1710068

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Joseph J. Simons, Chairman**
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of	)	
Linde AG	)	
a corporation,	)	**DECISION AND ORDER**
	)	**Docket No. C-**
Praxair, Inc.	)	
a corporation, and	)	
Linde PLC	)	
a corporation.	)	

DECISION
[Public Record Version]

The Federal Trade Commission ("Commission") initiated an investigation of the proposed merger of Linde AG and Praxair, Inc. to form Linde PLC (collectively "Respondents"). The Commission's Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents and the Bureau of Competition executed an agreement ("Consent Agreement") containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission's Rules, and (4) a proposed Decision and Order and Order to Hold Separate and Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Hold Separate and Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings, and issues the following Decision and Order ("Order"):

A. Respondent Linde AG is a corporation organized, existing, and doing business under, and by virtue of, the laws of Germany, with its office and principal place of business located at Klosterhofstrasse 1, 80331 Munich, Germany. Linde AG's United States address for service of process, the Complaint, Decision and Order, and Order to Hold Separate and Maintain Assets is Linde North America, Inc., 200 Somerset Corporate Boulevard, Bridgewater, New Jersey 08807 (attention: Greg Schuetz, Esq.).

B. Respondent Praxair, Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business located at 10 Riverview Drive, Danbury, Connecticut 06810.

C. Respondent Linde PLC is a corporation organized, existing, and doing business under and by virtue of the laws of Ireland with its executive office located at The Priestley Centre, 10 Priestley Road, The Surrey Research Park, Guildford, Surrey GU2 7XY, United Kingdom. Linde PLC's United States address for service of process, the Complaint, Decision and Order, and Order to Hold Separate and Maintain Assets is Praxair, Inc., 10 Riverview Drive, Danbury, Connecticut 06810 (attention: Guillermo Bichara, Esq.).

D. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

A. "Linde" means Linde AG, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Linde AG (including Linde North America, Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "Praxair" means Praxair, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Praxair, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Linde PLC" means Linde PLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Linde PLC (including Linde North America, Inc. after the Merger), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

D. "Commission" means the Federal Trade Commission.

E. "Acquirer" means any Person that acquires any of the Gases Assets pursuant to this Order.

F. "Active Employee" means any full-time, part-time, or contract individual employed by Linde, Praxair, or Linde PLC whose job responsibilities relate or related to any part of the Gases Business or Gases Assets, as of and after the date of the announcement of the Merger.

G. "Additional HyCO SMR Assets" means all assets identified on Appendix D of this Order.

H. "Additional Helium Assets" means all assets located outside of the United States relating to the Helium Business that are not identified on Non-Public Appendix B of this Order.

I. "Additional Industrial Gases Assets" means all assets (i) identified on Appendix A of this Order except for assets owned by Lincare Holdings, Inc. and (ii) relating to the Specialty Gases Business located in the United States.

J. "Atmospheric Gases" means oxygen, nitrogen, argon, krypton, neon, and xenon.

K. "Atmospheric Gases Business" means all business activities conducted by Linde prior to the Merger Date relating to the sale of Atmospheric Gases produced anywhere in the United States, Trail, British Columbia, Canada, and Sarnia, Ontario, Canada including researching, developing, producing, or selling Atmospheric Gases.

L. "Celanese" means Celanese International Corporation, a corporation organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its office and principal place of business located at 222 West Colinas Blvd., Suite 900N, Irving, Texas 75039.

M. "CO_2 Business" means all business activities conducted by Linde prior to the Merger Date relating to the sale of carbon dioxide anywhere in the United States, including researching, developing, producing, or selling carbon dioxide.

N. "Confidential Information" means any and all of the following information:

1. all information that is a trade secret under applicable trade secret or other law;

2. all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, software and computer software and database technologies, systems, structures, and architectures;

3. all information concerning the relevant business, including historical and current financial statements, financial projections and budgets, tax returns and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials; and

4. all notes, analyses, compilations, studies, summaries and other material to the extent containing or based, in whole or in part, upon any of the information described above;

Provided, however, that Confidential Information shall not include information that (i) was, is, or becomes generally available to the public other than as a result of a breach of this Order; (ii) was or is developed independently of and without reference to any Confidential Information; or (iii) was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.

