

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,)	
)	Docket No. C- 4660
Praxair, Inc.)	File No. 171-0068
a corporation, and)	
)	
Linde PLC)	
a corporation.)	
_____)	

**PETITION OF LINDE AG, PRAXAIR, INC., AND LINDE PLC FOR APPROVAL OF
THE PROPOSED DIVESTITURE OF THE HYCO SMR ASSETS TO
MATHESON TRI-GAS, INC.**

Pursuant to Section 2.41(f) of the Federal Trade Commission (“**Commission**”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2016), and Paragraph II.A.2 of the Decision and Order contained in the Agreement Containing Consent Orders accepted for public comment in this matter (“**Decision and Order**”), Linde AG (“**Linde**”), Praxair, Inc. (“**Praxair**”), and Linde PLC (together, the “**Respondents**”) hereby petition the Commission to approve the

divestiture of the HyCO SMR Assets¹ to Matheson Tri-Gas, Inc. (“**Matheson**”), a Delaware corporation and wholly owned subsidiary of Taiyo Nippon Sanso Corporation (“**TNSC**”).²

I. Introduction.

On October 1, 2018, Respondents executed an Agreement Containing Consent Orders (the “**Consent Agreement**”) to settle the Commission’s charges related to the proposed combination of Linde and Praxair (the “**Transaction**”). On October 22, 2018, the Commission accepted the Consent Agreement for public comment. The Respondents completed the Transaction on October 31, 2018. The Order to Hold Separate and Maintain Assets (the “**Hold Separate Order**”) requires the Respondents to operate Linde and Praxair independently until the Industrial Gases Assets and HyCO SMR Assets have been divested. Paragraph II.A.2 of the Decision and Order requires the Respondents to divest the HyCO SMR Assets as on-going businesses to Matheson or to any other Person that receives the prior approval of the Commission.

The Respondents intend to complete the proposed divestiture to Matheson as soon as possible following Commission approval. The Respondents are eager to satisfy their obligations under the Hold Separate Order so that they may integrate their operations. A prompt closing will also allow Matheson to begin executing on its business plans for the HyCO SMR Assets. The Respondents request that the Commission grant this petition and approve Matheson as the buyer of the HyCO SMR Assets as soon as practicable.

¹ All capitalized terms not defined herein shall have the meanings given to them in the Decision and Order, accepted by the Federal Trade Commission for public comment on October 22, 2018.

² Matheson’s office and principal place of business is located at 909 Lake Carolyn Parkway, Suite 1300, Irving, TX 75039.

II. The Divestiture Agreements Satisfy the Requirements of the Decision and Order.

Subject to the Commission's approval, the Respondents entered into the SMR Asset Sale and Purchase Agreement (the "SMR SPA") and additional ancillary agreements (together, the "Divestiture Agreements") to sell the HyCO SMR Assets to Matheson.³ The Divestiture Agreements will accomplish the divestiture of the HyCO SMR Assets consistent with the terms of the Decision and Order and the Hold Separate Order.

Paragraph II.A.2. of the Decision and Order requires the Respondents to divest the HyCO SMR Assets as on-going businesses to Matheson or to any other Person that receives the prior approval of the Commission. The scope of the Divestiture Agreements is consistent with this obligation. All the Respondents' rights, title, and interests in the HyCO SMR Assets will be acquired by Matheson. The Divestiture Agreements are also consistent with the additional provisions of the Decision and Order. In particular:

- As required by Paragraphs II.D.1-2, the Respondents will provide Transitional Assistance at the option of Matheson and on terms consistent with the Decision and Order.⁴
- As required by Paragraph II.E, Linde is working cooperatively with Matheson to obtain any outstanding Governmental Authorizations and Consents prior to closing. [Redacted from the Public Record Version].
- As required by Paragraph IV.A, Linde worked cooperatively with Matheson to allow Matheson to conduct its due diligence of the HyCO SMR Business. [Redacted from the Public Record Version].⁵

³ [Redacted from the Public Record Version].

