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C(2018) 6886 final

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PUBLIC VERSION

**To the notifying party:**

**Subject: Case M.9046 - Taiyo Nippon Sanso/Praxair EEA Business  
Commission decision pursuant to Article 6(1)(b) of Council  
Regulation No 139/2004<sup>1</sup> and Article 57 of the Agreement on the  
European Economic Area<sup>2</sup>**

Dear Sir or Madam,

- (1) On 11 September 2018, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Taiyo Nippon Sanso Corporation ("TNSC") (of Japan) would acquire sole control of the whole of Praxair EEA Business, by way of purchase of shares ("the Transaction").<sup>3</sup> Praxair EEA Business is part of Praxair Inc. ("Praxair"). TNSC is directly and solely controlled by Mitsubishi Chemical Holdings Corporation ("MCHC") (of Japan). MCHC, including TNSC, is designated hereinafter as the "Notifying Party" and, together with Praxair EEA Business, the "Parties".

## **1. THE PARTIES**

- (2) **TNSC** is a manufacturer and supplier of gases used in a variety of industries (including the steel, chemical, healthcare, food, and electronics industries). TNSC

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

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the "EEA Agreement").

<sup>3</sup> Publication in the Official Journal of the European Union No C 329, 18.9.2018, p. 3-4.

is based in Japan and is primarily active in Asia and North America,<sup>4</sup> with virtually no operations in the EEA.

- (3) **MCHC** is based in Japan and is the controlling parent of TNSC. MCHC has four core operating businesses: (i) Mitsubishi Chemical, (ii) Mitsubishi Tanabe Pharma, (iii) Life Science Institute, and (iv) TNSC. Through these companies, MCHC provides a wide range of products and services, including industrial chemicals and gases, pharmaceutical research and development, and chemistry-based solutions for environmental applications.
- (4) **Praxair EEA Business** (the "Target") consists of the majority of Praxair's industrial gas businesses in the EEA, as well as Praxair's European engineering capabilities. The Target is divested as part of the commitments submitted in Case M.8480 – *Praxair/Linde*.<sup>5</sup>

## 2. THE OPERATION

- (5) On 5 July 2018, TNSC and Praxair entered into an agreement, pursuant to which TNSC will acquire 100% of the shares in each of the companies that together constitute Praxair EEA Business. Following the Transaction, Praxair EEA Business will be solely controlled by TNSC.
- (6) The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## 3. EU DIMENSION

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>6</sup> (MCHC (including TNSC): EUR [...] million; Praxair EEA Business: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (MCHC (including TNSC): EUR [...] million; Praxair EEA Business: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (8) The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

## 4. RELEVANT MARKETS

- (9) The Parties' activities only overlap with respect to the supply of the following types of gases: (i) industrial gases, (ii) specialty gases, and (ii) helium.

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<sup>4</sup> TNSC's operating entity in North America is Matheson, a wholly owned subsidiary.

<sup>5</sup> See the Commitments annexed to the Commission decision of 20 August 2018 in case M.8480 – *Praxair/Linde*. In addition to the divestment of Praxair EEA Business, the Commitments also provide for the divestment of (i) Praxair's controlling shareholding in SIAD to the joint venture partner Flow Fin S.p.A. (of Italy), and (ii) helium sourcing contracts and related assets to one or more buyers to be agreed with competition authorities other than the European Commission (in particular the US Federal Trade Commission and the Chinese State Administration for Market Regulation).

