

Interlocutory Orders, Etc.

IN THE MATTER OF

**LINDE AG,
PRAXAIR, INC.,
AND
LINDE PLC**

Docket No. C-4660. Order, January 31, 2019

Letter approving the petition of Linde AG, Praxair, Inc., and Linde PLC to divest certain gases assets to Celanese Corporation.

LETTER ORDER APPROVING DIVESTITURE OF CERTAIN ASSETS

Thomas McGrath
Linklaters LLP

Re: *In the Matter of Linde AG, Praxair, Inc., and Linde PLC*, Docket No. C-4660.

Dear Mr. McGrath:

This is in reference to the petition for the approval of the proposed divestiture of certain assets filed by Linde AG, Praxair, Inc., and Linde PLC (collectively “Linde”) and received on November 9, 2018 (“Petition”). Pursuant to the Decision and Order in Docket No. C-4660, Linde requests prior Commission approval of its proposal to divest certain gases assets to Celanese Corporation (“Celanese”).

After consideration of Linde’s Petition and other available information, the Commission has determined to approve the proposed divestiture as set forth in the Petition. In according its approval, the Commission has relied upon the information submitted and the representations made by Linde and Celanese in connection with the Petition and has assumed them to be accurate and complete.

By direction of the Commission, Commissioner Chopra abstaining.

Interlocutory Orders, Etc.

IN THE MATTER OF
1-800 CONTACTS, INC.*Docket No. 9372. Order, February 12, 2019*

Order staying Respondent's obligation to comply with Paragraphs III.B., IV.A.2.(a), and IV.B.2. of the Final Order until the United States Court of Appeals for the Second Circuit issues a ruling disposing of the petition for review, but denying respondent's Application for a Stay Pending Review by a United States Court of Appeals in all other respects.

**ORDER GRANTING IN PART AND DENYING IN PART RESPONDENT'S APPLICATION FOR STAY
PENDING JUDICIAL REVIEW**

On November 7, 2018, the Commission issued an Opinion ruling that 1-800 Contacts, Inc. ("1-800 Contacts" or "Respondent") had violated Section 5 of the FTC Act by entering into and enforcing fourteen agreements with its competitors restricting search advertising and search advertising auctions. On that same day, the Commission issued a cease and desist order ("the Final Order"), described more fully below. Respondent has applied for a stay of most of the Final Order's provisions pending judicial review by a federal court of appeals.¹ We grant Respondent's application for a stay as to paragraphs III.B., IV.A.2.(a), and IV.B.2. and deny it as to the other Final Order provisions.²

The Final Order prohibits the conduct held to violate Section 5 and contains several fencing-in provisions. Specifically, the Final Order bars 1-800 Contacts from entering into any agreement with a Seller, defined as anyone that markets or sells contact lens products, that would regulate or limit the Seller's ability to participate in a search advertising auction, including by restricting use of keywords or requiring use of negative keywords, or that would regulate or limit search advertising. Final Order II.A., B. The Final Order clarifies, however, that these prohibitions do not preclude 1-800 Contacts from initiating a lawsuit or enforcing a court order, including an order approving a settlement. Final Order II.A., B. Further, 1-800 Contacts is not precluded from requiring the Seller to clearly identify itself and to refrain from making false or deceptive claims or from representing that 1-800 Contacts is the source of

¹ We use the following abbreviations in this opinion:

Opinion: Opinion of the Commission

App.: Respondent 1-800 Contacts, Inc.'s Application for a Stay Pending Review by a United States Court of Appeals

Reply: Respondent 1-800 Contacts, Inc.'s Reply Brief in Support of Its Application for a Stay Pending Review by a United States Court of Appeals

² We also deny as moot the parties' Joint Motion Regarding the Schedule for Respondent's Application for Stay. The timeframes requested in that Motion were the same as those specified by the Commission rules. *See* 16 C.F.R. §§ 3.56(d), 4.3(a), (d). Commissioner Phillips dissents from the parts of the Commission's order denying 1-800 Contacts' request for a stay because he believes 1-800 Contacts is likely to succeed on the merits of its appeal, for the reasons expressed in his dissenting opinion on the merits of this case.