O. "Consent" means any approval, consent, ratification, waiver, or other authorization.

P. "Contract" means any agreement, contract, lease, license agreement, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), whether or not legally binding with third parties.

Q. "Designated Assets" means:

1. all real property interests (including fee simple interests and real property leasehold interests), including all easements, and appurtenances, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;

2. all Tangible Personal Property, including any Tangible Personal Property removed from any location of a relevant business since the date of the announcement of the Merger and not replaced;

3. all inventories;

4. all Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto;

5. all Governmental Authorizations and all pending applications therefor or renewals thereof, to the extent transferable;

6. all data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, Records relating to Contracts, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, notices, orders, inquiries, correspondence, and other similar documents and Records, and copies of all personnel Records (to the extent permitted by law); and

7. all intangible rights and property, including Intellectual Property owned or licensed (as licensor or licensee) by Respondent (to the extent transferable or licensable), going concern value, goodwill, and telephone and telecopy listings.

R. "DivestCo Products" means any raw materials, partially finished products, supplies, and any other product that an Acquirer produces at or provides from a property or third-party source included in the Gases Assets.

S. "Divestiture Agreement" means any agreement between Respondents (or between a Divestiture Trustee) and a Person to divest any of the Gases Assets that has been approved by the Commission pursuant to this Order, including any ancillary agreements relating to the divestiture, all amendments, exhibits, agreements, and schedules thereto.

T. "Divestiture Trustee" means the Person appointed by the Commission pursuant to Paragraph VII. of this Order.

U. "EP&C Assistance" means field consulting, engineering, procurement, and construction services in connection with the design, delivery, and construction of industrial gases plants.

V. "Gases Assets" means the Helium Assets, HyCO Assets, and Industrial Gases Assets and, if applicable, any additional assets identified in Paragraphs I.G., I.H., and I.I. of this Order.

W. "Gases Business" means the Helium Business, HyCO Business, and Industrial Gases Business.

X. "Governmental Authorization" means any Consent, license, registration, or permit issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement.

Y. "Helium Assets" means all of Respondent's right, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, relating to the Helium Business, including the Designated Assets; *provided, however*, that the Helium Assets shall not include any Helium Retained Assets; *provided further* that the Helium Assets shall include helium assets owned by Praxair identified on Non-Public Appendix C of this Order.

Z. "Helium Business" means all business activities conducted by Linde prior to the Merger Date relating to the sale of bulk helium anywhere in the world, including researching, developing, producing, or selling bulk helium.

AA. "Helium Retained Assets" means the (i) Standard Retained Assets, (ii) any assets located outside of the United States other than the assets identified on Non-Public Appendix B of this Order, (iii) any assets exclusively related to the sale of helium through the Specialty Gases Business and Industrial Gases Retained Assets, and (iv) Linde's supply rights for 100 mmscf per annum starting in 2020 from the helium source contract between ExxonMobil Gas & Power Marketing and Linde Gas North America LLC, dated April 9, 2018.

BB. "HyCO Assets" means the HyCO Clear Lake Assets, HyCO La Porte Assets, and HyCO SMR Assets.

CC. "HyCO Business" means the HyCO Clear Lake Business, HyCO La Porte Business, and HyCO SMR Business.

DD. "HyCO Clear Lake Assets" means all of Respondent's right, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, relating to the HyCO Clear Lake Business, including the Designated Assets; *provided, however*, that the HyCO Clear Lake Assets shall not include (i) Linde's Gulf coast hydrogen pipeline and related assets necessary for its operation, (ii) any Standard Retained Assets or (iii) any assets located outside of the United States.

EE. "HyCO Clear Lake Business" means all business activities conducted by Linde prior to the Merger Date relating to the sale of hydrogen, carbon monoxide, syngas, and superheated steam produced in Clear Lake, Texas, including researching, developing, producing, or selling hydrogen, carbon monoxide, syngas, and superheated steam.