<sup>6</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

## 4.1. Product Markets

### 4.1.1. Industrial gases

- (10) Industrial gases are obtained from the air, mainly through cryogenic air separation technology (oxygen, nitrogen and argon) or from synthetic processes or natural sources (hydrogen, acetylene, carbon monoxide, carbon dioxide and nitrous oxide).<sup>7</sup> Gas companies typically build the plants, produce and distribute the gases to their clients. Industrial gases are used by a very wide variety of industries (metallurgy, chemical, paper, glass, electronics, food, fish farming, *etc.*). In previous decisions,<sup>8</sup> the Commission considered each individual industrial gas as a separate product market.
- (11) In its decisional practice,<sup>9</sup> the Commission also considered that the various modes of distribution (tonnage, small onsite-plant, bulk, and cylinder) give rise to distinct product markets. Tonnage supply is defined as sales of large quantities of gas through pipelines or large on-site plants. Supply through small on-site plants is defined as the supply of smaller volumes of gas in gaseous form via "standardised" gas plants of limited capacity built on the customer's production site. Bulk supply refers to the supply of smaller volumes of gas in liquid form, delivered by road or rail tankers and cylinder supply refers to the supply of very small volumes of gas, in gaseous form, in cylinders.
- (12) For certain gases, the Commission distinguished between standard and high purity grades. For other industrial gases, the Commission left open whether a distinction based on purity level would be appropriate.
- (13) The Notifying Party agrees with the previous assessment of the Commission, which is also in line with the results of the in-depth investigation recently carried out by the Commission in case M.8480 – *Praxair/Linde*.<sup>10</sup>
- (14) For the purpose of the present Decision, since the Transaction does not lead to affected markets under any plausible market definitions, the exact scope of the product markets concerned can be left open.

### 4.1.2. Specialty gases

- (15) Specialty gases include a large variety of gases with the common characteristic of being higher value products sold in smaller quantities than industrial gases. Frequently, the production of specialty gases involves the use of industrial gases with higher purity grades and/or the mixing of gases with other components.

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<sup>7</sup> These gases are mainly by-products of chemical processes and are often sourced from chemical companies and then only purified and distributed by the gas suppliers.

<sup>8</sup> Commission's decision of 9 February 2000 in Case M.1641 - *Linde/AGA*, Commission's decision of 18 January 2000 in Case M.1630 – *Air Liquide/BOC*, Commission's decision of 15 March 2004 in Case M.3314 – *Air Liquide/Messer Targets* and Commission's decision of 6 June 2006 in Case M.4141 – *Linde/BOC*.

<sup>9</sup> Commission's decision of 20 August 2018 in case M.8480 – *Praxair/Linde*, Commission's decision of 9 February 2000 in Case M.1641 - *Linde/AGA*, Commission's decision of 18 January 2000 in Case M.1630 – *Air Liquide/BOC*, Commission's decision of 15 March 2004 in Case M.3314 – *Air Liquide/Messer Targets* and Commission's decision of 6 June 2006 in Case M.4141 – *Linde/BOC*.

<sup>10</sup> Commission's decision of 20 August 2018 in case M.8480 – *Praxair/Linde*.

- (16) In previous decisions,<sup>11</sup> the Commission identified five groups of specialty gases: (i) **noble gases**, used either in pure form or in mixtures, in the lighting and electronics industries, (ii) **electronic specialty gases ("ESGs")**, mostly used in the semiconductor industry, (iii) **refrigerants**, used as cooling agents, (iv) **chemical gases**, used in the chemical, biochemical and manufacturing industries, and (v) **calibration and other gas mixtures**, used for the calibration of instruments and other specialty applications. With the exception of noble gases, which are extracted from the air, specialty gases are typically not produced in-house, but sourced from chemical companies, and then purified, blended and distributed to end-customers by gas suppliers.
- (17) While the above segmentation was introduced in order to facilitate the competition analysis, it does not correspond to the respective relevant product markets defined by the Commission in previous decisions.<sup>12</sup> As regards ESGs, chemical gases and refrigerants, the Commission took the view that each type of gas within these groups constitutes a separate relevant product market. As regards noble gases, the Commission identified the following relevant product markets: (i) krypton, (ii) neon, (iii) xenon, (iv) inert noble gas mixtures, (v) brominated compound gas mixtures, (vi) fluorine noble gas mixtures, and (vii) hydrogen chloride noble gas mixtures. As regards calibration and other gas mixtures, the Commission identified three relevant product markets: (i) environmental mixtures, (ii) special application mixtures, and (iii) other calibration mixtures.
- (18) Specialty gases are predominantly supplied in cylinders and only to a small extent in bulk. In the past,<sup>13</sup> the Commission considered that these two supply modes give rise to separate relevant product markets.
- (19) The Notifying Party agrees with the Commission's previous decisions, which are also in line with the results of the in-depth investigation recently carried out by the Commission in case M.8480 – *Praxair/Linde*.<sup>14</sup>
- (20) In light of the above, the Commission considers that, for the purposes of the assessment in this case, there is no reason to depart from the product market definitions retained in previous decisions.

