

***Case No COMP/M.4823 -
YARA / PRAXAIR / JV***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 28/11/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28/11/2007
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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.4823 – YARA / PRAXAIR / JV
Notification of 22.10.2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 22/10/2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "Merger Regulation"), by which the undertaking Yara International ASA ("Yara", Norway) and Praxair, Inc. ("Praxair", USA) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of a jointly owned undertaking ("JV") to be established by way of purchase of shares in a newly created company constituting a joint venture..
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 and the functioning of the EEA Agreement.

¹ OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

3. **Yara** is a chemical company incorporated and headquartered in Oslo, Norway and listed on the Oslo Stock Exchange. The main shareholder in Yara is the Norwegian Government, which holds 36.2 % of the company's share capital. Yara is primarily focused on the production and marketing of fertilizers and nitrogen-based chemicals. In addition, Yara produces and distributes certain industrial gases and nitrogen chemicals that most are by-products of its fertilizer operation.
4. **Praxair** is an industrial gases company headquartered in Connecticut, USA and listed on the New York Stock Exchange. Praxair has no controlling shareholders. Praxair has an industrial gases business in North and South America, Asia and Europe.

II. THE TRANSACTION AND THE CONCENTRATION

5. The JV will consist of the main part of Yara's existing industrial/medical and specialty gases business in Scandinavia (Norway, Denmark and Sweden), which will be contributed to a separate entity in which Praxair will acquire a shareholding of 50 % against a cash payment to Yara.
6. The JV will be headquartered at Helsfyr in Oslo (Norway), and separated from Yara's headquarters in Bygdøy Allé in Oslo. It will have approximately 320 employees and will have all administrative functions in its own organization. This includes production, logistics, sales, accounting, finance, IT, and human resources. The JV will thus have its own management, its own personnel, its own production and distribution assets and its own headquarters.
7. On the basis of the foregoing, it can be concluded that the JV will have sufficient resources to operate independently and on a lasting basis on a market. It will thus constitute a full-function joint venture within the meaning of Article 3(4) of the EC Merger Regulation.
8. Yara and Praxair will jointly control the JV: the parties will have equal voting rights and each will have effective veto rights in strategic decisions regarding the JV's commercial behaviour. Moreover, they will be equally represented in the board.
9. The notified operation constitutes therefore a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

10. The transaction has a Community dimension pursuant to article 1(2) of the Merger Regulation. The parties have a combined aggregate worldwide turnover in excess of €5,000 million (Yara: € 5,798 million; Praxair: € 6,629 million), and each of the two undertakings has a Community-wide turnover in excess of € 250 million (Yara:[..] Praxair:[..]). Furthermore, the parties do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.

IV. RELEVANT MARKETS

11. The transaction relates to the markets for industrial gases and specialty gases.
12. According to the Commission's decisional practice, industrial gases have to be distinguished from specialty gases².
13. Industrial gases comprise gases and mixtures of gases provided by gas suppliers for various industry and research applications. The most commonly used industrial gases are oxygen, nitrogen, hydrogen, argon, carbon dioxide (CO₂), acetylene and helium as well as mixtures thereof.
14. Specialty gases comprise a large number of different gases and gas mixtures. Even though there is no clear definition of specialty gases, this group comprises all gases which are not considered to be industrial gases. In order to facilitate the competition analysis, the Commission has segmented specialty gases into product groups as follows: (i) electronic specialty gases (ESGs), (ii) calibration mixtures, (iii) refrigerants, (iv) noble gases and noble gas mixtures (rare gases), (v) gaseous chemicals. The Commission stated that specialty gases can be distinguished from industrial gases on the basis of price, quantities sold, purity, application, and mode of supply³.
15. Furthermore, the Commission held that each gas belongs to a separate product market⁴ and that, except for helium, a further distinction can be made between distribution in tonnage, bulk and cylinders. Tonnage distribution most commonly concerns oxygen, nitrogen and hydrogen, but also carbon monoxide, i.e., gases that are required in high volumes. The two industrial gases that are most commonly supplied in bulk are liquid nitrogen and liquid oxygen. Argon, carbon dioxide and hydrogen can also be delivered in liquid form as well as some specialty gases. Bulk quantities of hydrogen are delivered both in liquid form and in gaseous form (in trailers). All industrial and specialty gases can be delivered in cylinders (the most common volume for a cylinder is 50 litres). Acetylene and nitrous oxide are only delivered in cylinders⁵.
16. Moreover, the Commission has differentiated between wholesale and retail activities for helium⁶.
17. In addition, the parties have identified the following other specialty gases concerned by the proposed transaction and which they were not able to classify into the five gas groups mentioned above: (i) methane, (ii) high purity helium, and (iii) high purity hydrogen. The question as to whether a further distinction can be made between distribution in bulk and cylinders for those gases can be left open since the proposed transaction does not give rise to competition concerns under any alternative product market definition.

