II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 9 February 2000

declaring a concentration to be compatible with the common market and the EEA Agreement

(Case COMP/M.1641 — Linde/AGA)

(notified under number C(2000) 352)

(Only the German version is authentic)

(Text with EEA relevance)

(2002/343/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57(2)(a) thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings [1] as last amended by Regulation (EC) No 1310/97 [2] and in particular Article 8(2) thereof,

Having regard to the Commission's decision of 30 September 1999 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

After consulting the Advisory Committee on Concentrations [3]

Whereas:

(1) On 1 September 1999 the Commission received notification of a proposed concentration under Article 4 of Council Regulation (EEC) No 4064/89 (the Merger Regulation). By this transaction Linde AG (Linde) was to purchase shares in AGA AB (AGA), thereby acquiring control of the whole of AGA within the meaning of Article 3(1)(b) of the Merger Regulation.

(2) On 30 September 1999 the Commission decided to initiate proceedings in the case under Article 6(1)(c) of the Merger Regulation and Article 57 of the EEA Agreement.

(3) The Advisory Committee discussed a draft of this Decision on 24 January 2000.

I. THE PARTIES AND THE PROPOSED TRANSACTION

(4) Linde's areas of business are process engineering, materials handling, refrigeration and the production and distribution of industrial gases. AGA also produces and distributes industrial gases.

[1] OJ L 395, 30.12.1989, p. 1; Corrigendum: OJ L 257, 21.9.1990, p. 13.
[2] OJ L 180, 9.7.1997, p. 1.
[3] OJ C 110, 7.5.2002.

(5) Linde already holds shares in AGA which account for 21,76 % of the capital and 14,45 % of the voting rights. On 15 August 1999 Linde concluded conditional contracts with six large AGA shareholders under which Linde was to buy a total of 66 891 874 A shares and 41 974 157 B shares in AGA. This would bring Linde's stake in AGA to over 66 % altogether.

(6) Linde has since then acquired the remaining A and B shares in AGA by means of a public bid.

II. CONCENTRATION

(7) The proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation, because Linde would acquire sole control of AGA.

III. COMMUNITY DIMENSION

(8) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion [4]. Linde and AGA have an aggregate Community-wide turnover of more than EUR 250 million each. The parties do not achieve more than two thirds of their Community-wide turnover in any one Member State. The notified transaction accordingly has a Community dimension. It also requires cooperation under Article 57 of the EEA Agreement in conjunction with Article 2(1)(c) of Protocol 24 to that Agreement.

IV. APPRAISAL UNDER ARTICLE 2 OF THE MERGER REGULATION

A. *THE RELEVANT PRODUCT MARKET*

(9) Both Linde and AGA produce and distribute industrial gases, medical gases and high-purity gases.

(10) 'Industrial gases' comprise all the gases and mixtures of gases provided by gas suppliers for applications in industry and research, applications of which there is a very wide variety. The most commonly used industrial gases are oxygen, nitrogen, argon, carbon dioxide, acetylene and hydrogen, and mixtures including them. Strictly speaking industrial gases do not include medical gases and gases which possess a purity above the standard degree or which are mixed to a precision greater than that of industrial gases.

(11) Industrial gases can be obtained from the air, from synthetic processes, or from natural sources. Atmospheric gases are extracted from the air by liquefaction and separation of the air into its component parts. Air is composed of 20,95 % oxygen, 78,09 % nitrogen, 0,93 % argon and 0,03 % other noble gases such as neon, krypton, xenon and helium. Acetylene and hydrogen are produced by chemical processes. Carbon dioxide comes from natural sources or occurs as a by-product of other chemical processes. Helium is extracted from natural sources.

(12) According to the notifying party, about 75 % of turnover in industrial gases is accounted for by atmospheric gases, and about 25 % by gases produced by synthetic processes or extracted from natural sources.

(13) The following table summarises the main uses of oxygen, nitrogen, argon, hydrogen, carbon dioxide, acetylene and helium.

Gas	Main industries where used
Oxygen	Metallurgy (steel production), chemicals, metalworking (cutting and welding), paper (bleaching), glass (melting), electronics, waste water purification, fish farming
Nitrogen	Electronics, chemicals, food (improving shelf life by protecting from oxygen and cryogenic freezing), metalworking (pressing of aluminium parts), building (soil freezing, cooling for the setting of concrete, shielding of prestressing steels against oxidation)
Argon	Metallurgy (steel production), metalworking (shielding of weld seams against oxidation), electronics (shielding of semiconductors against impurities), inflation of air bags
Hydrogen	Chemicals (purification), food (edible oil production), glass (grinding)
Carbon dioxide	Metalworking (shielding of weld seams against oxidation), steel production, chemicals, drinks manufacturing, food (cryogenic freezing), dry ice, waste water purification (neutralisation of alkaline wastes)
Acetylene	Metalworking (cutting and welding), glass (lubrication of moulds)
Helium	Aerospace, lifting gas for balloons, healthcare

[4] Turnover has been calculated in accordance with Article 5(1) of the Merger Regulation and with the Commission notice on calculation of turnover (OJ C 66, 2.3.1998, p. 25). Turnover before 1 January 1999 has been calculated by applying the average ecu exchange rates and converting into euro on a one-for-one basis.