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<sup>11</sup> Commission's decision of 6 June 2006 in Case M.4141 – *Linde/BOC*, Commission's decision of 20 September 2006 in Case M.4091 – *Linde/Spectra*, Commission's decision of 28 November 2007 in Case M.4823 – *Yara/Praxair/JV*.

<sup>12</sup> Commission's decision of 20 August 2018 in case M.8480 – *Praxair/Linde*, Commission's decision of 6 June 2006 in Case M.4141 – *Linde/BOC*, Commission's decision of 20 September 2006 in Case M.4091 – *Linde/Spectra*, Commission's decision of 28 November 2007 in Case M.4823 – *Yara/Praxair/JV*.

<sup>13</sup> Commission's decision of 20 August 2018 in case M.8480 – *Praxair/Linde*, Commission's decision of 6 June 2006 in Case M.4141 – *Linde/BOC*, Commission's decision of 20 September 2006 in Case M.4091 – *Linde/Spectra*, Commission's decision of 28 November 2007 in Case M.4823 – *Yara/Praxair/JV*.

<sup>14</sup> Commission's decision of 20 August 2018 in case M.8480 – *Praxair/Linde*. In this decision, the Commission found that, while specialty gases are generally processed in dedicated facilities, they typically use the distribution network of industrial gases. In fact, gas companies tend to use their distribution channels for as many products as possible in order to reduce costs where practically feasible. In addition, customers of specialty gases, generally of large size, often purchase together different types of specialty gases, and/or other types of gases (notably industrial gases and helium) (“one-stop shop solution(s)”).

#### 4.1.3. Helium

- (21) Helium is a scarce and high value product, with a very specific sourcing modality. It is a by-product of natural gas production extracted from a very limited number of sources worldwide, located in the US, Qatar, Algeria, Poland, Russia, Canada, and Australia. Helium producers are, consequently, natural gas producers, which are typically not active in the commercialisation of helium but rather enter into long-term contracts or joint-ventures with integrated gas companies (such as the Notifying Party) that bring helium to the market. Helium is used in a wide range of industries, including the medical, research, diving, automotive, electronics, balloon and aerospace industries.
- (22) The helium supply chain differs from that of the other gases as helium is sourced globally and then supplied at wholesale and retail levels:
- i. at **wholesale level**, helium is transported worldwide, from the production site to transfill centres located in the areas of consumption, in liquid form in special low temperature containers ("cryogenic portable tanks");
  - ii. at **retail level**, the supply of helium to end-customers is made from transfill centres by retailers that are either (i) vertically integrated with wholesalers or (ii) independent players which buy helium on the wholesale market. At a transfill centre, helium is removed from the cryogenic portable tanks and transferred into smaller containers called cryogenic dewars for deliveries of liquid helium to end-customers, or into high-pressure cylinders or tube trailers for supplies of helium in compressed gaseous form. At retail level, helium may also, to a much more limited extent, be delivered in cryogenic portable tanks to end-customers.
- (23) In previous decisions<sup>15</sup>, the Commission found that the wholesale and retail supply of helium constitute distinct product markets. The Commission considered that the market for the wholesale supply of helium also included the sourcing of helium. At retail level, the Commission envisaged to further segment the market depending on the modes of supply and also considered the existence of a distinct retail market for the supply of high purity helium (that is to say helium with a purity grade of 6.0 and above<sup>16</sup>), but ultimately left open the exact scope of the market in this respect.
- (24) The Notifying Party agrees with the previous assessment of the Commission, which is also in line with the results of the in-depth investigation recently carried out by the Commission in case M.8480 – *Praxair/Linde*.<sup>17</sup>
- (25) In light of the above, and given that the Transaction does not give rise to competition concerns under any plausible market definitions, the Commission considers that, for the purposes of the assessment in this case, there is no reason to depart from the product market definitions retained in previous decisions as

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<sup>15</sup> Commission's decision of 20 August 2018 in case M.8480 – *Praxair/Linde*. Commission's decision of 6 June 2006 in Case M.4141 – *Linde/BOC*, and Commission's decision of 28 November 2007 in Case M.4823 – *Yara/Praxair/JV*.