FF. "HyCO La Porte Assets" means all of Respondent's right, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, relating to the HyCO La Porte Business, including the

Designated Assets; *provided, however,* that the HyCO La Porte Assets shall not include (i) Linde's Gulf coast hydrogen pipeline and related assets necessary for its operation, (ii) Linde's air separation unit located in La Porte, Texas, (iii) any Standard Retained Assets or (iv) any assets located outside of the United States.

GG. "HyCO La Porte Business" means all business activities conducted by Linde prior to the Merger Date relating to the sale of hydrogen, carbon monoxide, syngas, and superheated steam produced in La Porte, Texas, including researching, developing, producing, or selling hydrogen, carbon monoxide, syngas, and superheated steam.

HH. "HyCO SMR Assets" means all of Respondent's right, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, relating to the HyCO SMR Business, including the Designated Assets; *provided, however,* that the HyCO SMR Assets shall not include any (i) Standard Retained Assets, (ii) assets located outside of the United States, or (iii) assets identified on Appendix D of this Order; *provided further* that the HyCO SMR Assets shall include Linde's Gulf coast hydrogen pipeline and related assets necessary for its operation.

II. "HyCO SMR Business" means all business activities conducted by Linde prior to the Merger Date relating to the sale of hydrogen, carbon monoxide, syngas, and superheated steam produced anywhere in the United States using SMR technology, including researching, developing, producing, or selling hydrogen, carbon monoxide, syngas, and superheated steam.

JJ. "Including" means including without limiting the generality of any description preceding such term.

KK. "Industrial Gases Assets" means all of Respondent's right, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, relating to the Industrial Gases Business, including the Designated Assets; *provided, however,* that the Industrial Gases Assets shall not include any Industrial Gases Retained Assets.

LL. "Industrial Gases Business" means the Atmospheric Gases Business, CO_2 Business, Laser Gases Business, and Liquid Hydrogen Business.

MM. "Industrial Gases Retained Assets" means the (i) Standard Retained Assets, (ii) any assets located outside of the United States other than assets relating to the Liquid Hydrogen Business located at Magog, Quebec, Canada, and (iii) any assets identified on Appendix A of this Order.

NN. "Intellectual Property" means all intellectual property owned or licensed (as licensor or licensee), including (1) commercial names, all assumed fictional business names, trade names, "doing business as" (d/b/a names), registered and unregistered trademarks, service marks and applications, and trade dress; (2) all patents, patent applications and

inventions and discoveries that may be patentable; (3) all registered and unregistered copyrights in both published works and unpublished works; (4) all rights in mask works; (5) all know-how, trade secrets, confidential or proprietary information, customer lists, software, technical information, data, process technology, plans, drawings, and blue prints; and (6) all rights in internet web sites and internet domain names presently used.

OO. "Laser Gases" means excimer laser gas mixtures containing neon and one or more of the following gases: argon, krypton, xenon, and fluorine.

PP. "Laser Gases Acquirer" means the Acquirer of the Industrial Gases Assets relating to the Laser Gases Business.

QQ. "Laser Gases Assets" means the Industrial Gases Assets relating to the Laser Gases Business.

RR. "Laser Gases Business" means all business activities conducted by Linde prior to the Merger Date relating to the sale of Laser Gases anywhere in the United States, including researching, developing, producing, or selling Laser Gases.

SS. "License" means a royalty-free, fully paid-up, perpetual, irrevocable, transferable, and sub-licensable license and such tangible embodiments of the licensed rights (including physical and electronic copies) as may be necessary or appropriate to enable the licensee to use the rights.

TT. "Liquid Hydrogen Business" means all business activities conducted by Linde prior to the Merger Date relating to the sale of liquid hydrogen produced anywhere in the United States and Magog, Quebec, Canada, including researching, developing, producing, or selling liquid hydrogen.

UU. "Lyondell" means LyondellBasell Industries N.V., a corporation organized, existing, and doing business under, and by virtue of, the laws of The Netherlands, with its office and principal place of business in the United States located at 1221 McKinney Street, Suite 300, Houston, Texas 77010.