⁴ [Redacted from the Public Record Version].

⁵ [Redacted from the Public Record Version].

- As required by Paragraph IV.B, Linde is working cooperatively with Matheson to assist Matheson with identifying and hiring any Active Employee whose responsibilities relate in any way to the HyCO SMR Assets. [Redacted from the Public Record Version].

III. Matheson Has the Ability and Incentive to Maintain Competition.

The operative question when evaluating a proposed divestiture buyer is whether the buyer is “ready, willing, and able to operate the assets in a manner that maintains or restores competition.”⁶ Put another way, a buyer must have both “(1) the financial capability and incentives to acquire and operate the assets, and (2) the competitive ability to maintain or restore competition in the market.”⁷ Matheson more than satisfies both of these requirements.

A. Background on Matheson.

Matheson Tri-Gas, Inc. was formed in 1999 when Nippon Sanso, a predecessor to TNSC,⁸ merged its U.S. industrial gas subsidiary, Tri-Gas, Inc., and its U.S. specialty gas subsidiary, Matheson Gas Products, Inc. Tri-Gas, Inc. has been a supplier of industrial gases, packaged gases, and gas equipment since 1987. Matheson Gas Products, Inc., has been a supplier of specialty gases since 1927. In 2004, Nippon Sanso merged with Taiyo Toyo Sanso, creating TNSC, Matheson’s current parent company. In addition to operating in the United States through Matheson, TNSC operates throughout Asia, including in countries such as Japan, China, India,

⁶ MERGER CONSENT ORDER FAQs, Q. 15, <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/mergers/merger-faq> (hereinafter “Merger Consent Order FAQs”).

⁷ STATEMENT OF THE BUREAU OF COMPETITION OF THE FED. TRADE COMM’N, NEGOTIATING MERGER REMEDIES, at 10 (January 2012) (hereinafter “NEGOTIATING MERGER REMEDIES”), <https://www.ftc.gov/system/files/attachments/negotiating-merger-remedies/merger-remediesstmt.pdf>.

⁸ In 2004, Nippon Sanso merged with Taiyo Toyo Sanso, creating TNSC, Matheson’s current parent company.

Australia, Singapore, Thailand, the Philippines, Vietnam, Malaysia, Indonesia, and Myanmar. As an overall result of this transaction, TNSC will become a global industrial-gas competitor, having already been approved by the European Commission as the divestiture buyer of Praxair's European business.

B. Matheson Has the Financial Capability and Commitment to Maintain Competition.

Matheson has made a substantial financial commitment to purchase and grow the HyCO SMR Business. [Redacted from the Public Record Version].

[Redacted from the Public Record Version]. The purchase of the HyCO SMR Assets will enable Matheson to grow its nascent U.S. HyCO business and to build HyCO expertise that can be expanded beyond the United States into other geographies.

C. Matheson Has the Experience and Ability to Maintain Competition.

Matheson has the "experience, commitment, and incentives necessary" to achieve the divestiture's remedial objective.⁹ Matheson is an established U.S. industrial gas competitor with a substantial business built, in large part, from earlier Commission-ordered divestitures. Since 2004, Matheson has constructed fifteen facilities in the United States and acquired another forty with capital investments totaling over \$3 billion.

The Commission has previously approved Matheson as a divestiture buyer on at least four occasions. In 1987, the Commission approved Matheson predecessor Tri-Gas, Inc. as the divestiture buyer of four air separation units ("ASUs") in connection with Air Liquide's acquisition of Big Three Industries.¹⁰ In 2004, the Commission approved Matheson as the divestiture buyer of six ASUs in connection with Air Liquide's acquisition of the U.S. operations

⁹ NEGOTIATING MERGER REMEDIES, at 11.