<sup>16</sup> In the gas industry, purity is expressed by two digits separated by a dot to express the percentage of the relevant gas in the product. The first digit indicates the number of 9s, the second the digit after the 9s. Purity 6.0 means 99.9999%; purity 3.5 means 99.95%.

<sup>17</sup> Commission's decision of 20 August 2018 in case M.8480 – *Praxair/Linde*.

regards the helium wholesale market and that the exact scope of the helium retail markets can be left open.

## 4.2. Geographic Markets

- (26) The in-depth investigation recently carried out by the Commission in case M.8480 – *Praxair/Linde* has largely confirmed the geographic market definitions retained in previous decisions.<sup>18</sup> The latter are not contested by the Notifying Party and can be summarized as follows:
- i. **national** scope for the bulk and cylinder supply of industrial and specialty gases (with the exception of noble gases and ESGs), as well as for the retail supply of helium (with the exception of the retail supply of helium in cryogenic portable tanks);
  - ii. **EEA** scope for the tonnage supply of industrial gases, as well as for the bulk and cylinder supply of noble gases and ESGs; and
  - iii. **global** scope for the wholesale supply of helium, as well as for the potential market for the retail supply of helium in cryogenic portable tanks.
- (27) In light of the above, the Commission considers that, for the purposes of the assessment of the Transaction, there is no reason to depart from the geographic market definitions retained in previous decisions.

## 5. COMPETITIVE ASSESSMENT

### 5.1. Introduction

- (28) Given the different geographic footprint of TNSC and Praxair EEA Business,<sup>19</sup> the overlaps between the Parties' activities are very limited and only give rise to the following affected markets:
- i. *Horizontally affected markets:*
    - the market for the cylinder supply of hydrogen bromide (ESG) at EEA level;
    - the market for the cylinder supply of propane (chemical gas) in the United Kingdom; and
    - the potential market for the retail supply of helium in high purity cylinders in Spain;<sup>20</sup>

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<sup>18</sup> Commission's decision of 20 August 2018 in case M.8480 – *Praxair/Linde*, Commission's decision of 6 June 2006 in Case M.4141 – *Linde/BOC*, Commission's decision of 15 March 2004 in Case M.3314 – *Air Liquide/Messer Targets* and Commission's decision of 6 June 2006 in Case M.4141 – *Linde/BOC*, and Commission's decision of 28 November 2007 in Case M.4823 – *Yara/Praxair/JV*.

<sup>19</sup> There is no horizontal or vertical overlap between the activities of MCHC (excluding TNSC) and Praxair EEA Business (see Form CO, paragraph 385).

<sup>20</sup> The Parties' activities also overlap on the global market for the wholesale supply of helium. This market would be affected only if sales to other wholesalers are not taken into account (with a combined market share around [30%-40%]). However, in case M.8480 – *Praxair/Linde*, the

ii. *Vertically affected markets:*

- the (upstream) market for the bulk supply of phosphine (ESG) and the (downstream) market for the cylinder supply of phosphine, which are EEA-wide markets; and
- the (upstream) global market for the wholesale supply of helium and some (downstream) national markets for the retail supply of helium.

(29) The above markets have recently been reviewed by the Commission in case M.8480 – *Praxair/Linde*.<sup>21</sup> Consequently, the assessment of the impact of the Transaction in the affected markets will take into account the results of the in-depth investigation carried out by the Commission in *Praxair/Linde*.

## 5.2. Horizontal overlaps

### 5.2.1. Cylinder supply of hydrogen bromide (ESG) in the EEA

(30) In the EEA market for the cylinder supply of hydrogen bromide, in 2017, the Parties had a combined value market share of [40-50%] ([40-50%] in volume), with a [5-10%] increment brought by TNSC's activities. TNSC's sales of hydrogen bromide cylinders in the EEA are limited (EUR [...] in 2017; EUR [...] in 2016). The totality of TNSC's sales is achieved with a single customer in one EEA country and results from a global commercial relationship established with the customer in the US. The high combined market shares of the Parties appear to reflect the small size of the total market in the EEA (EUR [...]) and to be volatile (which is illustrated by the fact that TNSC's sales have more than doubled between 2016 and 2017). Moreover, at least three other players supply hydrogen bromide in cylinders in the EEA, including Linde/Praxair, Air Liquide, and Versum, each of them having market shares larger than TNSC. Therefore, the Transaction is unlikely to lead to any meaningful increase in market power.