VV. "Matheson" means Matheson Tri-Gas, Inc., a corporation organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its office and principal place of business located at 150 Allen Road, Suite 302, Basking Ridge, NJ 07920. Matheson is a wholly-owned subsidiary of Taiyo Nippon Sanso Corporation.

WW. "Merger" means the merger of Linde and Praxair described in the Business Combination Agreement by and among Linde Aktiengesellschaft, Praxair, Inc., Zamalight PLC, Zamalight Holdco LLC, and Zamalight Subco, Inc., dated as of June 1, 2017.

XX. "Merger Date" means the date the Merger closes.

YY. "Messer" means MG Industries GmbH, a corporation organized, existing, and doing business under, and by virtue of, the laws of Germany, with its office and principal place of business located at Messer-Platz 1, 65812 Bad Soden/Taunus, Germany.

ZZ. "Multi-Product Customer" means any customer who, at any time within 12 months before the Merger Date, (i) purchased products or services from Respondents included in the Gases Business and (ii) purchased products or services from Respondents in the United States not included in the Gases Business.

AAA. "Multi-Location Customer" means any customer who, at any time within 12 months before the Merger Date, purchased products or services from Respondents from (i) any location of the Gases Business and (ii) any other location of Respondents in the United States.

BBB. "Person" means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.

CCC. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

DDD. "RemainCo Products" means any raw materials, partially finished products, supplies, and any other products relating to any Gases Business that Respondents produce at or provide from a facility or a third-party source that is not included in the Gases Assets.

EEE. "Specialty Gases" means electronic, specialty, calibration, and other packaged gases, including mixtures and Linde's Spectra and HiQ products, except for the Laser Gases.

FFF. "Specialty Gases Business" means all business activities conducted by Linde prior to the Merger Date relating to the sale of Specialty Gases produced anywhere in the United States, including researching, developing, producing, or selling specialty gases.

GGG. "Standard Retained Assets" means:

1. corporate, business, or other names of Linde or Praxair or any logo, trademark, service mark, domain name, trade or other name or any derivation thereof;

2. software that can readily be purchased or licensed from sources other than Respondents and that has not been materially modified (other than through user preference settings);

3. enterprise software that Respondents used primarily to manage and account for businesses other than the Gases Businesses;

4. the portion of any Record that contains information about any business other than the business divested to an Acquirer;

5. any Record that Respondents have a legal, contractual, or fiduciary obligation to retain the original; *provided, however,* that Respondents shall provide copies of the Record and shall provide the Acquirer access to the original materials if copies are insufficient for regulatory or evidentiary purposes; and

6. any assets if not needed by an Acquirer.

HHH. "Tangible Personal Property" means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, rolling stock, and other items of tangible personal property (other than inventories) of every kind owned or leased, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

III. "Transitional Assistance" means the assistance described in Paragraph II.D.1. of this Order.

JJJ. "Transitional Services" means any (i) goods and services relating to the Gases Business that Linde provides from a property, facility, or third-party source that is not included in the Gases Assets and (ii) training and consultation reasonably necessary to operate the Gases Business, including operation of new facilities constructed by Linde.

II.

IT IS FURTHER ORDERED that:

A. No later than 120 days from the date that Linde signs the Consent Agreement, Respondents shall divest the:

1. Industrial Gases Assets and Helium Assets, as on-going businesses, absolutely and in good faith, at no minimum price to Messer or to any other Person that receives the prior approval of the Commission, *provided, however,* that if the Commission approves a Person other than Messer to acquire the Industrial Gases Assets and Helium Assets, then Respondents shall also divest some or all of the Additional Industrial Gases Assets and Additional Helium Assets to such Person;

2. HyCO SMR Assets, as on-going businesses, absolutely and in good faith, at no minimum price to Matheson or to any other Person that receives the prior approval of the Commission, *provided, however,* that if the Commission approves a Person other than Matheson to acquire the HyCO SMR Assets, then Respondents shall also divest some or all of the Additional HyCO SMR Assets to such Person;

3. HyCO Clear Lake Assets, as on-going businesses, absolutely and in good faith, at no minimum price to Celanese or to any other Person that receives the prior approval of the Commission; and

4. HyCO La Porte Assets, as on-going businesses, absolutely and in good faith, at no minimum price to Lyondell or to any other Person that receives the prior approval of the Commission.

