitable and self-financing business with a good projected financial return. According to GGGE's forecasts, which are in line with historical performance, the Second Part of the Helium Sourcing Divestment Business is expected to generate revenues rising from EUR [...] in 2019 to EUR [...] in 2023 and a gross margin rising from [...] % in 2019 to [...] % in 2023.²⁷

²¹ Trustee's Reasoned Opinion, pages 8 and 44.

²² Compound Annual Growth Rate.

²³ Trustee's Reasoned Opinion, pages 8 and 44.

²⁴ Trustee's Reasoned Opinion, pages 8 and 44.

²⁵ Trustee's Reasoned Opinion, pages 9 and 45-46.

²⁶ Trustee's Reasoned Opinion, pages 46-47.

²⁷ Trustee's Reasoned Opinion, pages 10 and 49-50.

32. From a strategic point of view, the Proposed Agreement will allow GGGE to account for [...] % of the current Chinese helium market and to be the first Chinese helium supplier with its own helium sources (including sources ideally located for the Chinese market, such as the new Amur source located in Russia near the border with China). It will generate significant synergies with GGGE's existing business and will complement its existing gas portfolio. GGGE considers that the acquisition will enhance its competitiveness and expects significant sales opportunities to arise with regard to new and existing customers. In particular, the acquisition will provide GGGE with a strong platform for expanding gas sales in the Chinese [...] ²⁸ [...].²⁹
33. In order to maximise the value that can be extracted from the China Helium Package, GGGE plans to [...] ³⁰ [...].³¹ According to the Trustee, the above investments would enable GGGE's [...] to be at least equivalent to the ones that Praxair had in China pre-Transaction.
34. 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 Second Part of the Helium Sourcing Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.

(c) Absence of *prima facie* competition problems and of risks of delays in the implementation

35. The GISE group does not currently have any direct helium sourcing contract or back-to-back sourcing arrangements. The acquisition of the Second Part of Helium Sourcing Divestment Business will thus result in the GISE group becoming a new player in the field of helium sourcing.³²
36. Moreover, under the Chinese merger control rules, the acquisition by GGGE of both Linde's stake in the above-mentioned joint ventures and the China Helium Package constitute a single concentration notifiable to the SAMR. GGGE is confident that it will be able to secure the merger clearance in China within a reasonably short timeframe.³³ In this respect, the Commission notes that the SAMR has already approved GGGE as a suitable purchaser of the China Helium Package, as well as the terms of the sale.³⁴
37. The acquisition of the Second Part of the Helium Sourcing Divestment Business is not subject to any other regulatory approvals.³⁵
38. 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.

²⁸ [...].

²⁹ Trustee's Reasoned Opinion, pages 10 and 48-49.

³⁰ [...].

³¹ Trustee's Reasoned Opinion, pages 10 and 48.

³² Trustee's Reasoned Opinion, pages 11 and 52.

³³ Trustee's Reasoned Opinion, pages 11 and 53.

³⁴ See footnote 16 above.

³⁵ Trustee's Reasoned Opinion, pages 11 and 53.

(d) Conclusion

39. 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**

40. The review of the Trustee showed that the provisions included in the Proposed Agreement are consistent with the Helium Sourcing Commitments.³⁶

41. In the context of the acquisition of the First Part of the Helium Sourcing Divestment Business by MG Industries, the Trustee confirmed that, even without taking into account the Second Part of the Helium Sourcing Divestment Business:

- 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, and
- 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.³⁷

42. The Trustee provided an updated analysis taking into account the helium sourcing contracts included in the Second Part of the Helium Sourcing Divestment Business and confirms that its opinion remains unchanged.³⁸

43. In view of the above, the Commission concludes that the Second Part of the Helium Sourcing Divestment Business is being sold in a manner that is consistent with the Helium Sourcing Commitments.

III. CONCLUSION

44. On the basis of the above assessment, the Commission approves the Proposed Purchaser as a suitable purchaser for the Second Part of the Helium Sourcing Divestment Business.

45. On the basis of the Proposed Agreement, the Commission further concludes that the Second Part of the Helium Sourcing Divestment Business is being sold in a manner consistent with the Helium Sourcing Commitments.

³⁶ Trustee’s Reasoned Opinion, pages 12-16 and 56-65.

³⁷ See Commission decision C(2018)9176 of 19 December 2018 in case M.8480 – *Praxair/Linde*, recital 38.

³⁸ Trustee’s Reasoned Opinion, pages 15 and 59.

46. 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 Parties have complied with the Commitments in general and the Helium Sourcing Commitments in particular.
47. 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)
Olivier GUERSENT
Director-General