(31) Additionally, in the context of the in-depth investigation in *Praxair/Linde*, the Commission found that the suppliers' strength on ESGs markets is closely linked with the ability to provide a wide range of gases within this category, as well as other types of gases.<sup>22</sup> In this respect, pre-Transaction, TNSC enjoys significant market shares in the EEA only in relation to one specific type of ESGs, and is, therefore, pre-Transaction not a close competitor of the main ESG suppliers, including Praxair EEA Business, which have a strong presence in Europe on different gas markets (ESGs as well as other gases). In fact, in the context of the in-depth investigation conducted in case M.8480 – *Praxair/Linde*,<sup>23</sup> the Commission did not find TNSC to be a meaningful supplier of ESGs in the EEA.

(32) In light of the above, the Commission considers that the Transaction is unlikely to remove any significant competitive constraint on this market, and thus, it will not lead to any competition concerns.

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Commission found that excluding sales to other wholesalers when computing market shares is not appropriate given that it would not fully reflect the competitive dynamics in the wholesale market. Considering market share data including sales to other wholesalers, the Parties' combined share is below 20%.

<sup>21</sup> Commission's decision of 20 August 2018 in case M.8480 – *Praxair/Linde*.

<sup>22</sup> See footnote 13.

<sup>23</sup> Commission's decision of 20 August 2018 in case M.8480 – *Praxair/Linde*.

### 5.2.2. *Cylinder supply of propane (chemical gas) in the United Kingdom*

(33) In the market for the cylinder supply of propane in the United Kingdom, the Parties' combined value market share is moderate and amounts to about [20-30%] (in value and volume), with a *de minimis* increment of less than [0-5%] brought about by TNSC. In addition, Tier 1 players such as Air Liquide, Linde/Praxair, and Air Products will remain active on the market, together with other local players. In the context of the in-depth investigation conducted in case M.8480 – *Praxair/Linde*,<sup>24</sup> the Commission did not find TNSC to be a meaningful supplier of chemical gases (including propane) in the UK.

(34) In light of the above, the Commission considers that the Transaction is unlikely to remove any significant competitive constraint on this market and thus, it will not lead to any competition concerns.

### 5.2.3. *Retail supply of helium in high purity cylinders in Spain*

(35) In the potential market for the retail supply of helium in high purity cylinders in Spain, the Parties have a combined market share of about [30-40%] (both in value and volume), with a *de minimis* increment of [0-5%], brought about by TNSC, which is moreover likely to be overestimated.<sup>25</sup> There are other players active on the market, including Tier 1 players Linde/Praxair, Air Liquide and Air Products, as well as regional players like Messer. In the context of the in-depth investigation conducted in case M.8480 – *Praxair/Linde*,<sup>26</sup> the Commission did not find that TNSC is a meaningful supplier on the market for retail helium in Spain.

(36) In light of the above, the Commission considers that the Transaction is unlikely to remove any significant competitive constraint on this market and thus, it will not lead to any competition concerns.

### 5.2.4. *Conclusion*

(37) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as to the horizontal overlap created by the Transaction in relation to (i) the market for the cylinder supply of hydrogen bromide in the EEA, (ii) the market for the cylinder supply of propane in the United Kingdom, and (iii) the potential market for the retail supply of helium in high purity cylinders in Spain.

## 5.3. **Vertical links**

### 5.3.1. *Bulk and cylinder supply of phosphine in the EEA*

(38) TNSC is active on the upstream market for the bulk supply of phosphine, with a [30-40%] market share (both in value and volume) in 2017 at EEA level, whereas the Target is active on the downstream market for the cylinder supply of phosphine, with a [30-40%] market share (both in value and volume) in 2017 in

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<sup>24</sup> Commission's decision of 20 August 2018 in case M.8480 – *Praxair/Linde*.