B. With respect to Intellectual Property, Respondents:

1. If Messer acquires the Helium Assets, shall grant a License to Messer under any Intellectual Property not included in the Helium Assets (except for Intellectual Property of the kind identified in Paragraph I.GGG. of this Order) required to operate the Helium Business, as constituted after the divestiture of the Helium Assets, anywhere in the world in a manner consistent with the operation of the Helium Business prior to the Merger Date with the freedom to extend existing products and services and develop new products and services; and

2. May receive a License back from the Acquirer under any Intellectual Property included in the Gases Assets that also relates to any business conducted by Linde prior to the Merger that Respondents are not required to divest for use solely in those retained businesses.

C. Notwithstanding any other provision of this Order, Respondents may retain all or a portion of any Contract with a Multi-Product Customer or Multi-Location Customer as agreed between Respondents and an Acquirer; *provided, however,* that customer Contracts included in any of the Gases Assets shall provide the Acquirer with a volume of business equal to the historical volume of each relevant business and location; *provided further* that the quality and terms of the divested customer Contracts collectively shall be substantially similar to those retained by Respondents.

D. Respondents shall:

1. In connection with the divestiture of any of the Gases Assets and at the option of the Acquirer of such assets, provide assistance to the Acquirer as set forth below for up to the specified period of time after divestiture:

Type of Assistance	Period of Time
Provide Transitional Services	24 months
Supply RemainCo Products	36 months
Purchase DivestCo Products	36 months

The assistance required by this Paragraph II.D.1. shall be individually and collectively referred to as "Transitional Assistance."

2. Provide Transitional Assistance on terms and conditions sufficient for Acquirer to conduct the relevant Gases Business, as constituted after the divestiture of the relevant assets, in a manner consistent with the operation of such business prior to the Merger Date, including the ability to develop new products, increase sales of current products, make reasonable modifications to the relevant Gases Business, and maintain the competitiveness of the relevant Gases Business; *provided, however,* that:

   (a) Acquirer may terminate any Transitional Assistance at any time upon commercially reasonable notice and without cost or penalty;

   (b) Upon Acquirer's request, Respondents shall file with the Commission a request to extend the time period of any Transitional Assistance needed to achieve the purposes of this Order; and

   (c) Respondents shall not seek to limit any damages (such as indirect, special, and consequential damages) which Acquirer would be entitled to receive in the event of Respondents' breach of any agreement relating to Transitional Assistance.

3. Not sell or provide Laser Gases produced at any facility owned or operated by Linde prior to the Merger Date to any Person in the United States, other than the Laser Gases Acquirer during the period of such sales to the Laser Gases Acquirer, up to 5 years.

4. No later than 30 days from the date Respondents divest the Laser Gases Assets, deposit funds as set forth in Non-Public Appendix E into a Commission administered escrow account ("Construction Fund"):

   (a) The Construction Fund shall include earnings, but exclude costs of administration which shall be paid from the Construction Fund.

(b) The Monitor will oversee payments from the Construction Fund, which shall be used to reimburse the Laser Gases Acquirer for the costs (up to $12 million) associated with the design and construction or renovation of a facility to manufacture and blend Laser Gases ("Laser Gases Plant') in the United States, and to provide milestone payments to the Laser Gases Acquirer for the certification and operation of the Laser Gases Plant as set forth in Non-Public Appendix E.

(c) If the Laser Gases Acquirer does not begin actual physical construction or renovation of a Laser Gases Plant within 12 months after the Laser Gases Assets are divested:

(i) Respondents shall rescind the divestiture of the Laser Gases Assets within 5 days of the failure to meet the 12 month deadline and continue to operate the Laser Gases Business; and

(ii) The Commission shall appoint a Divestiture Trustee to divest the Laser Gases Assets (including any rights in the Laser Gases Plant and rights to the escrow account) pursuant to Paragraph VII. of this Order.

(d) The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with this Paragraph.