² Case M 4141 - Linde/BOC (paragraphs 16-19)

³ Case M 4141 - Linde/BOC (paragraph 16). Each group does not constitute a product market in itself.

⁴ Case M 4141 - Linde/BOC (paragraphs 20-23)

⁵ Case M 4141 - Linde/BOC (paragraph 24)

⁶ Case M 4141 - Linde/BOC (paragraph 34)

Geographic markets

18. The Commission, for all the gases mentioned above, recently held that the markets for tonnage were EEA-wide in scope, whereas the markets for bulk and cylinder gases were national⁷.
19. The Commission also recently held that the wholesale helium market was global in scope whereas the retail helium market was national⁸.
20. Furthermore, the Commission recently found that ESGs and rare gases were at least EEA-wide markets, whereas refrigerants, chemicals and calibration mixtures were national⁹.
21. Finally, as to (i) methane, (ii) high purity helium, and (iii) high purity hydrogen, the exact geographic market definition can be left open since the proposed transaction does not give rise to competition concerns under any reasonable alternative geographic market definition.

V. COMPETITIVE ASSESSMENT

22. The JV will only be active in Scandinavia, i.e. Denmark, Norway and Sweden. Since Praxair has no retail activities in Scandinavia, its acquisition of a 50 % stake in Yara's Scandinavian industrial gas business will not bring about any horizontal overlaps between Praxair and the JV, except for a very marginal overlap on certain ESGs in the EEA. As a matter of fact as the JV has a market share under [0-5]% on each of these EEA ESGs markets, the creation of the JV does not change significantly the competition structure of these markets and is unlikely to lead to any competition concern on any of them¹⁰.
23. However the proposed transaction will give rise to some vertical relationships and vertically affected markets, since Yara will retain some industrial gases activities in Scandinavia. Moreover both parties will remain active on some national markets where the JV will not be active.
24. Accordingly, the proposed transaction will create:
 - (1) A vertical link between Praxair and the JV in the markets for (a) helium, (b) some gaseous chemicals (such as ammonia and carbon monoxide), (d) methane, (e) high purity helium and (f) high purity hydrogen;
 - (2) A vertical link between Yara and the JV in the markets for (a) CO₂, (b) argon, and (c) nitrogen;

⁷ Case M 4141 - Linde/BOC (paragraph 45-52)

⁸ Case M 4141 - Linde/BOC (paragraphs 53-78)

⁹ Case M 4141 - Linde/BOC (paragraphs 79-84).

¹⁰ Praxair has an EEA market share of [10-20]% (whereas the JV has a market share below [0-5]%) on the ESGs markets for hydrogenklorid ([35-45]%), hydrogenbromid ([55-65]%), germane GeH₄ mixtures ([15-25]%), Fosfin 5% rest N₂ ([35-45]%), Diboran 8% rest N₂ ([35-45]%), 5000 ppm Diboran rest Ar 5.6 ([35-45]%), 5000 ppm Fosfin rest Ar 5.6f ([35-45]%), Dinitrogenoxid N₂ 5.0 ([15-25]%), Boron trifluoride BF₃ ([10-20]%).

- (3) A potential cooperative effect between Yara and Praxair on certain national markets outside Scandinavia for (a) CO₂, and (b) argon.

1 Vertical relationships

a) Vertical relationships between Praxair and the JV

Helium

25. The JV's business in the market for helium, will consist of Yara's current retail sales to end customers in Norway and Denmark. After the transaction, Yara's activities in this market will be transferred to the JV, including the supply agreement with [...], from which Yara currently sources helium. Consequently, Yara will not have any activity in any country in the market for helium and there will be no horizontal overlap between the parties and the JV as Praxair has no retail sales in Scandinavia.
26. However, Praxair is active in the global market of wholesale supply of helium. This could lead to a vertical link between Praxair and the JV. Nevertheless, the creation of the JV is not likely to lead to foreclosure behaviour from Praxair or the JV for the following reasons:
- input foreclosure is unlikely since Praxair has a market share of [20-30]% on the global wholesale market for helium and there are three other competitors with similar market shares (according to the parties' estimate, Linde: [20-30]%; Air Products: [20-30]%; Air Liquide: [20-30]%), which can supply the other helium retailers;
 - customer foreclosure is also unlikely. Indeed although Yara's transferred activities have a market share of [50-60]% in Norway and [10-20]% in Denmark on the market for retail sales of helium, those national markets for retail sales are small and their volumes represent together around [0-5]% of the volume of the global market for wholesale of helium. Given the size of the markets for retail sales of helium, the creation of the JV is therefore unlikely to lead to an output foreclosure of the wholesale market.

High purity helium

27. The JV's business also sells high purity helium to end customers only in Norway and Denmark. However it does not produce high purity helium and sources all of its requirements from Praxair. Moreover Praxair does not supply any other customer with high purity helium in Scandinavia.
28. Therefore the vertical relation between Praxair and the JV will not lead to any changes in the market for high purity helium.

