



Office of Commissioner
Rohit Chopra

UNITED STATES OF AMERICA
Federal Trade Commission

DISSENTING STATEMENT OF
COMMISSIONER ROHIT CHOPRA

Regarding Petition for Modification in the Matter of Linde AG and Praxair LLC
Commission File Number 1710068
November 13, 2020

In October 2018, the Commission gave the go-ahead for Linde's acquisition of Goodyear. This provides a unique window into the Commission's actions. The Commission acts too often with the

enforcement agency. I believe this should change.

I respectfully disagree with my colleagues that the latest petition for modifications are in the public interest, as it will extend contractual entanglements between competitors and it cannot be justified by issues related to COVID-19.

The Transaction and the Commission's Approval

The \$80 billion proposed merger between Linde and Praxair was clearly anticompetitive, as outlined in the agency's complaint. Indeed, there were many individual gas markets where the Commission had good reason to believe that competition would have been harmed.

There was a particularly unusual aspect of the transaction: under German law, the transaction would dissolve unless all approvals were obtained by October 24, 2018.¹ This timeline would have precluded resolving outstanding concerns in court. In ordinary circumstances, agencies often have to reach resolutions that are suboptimal, due to resource constraints and litigation uncertainties. But in this matter, the FTC would not have to factor in the costs and uncertainties associated with litigation that might lead to an unfavorable outcome for consumers and businesses.²

In many ways, this proved to be a natural experiment for the Commission given that resource

the matter with a different mindset and

The Petitions

Today, the Commission