5. Provide EP&C Assistance pursuant to Paragraph II.D.2. of this Order to complete the construction of industrial gas plants located in Keyes, California; Claymont, Delaware; and Adel, Georgia; and (ii) at the option of an Acquirer, to design, deliver, and construct industrial gas plants in Indianapolis, Indiana; Enid, Oklahoma; and in connection with the Laser Gases Business; *provided, however,* that notwithstanding Paragraph II.D.2.(c) of this Order, Respondents may enter into arrangements with the Engineering Division of Linde on customary commercial terms.

E. Respondents shall obtain all Governmental Authorizations and Consents from any Person that are necessary to transfer any of the Gases Assets no later than the date that such assets are divested; *provided, however,* that in the event Respondents are unable to obtain any:

1. Governmental Authorization, Respondents shall provide such assistance as an Acquirer may reasonably request in Acquirer's efforts to obtain a comparable authorization; and

2. Consent from a third party, Respondents shall, with the acceptance of the Acquirer and the prior approval of the Commission, substitute equivalent assets or arrangements.

F. For a period of 2 years after divestiture of any of the Gases Assets, Respondents shall not solicit or induce any:

1. Multi-Product Customer, Multi-Location Customer, or any customer of the Laser Gases Business to discontinue or reduce such customer's purchases from an Acquirer; *provided, however,* that Respondents may (i) advertise in newspapers, trade publications, or other media in a manner not targeted specifically at customers of an Acquirer or (ii) sell products to a Multi-Product Customer or Multi-Location Customer that initiates communications with Respondents to purchase products, so long as such customers were not solicited by Respondents in violation of this paragraph; or

2. Active Employee who has accepted an offer of employment with an Acquirer to terminate such employment; *provided, however,* that Respondents may (i) advertise for employees in newspapers, trade publications, or other media not targeted specifically at the employees or (ii) hire employees if employment has been terminated by an Acquirer or who apply for employment with Respondents, so long as such employees were not solicited by Respondents in violation of this Paragraph.

G. The purpose of the divestiture of the Gases Assets is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Merger by Respondents and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

A. Respondents shall set forth and submit to the Commission for prior approval the manner in which they will comply with Paragraph II. of this Order in one or more agreements with one or more Acquirers. Upon approval, such agreements shall individually and collectively be referred to as "Divestiture Agreement."

B. Respondents shall comply with all terms of any Divestiture Agreement, which shall be incorporated by reference into this Order and made a part hereof; *provided, however,* that a Divestiture Agreement shall not limit, or be construed to limit, the terms of this Order and to the extent any provision in the Divestiture Agreement varies from or conflicts with any provision in the Order such that Respondents cannot fully comply with both, Respondents shall comply with the Order.

C. Respondents shall not modify, replace, or extend the terms of a Divestiture Agreement without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

IV.

IT IS FURTHER ORDERED that:

A. Respondents shall cooperate and assist with an Acquirer's due diligence investigation of any of the Gases Assets and Gases Business, including providing access to any and all personnel, properties, contracts, authorizations, documents, and information customarily provided as part of a due diligence process.

B. From the time Respondents engage in negotiations with any Acquirer until 6 months after the divestiture of any of the Gases Assets to that Acquirer, Respondents shall cooperate and assist the Acquirer to identify and hire any Active Employee whose responsibilities relate in any way to the Gases Assets to be divested to the Acquirer:

1. No later than 10 days after the request of an Acquirer, Respondents shall provide all information of any relevant Active Employee, including providing access to personnel Records (to the extent permissible under applicable laws) and allowing Acquirer to privately interview such Active Employee;

2. Respondents shall (i) not solicit the continued employment of any Active Employee (unless Acquirer has informed Respondents that a particular Active Employee will not receive an employment offer from Acquirer) and (ii) not otherwise interfere, directly or indirectly, with the recruitment, hiring, or employment of any Active Employee by an Acquirer;

3. Respondents shall provide reasonable financial incentives as necessary to any Active Employee to accept an offer of employment from an Acquirer, which may include providing a retention bonus for continuing employment in connection with any Gases Assets to be divested; and

4. All Active Employees hired by an Acquirer who are participants in Respondents' retirement and savings plans (i) shall retain their accrued benefits under such plans as of the date the Gases Assets are divested and Respondents shall be liable for payment of the benefits when employees become eligible for them and (ii) shall become fully vested in their accrued benefits as of the date the Gases Assets are divested.

