

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch**

)	
In the Matter of)	
)	
LINDE AG,)	
a corporation, and)	Docket No. C-4163
)	
THE BOC GROUP PLC,)	
a corporation.)	
)	
)	

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Linde AG (“Linde”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent The BOC Group plc (“BOC”) (collectively “ Respondents”), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Linde is a corporation existing under and by virtue of the laws of Germany, with its principal executive offices located at Abraham-Lincoln-Strasse 21, 65189 Wiesbaden, Germany. Linde operates in the United States through its wholly-owned subsidiary Linde Gas LLC, with its headquarters at 6055 Rockside Woods Boulevard, Independence, Ohio, 44131.

2. Respondent BOC is a corporation organized, existing, and doing business under and by virtue of the laws of England whose registered principal office is located at Chertsey Road Windlesham, Surrey GU206HJ, England.

3. Respondents are engaged in, among other things, the production and sale of industrial gases, including, but not limited to, liquid oxygen and liquid nitrogen and bulk refined helium.

4. Respondents are, and at all times relevant herein have been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. §12, and are corporations whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE ACQUIRED COMPANY

5. BOC is a corporation organized, existing, and doing business under and by virtue of the laws of England whose registered principal office is located at Chertsey Road Windlesham, Surrey GU206HJ, England. BOC operates in the United States through its wholly-owned indirect subsidiaries, including The BOC Group Inc. and BOC Global Helium Inc., which exist under and by the virtue of the laws of the United States. The respective principal executive offices of The BOC Group Inc. and BOC Global Helium Inc. are located at 575 Mountain Avenue, Murray Hill, New Jersey, 07974.

III. THE PROPOSED ACQUISITION

6. Pursuant to a tender offer and agreement dated March 6, 2006, Linde announced its intention to acquire the entire share capital of BOC for an aggregate purchase price of approximately \$14.4 billion.

IV. THE RELEVANT MARKET

7. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the acquisition are the manufacture and sale of:

- a. Liquid oxygen;
- b. Liquid nitrogen; and
- c. Bulk refined helium.

8. For the purposes of this complaint, the relevant geographic areas in which to analyze the effects of the acquisition on the liquid oxygen and liquid nitrogen markets are:

- a. The Northeast;
- b. the Chicago-Milwaukee Metropolitan Area;

- c. the Eastern Midwest; and
- d. the Southeast.

9. For the purposes of this complaint, the relevant geographic area in which to analyze the effects of the acquisition on the bulk refined helium market is the world.

V. THE STRUCTURE OF THE MARKET

10. The relevant markets are highly concentrated whether measured by Herfindahl-Hirschman (“HHI”) or two-firm and four-firm concentration ratios.

11. Respondents are actual competitors in the relevant markets.

VI. ENTRY CONDITIONS

12. New entry into the relevant markets would not occur in a timely manner sufficient to deter or counteract the likely adverse competitive effects of the acquisition because it would take over two years for an entrant to accomplish the steps required for entry and achieve a significant market impact.

13. Entry into the liquid oxygen and liquid nitrogen markets is costly, difficult, and unlikely because of, among other things, the time and cost required to construct the air separation units that produce liquid oxygen and liquid nitrogen. Constructing one air separation unit large enough to be viable in the market would cost at least \$30 to \$40 million, most of which are sunk costs. Moreover, it is not economically justifiable to build an air separation unit unless a sufficient amount of the plant’s capacity has been pre-sold prior to construction, either to an on-site customer or to liquid customers with commitments under contract. Such pre-sale opportunities occur infrequently and unpredictably.

14. Entry into the bulk refined helium market is also costly, difficult, and unlikely, because of, among other things, the time and cost required to gain access to a source of crude helium, build a refinery, and acquire helium distribution assets. There are no sources of refined helium available that are not committed in long term contracts. A new entrant would need to locate a new source of crude helium and build a refinery. Constructing a helium refinery large enough to be viable in the market would cost between \$25 to \$100 million dollars, most of which are sunk costs. In addition, tens of millions of dollars would be needed to acquire the necessary infrastructure and distribution assets, including transfill facilities, cryogenic storage trailers, high-pressure tube trailers and liquid dewars, capable of transporting helium from the refinery to customers.

VII. EFFECTS OF THE ACQUISITION

15. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. By eliminating actual, direct, and substantial competition between Respondents;
- b. By increasing the likelihood that Respondents would unilaterally exercise market power in the Northeast, Chicago-Milwaukee, Eastern Midwest, and Southeast liquid oxygen and liquid nitrogen markets;
- c. By enhancing the likelihood of collusion or coordinated interaction between or among the remaining firms in the Northeast, Chicago-Milwaukee, Eastern Midwest, and Southeast liquid oxygen and liquid nitrogen markets;
- d. By enhancing the likelihood of collusion or coordinated interaction between or among the remaining firms in the bulk refined helium market; and
- e. By increasing the likelihood that consumers would be forced to pay higher prices for liquid oxygen, liquid nitrogen, and bulk refined helium in the relevant geographic areas.

VIII. VIOLATIONS CHARGED

16. The Acquisition described in Paragraph 6 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

17. The Acquisition described in Paragraph 6, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this seventeenth day of July, 2006, issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: