

***Case No COMP/M.3380 -  
UTC / LINDE  
KÄLTETECHNIK***

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: 12/07/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.VII.2004

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir/Madam,

**Subject: Case No COMP/M.3380 - UTC/Linde Kältetechnik  
Notification of 9.6.2004 pursuant to Article 4 of Council Regulation  
No 4064/89<sup>1</sup>**

1. On 9.6.2004, the Commission received a notification of a proposed concentration by which the undertaking United Technologies Corporation acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Linde Kältetechnik, part of Linde AG, by way of purchase of shares.
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that it does not raise any serious doubts as to its compatibility with the common market and with the EEA agreement.

#### **I. THE PARTIES**

3. United Technologies Corporation (“UTC”) is a US-based global and diversified industrial equipment company active *inter alia* in flight systems, elevators and jet engines UTC is active in the commercial refrigeration business through the Carrier group of companies.
4. Linde AG is an international technology group based in Germany. It’s activities include gas and engineering, material handling and refrigeration. The notified transaction concerns only Linde’s refrigeration business (Kältetechnik, “Linde”).

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<sup>1</sup> 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).

## II. THE OPERATION AND THE CONCENTRATION

5. UTC will acquire Linde's shares in Linde Kältetechnik GmbH & Co. KG and Linde Kältetechnik Verwaltungs GmbH, as well as various direct and indirect subsidiaries of Linde active in the Refrigeration Business.
6. As a result of the transaction, UTC will acquire sole control over Linde. The transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Council Regulation.

## III. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (UTC: 27,439,434 MEUR; Linde: 866 MEUR)<sup>2</sup>. Each of the parties has a Community-wide turnover in excess of EUR 250 million (UTC: [...] MEUR; Linde [...] MEUR), 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. COMPETITIVE ASSESSMENT

### A. Relevant product markets

8. The refrigeration industry is generally viewed as a part of the larger heating, ventilation, air conditioning and refrigeration, or "HVAC/R", industry. The refrigeration industry can be divided generally between commercial refrigeration, industrial refrigeration, and transport refrigeration.
9. UTC is active in the commercial refrigeration business through the Carrier group. Linde is mainly active in commercial refrigeration but has a small industrial refrigeration business (less than [0-10]% of the turnover of Linde's Refrigeration Business). However, Linde's share of sales in any industrial refrigeration market is below [5-15]% in the EEA, and its industrial refrigeration products comprise cold rooms for industrial facilities as well as refrigeration installations for meat processing and industrial bakery facilities. UTC does not offer these products in Europe. UTC is also active in specialized cooling cabinets sold to the Horeca sector through its Dutch subsidiary Gamko. However, Linde has no comparable activities. Therefore, the parties' activities overlap only in commercial refrigeration for the retail business.
10. Display cases are used by retailers to display refrigerated and frozen food products. Display cases can be divided into remote display cases and plug-in display cases. **Remote display cases** rely on an external cooling supply. Therefore, remote display cases need to be installed in a fixed location and connected to a cooling system, which is usually installed in a separate room in the store. The same cooling system can be used for some or all of the remote display cases in the store, regardless of the supplier, though two separate circuits are required for positive and negative temperature display cases. **Plug-ins** have a built-in cooling supply and can therefore be plugged in and used anywhere in a store.

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<sup>2</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).

11. The parties have submitted that a single market for display cases, including both plug-ins and remote display cases, should be identified. The Commission has considered the commercial refrigeration business in an earlier decision, *Coca Cola Company/Kar-Tess Group (Hellenic Bottling)*<sup>3</sup>, where it found for the purpose of that case that food and beverage coolers, i.e. plug-in cooling cabinets, should be considered a separate product market from other commercial refrigeration products.
12. Based on the market investigation carried out in this case there are strong indications that remotes and plug-ins should be considered as constituting separate relevant product markets. From the demand side, the investigation showed that plug-ins and remotes are purchased largely by different types of customers and are purchased for different types of end-uses. By way of example, plug-ins are usually installed in smaller shops whereas remotes are installed in larger supermarkets, as they require more space and room for the refrigeration equipment. Remotes require a fixed location while plug-ins are more flexible and can be installed more easily. From the supply side, the investigation showed that the manufacturing process for remotes and plug-ins is relatively different. The production of remotes requires larger machinery for metal equipment, larger foaming moulds, different material handling as well as additional know-how, in particular with respect to cooling requirements. Therefore, almost all producers of remotes are also active in plug-ins, but not vice versa. Moreover, the production of the two types of display cabinets is done either in separate factories, or on dedicated production lines. Consequently, there is, if any, a one-sided supply side substitutability from remotes into plug-ins.
13. However, since the competitive assessment does not differ, for the purposes of this investigation, it can be left open, whether remotes and plug-ins are considered to constitute separate relevant product markets or belong to one single product market.
14. Display cases require certain after-sales services, such as maintenance (including testing cases and systems for leaks) and repair. Display case manufacturers offer these services through their own service organisations or independent subcontractors. Both Carrier and Linde are providing after-sales services. However, both are marketing their aftermarket services actively only to their own display case customers. Therefore, this market is not considered further in this decision.

## **B. Relevant geographic markets**

15. The parties have submitted that the geographic market for display cases is EEA-wide. They have argued that suppliers usually manufacture display cases at a limited number of production sites and supply the entire EEA from these sites. According to the parties, there are no national standards or regulations which could prevent cross-border trade. The parties have also argued that, from the demand side, as a result of cross-border expansion in the retail sector, customers increasingly conduct multinational or EEA-wide tenders for the supply of display cases.
16. The investigation has confirmed the parties' argument that the relevant geographic market is EEA-wide. Customers in their replies have confirmed that they source display cases, both remotes and plug-ins, at the EEA-wide level, and, in the case of plug-ins, to a limited extent also from outside the EEA. This is in line with the

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<sup>3</sup> Case COMP/M.1683 *The Coca Cola Company/Kar-Tess Group (Hellenic Bottling)*, Commission decision of 07.02.2000

previous case, *Hellenic Bottling*<sup>4</sup>, where the assessment for plug-ins was based on an EEA-wide market. Large customers often negotiate prices at EEA-wide level in order to obtain better prices. Transport costs are said to be of no or little relevance. Customers require, however, a local after sales support function. This is particularly pertinent for remote display cases, where because of the size and the content a technical failure can lead to huge damage in a couple of hours. The market investigation has shown that some producers of display cases have their own service staff whereas others contract it out to independent local service firms. Therefore, the service requirement does not point to relevant geographic markets smaller than the EEA.

17. Therefore, for the purposes of this case, the relevant geographic market for display cases - both remotes and plug-ins – is considered to be EEA-wide.

### C. Assessment

18. In Europe, Carrier manufactures a full line of display cases at its production facilities in Ingelstad, Sweden (remotes) and Jaszaroksalas, Hungary (plug-ins). Carrier's display cabinets are marketed under the Beverage-Air, Gamko and Carrier brand names. Carrier's customers are primarily supermarket chains, convenience stores (particularly those operated by petroleum companies), and food and beverage companies, such as Pepsi-Cola and Unilever.
19. Linde has European production facilities in Kostheim/Germany, Romorantin/France, Torreglia/Italy, and Beroun/Czech Republic. In the course of 2004, another facility in Myto/Czech Republic, is envisaged to become operational. Torreglia and Beroun plants produce both remotes and plug-ins. Linde produces a full range of display cabinets, which are marketed under the brands of Linde, Criosbanc, Celsior, Chief and Seral (Brazil). Linde's customers for these products are mainly supermarket chains such as Tesco, Edeka, Carrefour, Rewe and, to a lesser extent, food and beverage companies such as Coca-Cola and Unilever.
20. On the overall market for display cases, the combined market share of the parties based on units sold in 2003 would be [10-20]% (Linde [5-15]%, UTC [0-10]%). This market share is not indicative of market power and does not give raise to competition concerns. Moreover, there are several competitors of comparable strength, such as IARP ([10-20]%), AHT ([10-20]%), Norcool/Frigorex ([5-15]%), ISA/Tasselli [0-10]%). However, all these competitors are active exclusively in plug-ins except ISA, who has bought Tasselli, a supplier of remotes, recently.
21. With regard to **remote display cases**, Linde is the largest supplier in the EEA. There is no publicly available data available regarding sales of remote display cases. Linde has, according to its own estimation, a share of sales based on units in 2003 of approximately [35-45]%. UTC is the fourth largest supplier of remote display cases in the EEA, through the acquisition of Electrolux' commercial refrigeration business in 1999, with a share of sales approximately [0-10]%. Thus, the parties' combined shares of sales of units in the EEA is some [40-50]% according to their own estimation.

