

**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**

**THE BOC GROUP PLC,
a corporation.**

Docket No. C-4163

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Linde AG (“Linde”) of Respondent The BOC Group plc (“BOC”) hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having executed the Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from

interested persons pursuant to section 2.34 of its Rules, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Order to Maintain Assets:

1. Respondent Linde AG is a corporation organized, existing and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Abraham-Lincoln-Straße 21, 65030 Wiesbaden, Germany.

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. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, all capitalized terms used in this Order to Maintain Assets, but not defined herein, shall have the meanings attributed to such terms in the Decision and Order contained in the Consent Agreement.

II.

IT IS FURTHER ORDERED that:

- A. From the date Respondents sign the Consent Agreement until the divestiture of the Helium Assets To Be Divested pursuant to the Consent Agreement, Respondents shall:
1. maintain the Helium Assets To Be Divested in substantially the same condition (except for normal wear and tear) existing at the time Respondents sign the Consent Agreement;
 2. take such actions that are consistent with the past practices of Respondents in connection with the Helium Assets To Be Divested and that are taken in the ordinary course of business and in the normal day-to-day operations of Respondents;
 3. keep available the services of the current officers, employees, and agents of Respondents; and maintain the relations and good will with, among others, customers, suppliers, payors, landlords, employees, agents, and others having business relations with Helium Assets To Be Divested in the ordinary course of business; and

4. preserve the Helium Assets To Be Divested as an ongoing business and not take any affirmative action, or fail to take any action within Respondents' control, as a result of which the viability, competitiveness, and marketability of the Helium Assets To Be Divested would be diminished.
- B. From the date Respondents sign the Consent Agreement until the date this Order to Maintain Assets terminates pursuant to Paragraph VII, Respondents shall abide by the requirements set forth in Paragraph III of the Consent Order contained in the Consent Agreement with respect to the divestiture of the Helium Assets To Be Divested, the Escrow Transfills, the ExxonMobil Helium Contract, the Russian Helium Contract, and the Polish Helium Contract. Respondents shall also abide by the Consent Order requirements with respect to the helium Allocation Percentage, Helium Employees, Helium Transfill Employees and the divestiture of Respondent Linde's helium business in the United Kingdom.
 - C. Respondents shall not restrict, preclude, or influence any supplier of goods or services to its retained helium business from supplying goods or services to the helium business of the Helium Acquirer.

III.

IT IS FURTHER ORDERED that:

- A. Richard M. Klein shall be appointed Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Consent Agreement and this Order to Maintain Assets.
- B. No later than one (1) day after this Order to Maintain Assets is made final, Respondents shall, pursuant to the Monitor Agreement and to this Order to Maintain Assets, transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities in a manner consistent with the purposes of the Consent Agreement and this Order to Maintain Assets.
- C. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor. Not later than ten (10) days after appointment of a substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights, powers, and authorities necessary to permit the Monitor to monitor Respondents'

compliance with the terms of the Consent Agreement and this Order to Maintain Assets, in a manner consistent with the purposes of this Order to Maintain Assets.

- D. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
1. The Monitor shall have the power and authority to monitor Respondents' compliance with the terms of the Consent Agreement and this Order to Maintain Assets, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Consent Agreement and this Order to Maintain Assets and in consultation with the Commission, including, but not limited to:
 - a. Assuring that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Consent Agreement and this Order to Maintain Assets;
 - b. Monitoring any transition services agreements;
 - c. Assuring that material confidential information is not received or used by Respondents or the Acquirers, except as allowed in the Consent Agreement and this Order to Maintain Assets; and
 - d. Determining the completion of a Standard Industry Helium Transfill.
 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of the Consent Agreement and the Order to Maintain Assets.
 4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with its obligations under the Consent Agreement and this Order to Maintain Assets. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with the Consent Agreement and this Order to Maintain Assets.
 5. The Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the

- Commission may set. The Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.
 7. Respondents shall report to the Monitor in accordance with the requirements of this Order to Maintain Assets and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under the Consent Agreement and this Order to Maintain Assets.
 8. Within one (1) month from the date the Monitor is appointed pursuant to this paragraph, every sixty (60) days thereafter, and otherwise as requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Consent Agreement and this Order to Maintain Assets.
 9. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Monitor's duties.
 - F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph III.

- G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Consent Agreement and this Order to Maintain Assets.

IV.

IT IS FURTHER ORDERED that, beginning fifteen (15) days after the date on which Respondents sign the Consent Agreement and every thirty (30) days thereafter until this Order to Maintain Assets terminates pursuant to Paragraph VII, Respondents shall each submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the terms of this Order to Maintain Assets. Respondents shall each submit at the same time a copy of these reports to the Monitor.

V.

IT IS FURTHER ORDERED that Linde or BOC shall notify the Commission at least thirty (30) days prior to: (1) any proposed dissolution of Linde or BOC; (2) any proposed acquisition, merger, or consolidation of Linde or BOC; or (3) any other change in Linde or BOC that may affect compliance obligations arising out of this Order to Maintain Assets, including but, not limited to, assignment, the creation or dissolution of subsidiaries, or any other change in Linde or BOC.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order to Maintain Assets; and
- B. Upon five (5) days' notice to Linde or BOC and without restraint or interference from it, to interview officers, directors, or employees of Linde or BOC, who may have counsel present, regarding any such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate at the earlier of:

- A. three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. such time as (1) all Assets To Be Divested have been divested pursuant to the terms of the Consent Agreement, and (2) the Decision and Order has been made final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: July 17, 2006