V.

IT IS FURTHER ORDERED that:

A. Respondents shall (i) not disclose (including as to Respondents' employees) and (ii) not use for any reason or purpose, any Confidential Information received or maintained by Respondents relating to the Gases Assets, Gases Business, and the post-divestiture Gases Business; *provided, however,* that Respondents may disclose or use such Confidential Information in the course of:

1. Performing their obligations or as permitted under this Order, the Order to Hold Separate and Maintain Assets, or any Divestiture Agreement; or

2. Complying with financial, regulatory, or other reporting or legal obligations, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Gases Assets or Gases Business or as required by law.

B. If disclosure or use of any Confidential Information is permitted to Respondents' employees or to any other Person under Paragraph V.A. of this Order, Respondents shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph V.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.

C. Respondents shall enforce the terms of this Paragraph V. as to its employees or any other Person, and take such action as is necessary to cause each of their employees and any other Person to comply with the terms of this Paragraph V., including implementation of access and data controls, training of its employees, and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

VI.

IT IS FURTHER ORDERED that:

A. Grant Thornton LLP ("Monitor") shall serve to observe and report on Respondent's compliance with all of its obligations as required by this Order and any Divestiture Agreement.

B. Respondents shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order and in consultation with the Commission:

1. The Monitor shall (i) monitor Respondents' compliance with the obligations set forth in this Order and (ii) act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondents or of the Commission;

2. Respondents shall (i) ensure that the Monitor has full and complete access to all Respondents' personnel, books, records, documents, and facilities relating to compliance with this Order or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to this Order;

3. The Monitor (i) shall serve at the expense of Respondents, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;

4. Respondent shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct; and

5. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Monitor from providing any information to the Commission.

C. The Monitor shall report in writing to the Commission:

1. every 30 days from the date the Monitor is appointed until Respondents have fully complied with the provisions of Paragraphs II.A.-B. of this Order;

2. every 90 days from the date Respondents have complied with Paragraphs II.A.-B. of this Order until Respondents have fully complied with the provisions of Paragraph II.D of this Order;

3. no later than 10 days after Respondents have completed their obligations required by Paragraph II.D of this Order ("Final Report"); and

4. at any other time as requested by the staff of the Commission, concerning Respondents' compliance with this Order.

D. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

E. The Monitor's power and duties shall terminate 10 business days after the Monitor has completed his Final Report, or at such other time as directed by the Commission.

F. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld:

1. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within five (5) days after notice by the staff of the Commission to Respondents of the identity of any substitute Monitor, then Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor; and

2. Respondents shall, no later than five (5) days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order on the same terms and conditions as provided in this Paragraph VI.

G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

VII.

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with the divestiture and other obligations as required by Paragraph II. of this Order or the Respondents have rescinded the divestiture of the Laser Gases Assets pursuant to Paragraph II.D.4. of this Order, the Commission may appoint a Divestiture Trustee to divest the Gases Assets (including the Laser Gases Assets, if applicable) and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor.

B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a

Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

D. Within 10 days after appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or other action required by the Order.

E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to take such other action as may be required to divest the Gases Assets and perform Respondents' other obligations in a manner that satisfies the requirements of this Order;

2. The Divestiture Trustee shall have 12 months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the 12 month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court;

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant

information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph VIII. in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however,* if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; *provided further, however,* that Respondents shall select such entity within 5 days of receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph VII.E.6., the term

"Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph VII.E.5. of this Order;

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order;

8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 60 days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and

9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

F. The Commission may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.

G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VII.

H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

VIII.

IT IS FURTHER ORDERED that:

A. Respondents shall:

1. No later than 5 days after the Merger Date, notify the Commission via email at bccompliance@ftc.gov of the Merger Date; and

2. No later than 10 days after the divestiture of any of the Gases Assets has been completed, (a) notify the Commission of the date such divestiture closed and (b) submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov.