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<sup>4</sup> Case COMP/M.1683 *The Coca Cola Company/Kar-Tess Group (Hellenic Bottling)*, Commission decision of 07.02.2000

22. The largest competitor in remote display cases at the EEA-wide level is the French El-Fi Group with [15-25]% of the market. The US-based world market leader Hussmann has [10-20]% of the market and the Italian supplier Arneg [0-10]%. The remaining competitors (Carter, Hauser, Norpe, Tasselli, Wica etc.) have [0-10]% of the market each, but have market shares of [5-15]% and more in the regions they are located, e.g. Carter on the British Isles, Hauser in Austria, Germany & Benelux, etc.).
23. The parties have argued that the market share increment for remote display cases is small and does not give rise to serious competition concerns. The parties have also argued that there is a large number of competing suppliers in the EEA. Furthermore, the parties have argued the transaction would not lead to competition concerns, because remote display case customers exercise significant buyer power. They have also submitted that over 90% of their own sales are made in competitive bidding situations to large retail chains. Since remote cases are made to order based on the customers' specifications, the parties have argued that switching costs are not prohibitive.
24. The Commission has verified the parties' market share estimates by comparing the sales data obtained from remote case suppliers in the EEA. This data suggests that the total market size for remote display cases could be somewhat bigger than what the parties have estimated and, consequently, the parties' market position in the EEA would be less than [40-50]%.
25. The market investigation further confirmed that a large number of competitors are present on the remote display case market. The larger competitors such as El-Fi, Hussmann and Arneg are active across the EEA, whereas several mid-size suppliers have a strong regional (larger than national) footprint (see above Paragraph 20). Customers have confirmed that there are a number of alternative remote display case suppliers in the EEA to whom they could switch to. Customers have also confirmed that switching costs are negligible when changing suppliers. Since the market investigation has confirmed the parties' view that there is overcapacity of [15-25]% and more in the market customers could easily switch significant volumes to competing suppliers.. Moreover, the market investigation showed that sizable customers are not without buying power, exerting competitive pressure on suppliers through – often EEA-wide – bidding contests.
26. Lastly, Carrier is not viewed as the second best alternative to Linde by a clear majority of the customers. Out of 45 replies [fewer than one third] buy remotes from both parties. Among those [fewer than one third] only [a handful] have Linde and Carrier as number one and two. Even those two customers which have Linde and Carrier as their only suppliers and where the merged entity would have 100% were not concerned by the proposed operation, which is evidence of the possibility to switch suppliers but also of the countervailing buyer power of the demand side.
27. Therefore, the Commission considers that the parties' market position in remote display cases post-transaction is unlikely to allow the new entity to exert market power so as to raise prices without customers being capable of switching to other suppliers. Neither customers nor competitors have expressed concerns about the notified transaction with regard to remote display cases.
28. As concerns **plug-ins**, in 2003, UTC achieved a share of sales based on units of approximately [0-10]% in the EEA, whereas Linde achieved a share of sales of about

[0-10]%. The market investigation suggests that these market shares could be somewhat higher, leading to an affected market, although below 25%.

29. The plug-in segment is relatively fragmented compared to the remote segment, with approximately 50 plug-in suppliers in the EEA. These include all remote suppliers, as well as a large number of specialized plug-in suppliers, such as Iarp, AHT and Norcool/Frigorex - each of which with a share of sales estimated at over [5-15]% - ISA/Tasselli, Caravell, and Helkama. Furthermore, customers have mentioned that new, viable suppliers have entered the market in recent years, mainly from outside the EEA like Turkey. Third parties in their replies to the market investigation have confirmed that competitive conditions on the plug-in market exist. Neither customers nor competitors have expressed concerns about the notified transaction with regard to plug-ins.

*Conclusion*

30. On the basis of the foregoing, the Commission concludes that the transaction as notified would not give rise to serious competitive concerns neither on the overall market for display cases nor on the separate markets for remote display cases and plug-in display cases in the EEA.

**V. CONCLUSION**

31. 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, signed  
Member of the Commission