High purity hydrogen

29. The JV's business sells high purity hydrogen to end customers only in Norway. However it does not produce high purity hydrogen and sources all of its requirements from Praxair. Moreover Praxair does not supply any other customer with high purity hydrogen in Scandinavia.
30. Therefore the vertical relation between Praxair and the JV will not lead to any changes in the market for high purity hydrogen.

Ammonia

31. The JV business in the market for ammonia will consist of Yara's current sales to end customers in Norway. However, Yara has [...] and the JV will not therefore be active on this market.
32. As a consequence, there will be no actual overlap or vertical link with Praxair with respect to ammonia.

Carbon monoxide

33. The JV's business sells carbon monoxide to end customers only in Norway. The JV's business purchases most of its requirements from Praxair and uses this carbon monoxide in its own production of gas mixtures. Moreover the JV's business is Praxair's only customer in these two countries.
34. Therefore the vertical relation between Praxair and the JV will not lead to any changes in the market for carbon monoxide.

Methane

35. The JV's business sells methane to end customers in Norway and Denmark. The JV's business does not produce methane and purchase its entire requirement from Praxair. Moreover the JV's business is Praxair's only customer in these two countries.
36. Therefore the vertical relation between Praxair and the JV will not lead to any changes in the market for methane.

b) Vertical relationships between Yara and the JV

CO2

37. The JV's business in the market for CO₂, will consist of Yara's current bulk and cylinders sales to end customers in Sweden, Norway and Denmark. Yara will retain its business for the production of liquid CO₂ and will supply the JV with CO₂ in Scandinavia.
38. However the vertical relation between Yara and the JV will not lead to any changes in the market for CO₂ in Sweden, Norway and Denmark as a vertical link between the business contributed to the JV and Yara existed pre-merger. As a matter of fact, Yara is currently self-supplying its business for the sales of CO₂ in Scandinavia, while after the transaction Yara will continue to supply the JV that will replace Yara.

Argon

39. The JV's business in the market for argon will consist of Yara's current sales in bulk and cylinders to end customers in Sweden, Norway and Denmark. The JV will also have a very limited production facility of argon in Norway. Yara has its production facility for argon in Germany and Norway and will supply the JV with argon from either of these plants under a supply agreement to be entered into by the JV and Yara.

40. As for the CO₂, the vertical relation between Yara and the JV will not lead to any changes in the market for argon in Sweden, Norway and Denmark as a vertical link between the business contributed to the JV and Yara existed pre-merger. As a matter of fact, Yara is currently self-supplying its business for its sales of argon in Scandinavia, while after the transaction Yara will continue to supply the JV.

Nitrogen

41. The JV's business in the market for nitrogen will consist of Yara's current bulk and cylinders sales to end customers in Sweden, Norway and Denmark. The JV will also produce nitrogen at its air separation units in Norway. In addition to its own production, for Denmark the JV will source small quantities of nitrogen from Yara, which will represent the whole production of nitrogen from Yara's unit in Germany. The JV will also source nitrogen from third parties.
42. In light of the above, the vertical relation between Yara and the JV will not lead to any changes in the market for nitrogen in Sweden, Norway and Denmark as a vertical link between the business contributed to the JV and Yara existed pre-merger. As a matter of fact, Yara is currently self-supplying its business for the sales of nitrogen in Scandinavia, while after the transaction Yara will continue to supply the JV.

2 Coordinated effects

CO₂

43. Outside Scandinavia, both Yara and Praxair will be active on the markets for bulk and cylinders sales of CO₂ in some national markets, namely Belgium, Germany, Italy, the Netherlands, France, Spain and Portugal.
44. However, in most of these national markets where they overlap the parties' combined market shares are below [20-30]¹¹, while their highest combined market share is of [30-40]¹². Moreover the parties have always very asymmetric market shares. As a consequence, the creation of the JV is unlikely to lead to anticompetitive coordination between Yara and Praxair on those national markets.

Argon

45. Outside Scandinavia, both Yara and Praxair will be active in the market for argon in Germany and Italy.
46. However, the parties' combined market shares are [20-30]% in Germany and [5-15]% in Italy and their market shares are very asymmetric in Germany¹³. As a consequence, the

¹¹ Markets for bulk in Belgium (<[0-5]: Praxair <[0-5]; Yara [0-5]) and in Italy ([10-20]: Praxair [0-10]; Yara [0-10]); or markets for cylinder in France ([10-20]: Praxair <[0-5]; Yara <[5-15]) and in Portugal ([10-20]: Praxair [10-20] and Yara [0-5]).

¹² Market for cylinder CO₂ in the Netherlands (respectively Praxair: [0-5]; Yara: [30-40]).

¹³ Praxair: [10-20] and Yara: [0-10] in Germany; Praxair: [0-10] and Yara: [0-5] in Italy.

creation of the JV is unlikely to lead to anticompetitive coordination between Yara and Praxair on those national markets.

VI. CONCLUSION

47. 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 the Merger Regulation.

For the Commission,
Signed
Neelie KROES
Member of the Commission