¹⁰ *In the Matter of L'Air Liquide, S.A.*, Docket No. C-3216 (1987).

of the Messer Group.¹¹ In 2006, the Commission approved the divestiture of helium assets to Matheson in connection with Linde AG's acquisition of the BOC Group.¹² And just two years ago, in 2016, the Commission approved the divestiture of eighteen ASUs, four liquid CO₂ production facilities, two nitrous oxide production facilities, and additional assets to Matheson in connection with Air Liquide's acquisition of Airgas, Inc.¹³ All of these divestitures have been successful, and Matheson operates these assets competitively.

Matheson also has a demonstrated interest in and the beginnings of entry into the HyCO business. [Redacted from the Public Record Version]. Matheson will acquire five high-quality Linde assets that will provide exposure to different technologies and customer sectors. Matheson will also acquire Linde's pipeline in the Gulf Coast, strengthening its ability to compete for opportunities in that region. Furthermore, Matheson's business will be led by an existing Linde employee with more than 20 years of experience in HyCO business development and relationships with key customers in the refining and chemicals industries, and an existing Linde employee with extensive HyCO Operations experience across the Americas, supported by additional, hand-picked personnel. Matheson will be well-positioned to combine the HyCO SMR Assets and personnel with its own global engineering and project execution experience to develop a significant U.S. HyCO business that can successfully compete to supply hydrogen, syngas, and carbon monoxide.

D. Matheson's Acquisition of the HyCO SMR Assets Raises No Competitive Issues.

Matheson is the ideal acquirer of the HyCO SMR Assets because, while Matheson has a deep interest in entering the U.S. HyCO SMR market, [Redacted from the Public Record

¹¹ *In the Matter of American Air Liquide, Inc.*, Docket No. C-4109 (2004).

¹² *In the Matter of Linde AG and The BOC Group PLC.*, Docket No. C-4163 (2006).

¹³ *In the Matter of American Air Liquide Holdings, Inc.*, Docket No. C-4574 (2016).

Version]. Thus, while Matheson has the advantage of extensive experience in the industrial-gas industry, its acquisition of the HyCO SMR Assets does not raise any competitive issues. To the contrary, the HyCO SMR Business is highly complementary to Matheson's existing U.S. operations and will allow Matheson to expand the scope of its business relationships with its customers.

IV. Conclusion.

Divestiture of the HyCO SMR Assets to Matheson will restore any lessening of competition in the United States threatened by the combination of Praxair and Linde. Matheson has a proven track-record as a divestiture buyer that continues to operate assets competitively and invests in additional growth. Matheson is well-positioned to maintain the HyCO SMR Assets and use those assets to compete for future HyCO projects.

Moreover, Matheson's acquisition of the HyCO SMR Assets does not raise any competitive issues because the assets are highly complementary to Matheson's existing U.S. industrial-gas business. The proposed divestiture of the HyCO SMR Assets to Matheson will accomplish the purposes of the Decision and Order and further the Commission's goals. Accordingly, the Respondents and Matheson seek expeditious Commission approval of this Application.

V. Request for Confidential Treatment.

This Application and its attachments contain confidential and competitively sensitive business information relating to the Respondents and the divestiture of the HyCO SMR Assets. Disclosure of this information may prejudice the Respondents and Matheson, cause harm to the ongoing competitiveness of the HyCO SMR Assets, and impair the Respondents' ability to comply with its obligations under the Consent Agreement.

Pursuant to Section 4.2(d)(4) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.2(d)(4), the Respondents are submitting two versions of this Application. The confidential version contains nonpublic or commercially or competitively sensitive information. The public version redacts confidential information. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. §§ 2.41(f)(4) and 4.9(c), Praxair and Linde request, on their own behalf and on behalf of Matheson, that the confidential version of this petition and its attachments and the information contained herein be accorded confidential treatment under all applicable statutes and regulations.

Dated: December 14, 2018

Respectfully submitted,



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Confidential Appendix 2

[Redacted from the Public Record Version]