

***Case No COMP/M.2868 -
LINDE / SONATRACH /
JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19/12/2002

*Also available in the CELEX database
Document No 302M2868*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19/12/2002

SG(2002)D/233398

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties:

Dear Sirs,

Subject: Case No COMP/M.2868 - LINDE/SONATRACH/JV

Notification of 20 November 2002 pursuant to Article 4 of Council Regulation No 4064/89

1. On 20 November 2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ by which the German undertaking Linde International AG ("Linde") and the Algerian state-owned undertaking Société Nationale pour la Recherche, la Production, le Transport, la Transformation et la Commercialisation des Hydrocarbures S.p.A. ("Sonatrach") acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the newly created joint ventures "Société de Production" and "Société de Commercialisation" by way of transfer of assets.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. Linde operates in the fields of industrial gases and engineering, material handling and refrigeration, world-wide.
4. Sonatrach is a company wholly controlled by the Algerian State operating in the field of prospecting, production and world-wide commercialisation of hydrocarbons. As regards helium, Sonatrach is involved in Helios, a joint venture together with Air Liquide and

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

Air Products, in order to produce helium wholly dedicated to Air Liquide and Air Products (Linde's direct competitors).

II. THE OPERATION

5. The proposed operation consists of creating two joint ventures, jointly controlled by the parties: Société de Production and Société de commercialisation. The former company will be responsible for constructing and operating a facility for the production of liquid helium from the gas provided by Sonatrach. In turn, the Société de Commercialisation will act as a helium wholesale supplier. It will sell 50% of its production to Linde and the rest to other gas suppliers, Linde's competitors. It will therefore perform, on a lasting basis, all the functions of an autonomous economic entity.
6. Linde will hold 51% of the shares in these two companies and Sonatrach the remaining 49%. They are equally represented on the board and the general assembly. Based on the shareholder agreements, at least a two-third majority is required for all strategic decisions. Therefore, they both enjoy joint control of the two joint ventures.
7. The rationale of this operation is for Linde to become vertically integrated, i.e. to have its own production facilities for helium, as it is already the case for its main competitors: Air Liquide, Air Products, Praxair, BOC and Messer.
8. The proposed operation, therefore, constitutes a concentration within the meaning of Article 3(1)(b) and Article 3(2) of the Merger Regulation.

III. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion². (€9 billion for Linde and €24 billion for Sonatrach). Each of Linde and Sonatrach has a Community-wide turnover in excess of EUR 250 million (€6,3 billion for Linde and €13,3 billion for Sonatrach), 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.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product markets

10. The different possible markets for helium, as well as their geographic scope, were mentioned by the Commission in a previous decision³ but finally left open. As regards helium, the parties submit that three markets can be identified : (i) the production of helium, (ii) the wholesale supply of helium and (iii) the distribution of helium, the latter being possibly further subdivided based on different distribution methods.

² 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).

³ Commission decision on 18.1.2000, COMP/M.1630 – Air Liquide/BOC.

11. However, it is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

B. Relevant geographic markets

12. As regards the scope of these markets, the parties submit that the production as well as the wholesale of helium are world-wide or at least wider than the EEA in scope because there are only 6 areas in the world where helium is produced (USA, Canada, Algeria, Poland, Russia and China), helium can economically be transported over long distances in big dedicated containers and European customers of the helium wholesalers are significantly supplied with helium produced in these different areas. Last, the parties put forward that the market for distribution of helium is national in scope because the quantities supplied are much smaller and cannot bear extra costs due to long distance transportation.
13. It is not necessary to further delineate the relevant geographic markets because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

C. Assessment

Horizontal overlaps

14. Linde is not active in the production as well as the wholesale of helium, so far. Conversely, Sonatrach is currently not active on the downstream markets where Linde operates, in particular the sales of industrial and medical gases in cylinder, bulk or tonnage, including the distribution of helium. As a consequence, there is no horizontal overlap.

Vertical integration

15. As mentioned above, vertical integration is the rationale for this operation. In the distribution of helium (downstream market), Linde enjoys market shares in excess of 25% in Germany, Greece; the Netherlands, Austria, Denmark, Sweden, Finland and the United Kingdom as well as in Norway and Iceland. Nevertheless, in most of these countries, Linde faces powerful competitors such as Air Liquide or BOC, respectively world-wide numbers 1 and 2 in industrial gas supply, which are vertically integrated, i.e. active on the helium wholesale market.
16. As regards the upstream markets (production and wholesale supply), the joint ventures created in this operation have no activity for the time being. Besides, Sonatrach's current activities related to helium are limited to Helios, its joint venture with Air Liquide and Air Products. All the helium produced by Helios for the EEA is contractually committed to Helap, a joint venture jointly controlled by Air Liquide and Air Products only, under long-term supply contracts. Helap in turn is in charge of the wholesale of the helium produced. Therefore, it can be concluded that Sonatrach is currently not active in the helium wholesale.
17. As a consequence, the proposed operation does not raise concerns as to its impact on competition in the relevant markets through vertical integration.

V. CONCLUSION

18. 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.

Mario
Member of the Commission

For the Commission
MONTI