B. Respondents shall submit verified written reports ("Compliance Reports") in accordance with the following:

1. Respondents shall submit:

(a) Interim Compliance Reports 30 days after this Order is issued, every 30 days thereafter until Respondents have fully complied with the provisions of Paragraphs II.A.-B. of this Order, and every 90 days thereafter until Respondents have fully complied with the provisions of Paragraph II.D of this Order;

(b) Annual Compliance Reports one year after the date this Order is issued and annually thereafter for the next nine years on the anniversary of that date; and

(c) Additional Compliance Reports as the Commission or its staff may request;

2. Each Compliance Report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Order (conclusory statements that Respondents have complied with their obligations under the Order are insufficient);

3. Respondents shall include in their Compliance Reports a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each paragraph of the Order, and a description of all substantive contacts or negotiations for the divestitures and the identities of all parties contacted; and

4. Respondents shall retain copies of all material written communications to and from such parties, as well as all non-privileged internal memoranda, reports, and recommendations concerning completing their obligations under this Order for a period of 3 years, and shall provide copies of those records to Commission staff upon request.

C. Respondents shall verify each Compliance Report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or other officer or employee specifically authorized to perform this function. Respondents shall submit an original and 2 copies of each Compliance Report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondents shall provide a copy of each Compliance Report to the Monitor if the Commission has appointed one in this matter.

IX.

IT IS FURTHER ORDERED that Respondent Linde PLC shall notify the Commission at least 30 days prior to:

A. Any proposed dissolution of Linde PLC;

B. Any proposed acquisition of, or merger or consolidation of Linde PLC; or

C. Any other change in Respondents, including assignment and the creation, sale, or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

X.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to the relevant Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and

B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order shall terminate ten years from the date it is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

Appendix A

The Industrial Gases Retained Assets shall include the type of assets identified below at the specified locations for the following businesses.

Business	Type of Assets	Locations
Atmospheric Gases Business	On-site air separation facilities	Crawfordsville, IN Baton Rouge, LA Fostoria, OH (closed) Warren, OH (closed) Butler, PA Jewett, TX
	On-site ECOVAR facilities	All
	Packaged gases products facilities	Hammond, IN Twinsburg, OH Union City, GA Blythewood, SC
	All assets owned by Linde Engineering	All
	All assets owned by Lincare Holdings, Inc. and the LifeGas business assets	All
	Office building and leased space	Murray Hill, NJ Shreveport, LA (sales) Bridgewater, NJ (leased) Stewartsville, NJ (leased) Butler, PA warehouse (leased)

Business	Type of Assets	Locations
CO_2 Business	CO_2 facilities	El Segundo, CA Muscatine, IA Sandhill, MS Enid, OK (closing) Denver City, TX (closed) Fort Worth, TX McCamey, TX (closed) Green River, WY
	Transfer (FPU) contracts	Sauget, IL Clearfield, PA Oshkosh, WI Cheyenne, WY
Laser Gases Business	Real property and Tangible Personal Property (intangible assets, inventories, and records of the Laser Gases Business shall not be included in the Industrial Gases Retained Assets)	Phoenix, AZ San Marcos, CA Acton, MA Research Triangle, NC Alpha, NJ Pohatcong, NJ Hobbs, NM (closed) Medford, OR Freeport, TX (joint venture) Terrell, TX Vancouver, WA

Non-Public Appendix B

[Redacted From the Public Record Version, But Incorporated By Reference]

Non-Public Appendix C

[Redacted From the Public Record Version, But Incorporated By Reference]

Appendix D

The HyCO SMR Assets shall not include the type of assets identified below at the specified locations for the HyCO SMR Business.

Business	Type of Assets	Locations
HyCO SMR Business	On-site SMR facilities (including equipment required for crude CO_2 production in Decatur, AL, the liquid hydrogen storage assets related to Charleston, TN, and the Charleston, TN SMR spare parts located in the Butler, PA warehouse)	Decatur, AL Delaware City, DE Crawfordsville, IN Toledo, OH Charleston, TN Salt Lake City, UT Morris, IL

Non-Public Appendix E

[Redacted From the Public Record Version, But Incorporated By Reference]