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***Case No COMP/M.2871 -  
AIR LIQUIDE / BOC /  
JAPAN AIR GASES***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 10/10/2002

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.10.2002  
SG (2002) D/232094

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.2871 – Air Liquide / BOC / Japan Air Gases**

Notification of 09 September 2002 pursuant to Article 4 of Council Regulation  
No 4064/89

1. On 9 September 2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (the “Merger Regulation”) by which the undertakings Air Liquide Japan Ltd, a majority-owned subsidiary of L’Air Liquide SA, France (AL), and BOC Japan Ltd, subsidiary owned by BOC Group plc, United Kingdom, create within the meaning of Article 3(2) of the Merger Regulation a full-function joint-venture, Japan Air Gases Ltd, Japan.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market.

### I. THE PARTIES

3. Air Liquide Japan (ALJ), owned as to approximately 67.7% by AL, manufactures and sells industrial et medical gases and related services and equipment to customers throughout Japan. These gases are used *inter alia* in industries such as electronics, healthcare, steel and oil refining, chemistry and food processing. ALJ’s activities include also research and development and engineering activities, but these are excluded from the proposed transaction.
4. BOC Japan Ltd (BOCJ), wholly-owned by BOC Group Plc, owns 94.3% of Osaka Sanso Kogyo Ltd (OSK) which in turn principally manufactures and sells industrial and medical gases and related services and equipment in Japan.

### II. THE OPERATION

5. The operation consists in the combination of the activities of ALJ and OSK in industrial and medical gases through the establishment of a single economic entity. The existing OSK legal entity will be the vehicle company used for these

purposes and will be renamed “Japan Air Gases Ltd” (“JAG”). The combined turn-over of the two entities currently amounts to 1,770 million euros.

6. Some current activities of ALJ or OSK will not be included in the joint venture: research and development units, some equipment and engineering activities as well as BOC’s interest in the Japan Helium Center (wholesale of helium).

### **III. CONCENTRATION**

7. As a result of the notified operation, JAG will be owned as to 55% by ALJ and 45% by BOCJ. The CEO will be appointed by ALJ and BOCJ and ALJ will nominate an equal number of directors. In turn, ALJ and BOCJ are under sole control of AL and BOC Group plc, respectively. Therefore, AL and BOC Group plc will have joint control over JAG.
8. JAG will inherit most of ALJ’s and OSK’s activities in Japan, including manufacturing and retailing of industrial and medical gases. Therefore, JAG will perform on a lasting basis all the functions of an autonomous economic entity.
9. The proposed operation, therefore, constitutes a concentration within the meaning of Article 3(1)(b) and Article 3(2) of the Merger Regulation.

### **IV. COMMUNITY DIMENSION**

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>1</sup>. Each of AL and BOC Group plc has a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

### **V. ASSESSMENT**

11. In a previous decision<sup>2</sup> concerning the same parties, the Commission has identified the product markets at stake as individual industrial or medical gases supplied in tonnage, bulk and cylinders as well as the wholesale supply of helium and the supply of electronic specialty gases (ESGs).
12. In that decision, the Commission established that these markets were national in scope for bulk and cylinder sales, EEA-wide for tonnage and ESG sales and left open the exact geographic definition of the wholesale supply of helium. Nevertheless, the latter activity has been excluded from the newly created joint venture, JAG, and will remain operated separately by the relevant entities of the AL and BOC groups.

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<sup>1</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

<sup>2</sup> Case COMP/M.1630 Air Liquide/BOC.

13. As a consequence, since JAG's activities will be limited to Japan, it appears that the notified operation does not lead to any affected market in the EEA. The market investigations confirmed that this operation did not raise serious concerns of competition within the EEA area.

## **VI. CONCLUSION**

14. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission  
Mario MONTI  
Member of the Commission