<sup>25</sup> The above estimates rely on the market share data provided in case M.8480 by Linde and Praxair, which overestimated their position for the supply of high purity helium (see Commission's decision of 20 August 2018 in case M.8480 – *Praxair/Linde*, paragraph 1226).

<sup>26</sup> Commission's decision of 20 August 2018 in case M.8480 – *Praxair/Linde*.



the EEA. While the Parties' upstream and downstream market shares are above the 30% threshold, their market shares appear to reflect the small size of the markets concerned (around [...]for each of the upstream bulk market and the downstream cylinder market). Moreover, the data available point to high volatility of the Parties' market shares over the past three years (oscillating between [20-30%] in 2015 and [30-40%] in 2017, in value and volume).

- (39) The Commission considers that the Transaction is unlikely to result in any risk of input or customer foreclosure. In particular, neither of the Parties appears to hold a sufficiently high degree of market power at upstream or downstream level. On the one hand, TNSC's entire upstream market share in the EEA originates from sales to a single customer, namely [...], which will have alternative sources of supply (including chemical companies that are not vertically integrated, such as Solvay, Cytec, Liming, and Nippon Chemical). On the other hand, competitors upstream would be able to sell phosphine to other (actual and potential) clients in the EEA, these being either other gas suppliers (for transfilling into cylinders) or end-customers purchasing phosphine in cylinders, which represent [60-70%] of the current demand.

### 5.3.2. Helium wholesale supply (global) and retail supply (national)

- (40) Upstream, at wholesale level, the Parties have a moderate combined sales market share ([10-20%]) and net capacity share ([10-20%]), well below the 30% threshold, while facing a number of competitors with higher sales/capacity shares (such as Linde/Praxair, Air Products, Air Liquide).
- (41) Downstream, the Parties' combined market shares exceed 30% in a limited number of national markets,<sup>27</sup> where the increment brought about by TNSC is very modest. In fact, in the context of the in-depth investigation conducted in case M.8480 – *Praxair/Linde*,<sup>28</sup> the Commission did not find TNSC to be a meaningful supplier of helium at retail level in any EEA countries. In those national retail markets, the merged entity will face a number of competitors (including vertically integrated players with direct access to helium sources, such as Praxair/Linde, Air Liquide, Air Products, and Messer). In addition, the Commission notes that Praxair EEA Business was already vertically integrated pre-Transaction, having higher sales/capacity shares than TNSC at wholesale level.
- (42) The Commission considers that Transaction is unlikely to result in any risk of input or customer foreclosure. On the one hand, the existence of credible alternative upstream (wholesale) suppliers will limit the ability of the Parties to foreclose access to helium to downstream rivals and thus make any input foreclosure unlikely. On the other hand, the Transaction does not bring any relevant change on the downstream retail markets since TNSC is not a meaningful player at retail level in the EEA and Praxair EEA Business was already vertically integrated pre-Transaction. Therefore, customer foreclosure is also unlikely to arise as a result of the Transaction.

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<sup>27</sup> While the Notifying Party was unable to provide market share estimates at downstream level, based on the market reconstruction data included in the Commission's decision in case M.8480 – *Praxair/Linde*, the Target's market shares on the markets for the retail supply of helium (and potential sub-markets) would exceed 30% in the following EEA countries: Belgium, Germany, Norway, Portugal, and Spain.

<sup>28</sup> Commission's decision of 20 August 2018 in case M.8480 – *Praxair/Linde*.

### 5.3.3. Conclusion

- (43) In light of the above, the Commission concludes that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the vertical links (i) between the EEA supply of phosphine in bulk (upstream) and in cylinders (downstream), and (ii) between the global supply of helium at wholesale level (upstream) and the national supply of helium at retail level (downstream).

## 6. CONCLUSION

- (44) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.
- (45) This decision is without prejudice to the Commission's approval of TNSC as a suitable purchaser of Praxair EEA Business in case M.8480 – *Praxair/Linde* and of the Commission's assessment of whether the terms of the divestiture are consistent with the Commission's decision and the commitments in that case.

*For the Commission*

*(Signed)*  
*Margrethe VESTAGER*  
*Member of the Commission*