(14) The notifying party submits that industrial gases can be classed in groups with similar uses and capabilities. In almost all applications one gas can be replaced by another with suitable physical and chemical characteristics. Mixtures can almost always be replaced by pure gases. Nitrogen, argon and carbon dioxide can be used where an inert gas is needed, and liquefied nitrogen, liquefied argon, liquefied helium and liquefied or solid carbon dioxide can be used for cooling. Gases which can be used to shield weld seams, such as carbon dioxide, argon and certain mixtures, form one group; air and oxygen might also be considered to form a single group.

(15) The notifying party also submits that in 60 % of applications industrial gases can be replaced by alternative non-gas-based processes. It claims that this is so in heat treatment in metallurgy; oxygen enrichment, including glass melting processes; joining, binding and cutting; inert gas protection in chemistry; cooling processes for foodstuffs; drinks manufacture; water treatment; etching and doping for semiconductors, electronics and lighting; cooling and pressure applications in the plastics and rubber industry; and assisted respiration and anaesthesia. In these areas of use users can employ non-gas-based processes as well as gas-based processes, and the relevant market should accordingly be taken to include such alternative technologies. The notifying party therefore suggests that each of the ten main areas of use should be taken to constitute a relevant market.

(16) On the basis of its investigations in this case and in the parallel Case M.1630 — Air Liquide/BOC, the Commission takes the view that because of the different chemical and physical properties of the individual industrial gases they are not generally interchangeable. Industrial gases are used in production processes on the basis of their particular chemical and physical properties in order to produce a desired result in that particular application. The requirements of customers are very different from one application to another, and there is no general interchangeability. It may be that in a particular application there are several gases which possess the properties fundamentally required; thus nitrogen and argon may both be used for protection with an inert gas, and nitrogen and carbon dioxide can both be used for the deep freezing of foodstuffs. But even in cases of that kind it can be assumed that one of these gases is technically superior in the user's particular application. This means that from the customer's point of view there is no real interchangeability, because using a replacement would impair the process and reduce quality. And in fact the users consulted in the course of the investigation in this proceeding, and in the parallel Case M.1630 — Air Liquide/BOC, have almost without exception denied that the industrial gases they use could be replaced by others.

(17) On the basis of its investigations in this case and in the parallel Case M.1630 — Air Liquide/BOC the Commission likewise takes the view that there is no general interchangeability between industrial gases and non-gas-based processes. The users questioned by the Commission in the present case have almost without exception stated that for their purposes industrial gases cannot be replaced by non-gas-based processes, such as mechanical or chemical processes for example.

(18) It may happen that replacement is possible in a particular application: thus compression refrigerators may be used instead of carbon dioxide and nitrogen for chilling and freezing foodstuffs, and air may be used instead of oxygen in steel production. But in the latter case the energy expended is greater, quality suffers and the process consequently works less well, so that there is no real interchangeability. In the first case mentioned it should be pointed out that a changeover from carbon dioxide and nitrogen to compression refrigerators for chilling and freezing foodstuffs would require a decision to convert from one system to another. Given the investment needed for such a conversion, there is no reason to suppose that in the event of any lasting increase in the prices charged for industrial gases the user will be able to convert production rapidly to a non-gas-based process.

(19) The Commission is satisfied, therefore, that because of their specific chemical and physical properties the individual gases constitute separate product markets.

(20) Industrial gases are delivered to purchasers who need continuous supply, either from a pipeline forming part of a pipeline network belonging to the supplier, or from a plant on the user's own site which is tailored to the user's needs and production volumes. Large purchasers whose requirements are not so great that an on-site plant would be economically justified are supplied using tanks. The gases are usually delivered by tanker in liquefied form. Industrial gases can also be supplied in cylinders. Mixtures of gases for industrial and scientific purposes, high-purity gases, noble gases and reactive gases for the semiconductor industry are likewise bottled in cylinders and marketed in that form.

(21) On the basis of the information supplied by the notifying party, and the information which the Commission has assembled in the parallel Case M.1630 — Air Liquide/BOC, the Commission takes the view that each of the relevant product markets should be subdivided in terms of the three distribution channels, namely on-site plants and pipelines; tankers; and cylinders. The facilities on the customer's premises differ greatly from one distribution channel to another, depending on the manner of supply and the prices of the individual gases, as the notifying party has itself submitted. The Commission's investigations in this and the parallel Case M.1630 — Air Liquide/BOC have confirmed that competitors and purchasers from the three distribution channels regard them as separate product markets.

B. *THE RELEVANT GEOGRAPHIC MARKETS*

(22) The notifying party submits that the relevant geographic market is the Community. It argues that the gas manufacturers who operate Community-wide are present in almost all Member States and supply gas there through all the customary distribution channels, though their market shares vary. Sales of cylinder gas across the borders of Member States are comparatively limited, but this does not change the fact that the geographic market is Community-wide. All competitors supply customers in the Member States by means of on-site plants and pipelines, and are in competition with one another, thus determining the limits of the market.

(23) The Commission's investigations in this case and the parallel Case M.1630 — Air Liquide/BOC have established that the extent of the relevant geographic market depends on the properties of the particular gas and the particular form of distribution.

(24) To take supply from a plant on the customer's own site first, all the main suppliers of industrial gases clearly have the know-how and resources necessary to build and operate such units anywhere in the EEA. Thus they can all tender throughout the EEA for contracts to build and operate on-site plants of this kind. Here, therefore, the relevant geographic markets are EEA-wide.

(25) Turning to delivery by tanker, the high cost of transport means that delivery by tanker will be economical only within a radius of about 200 km from the filling plant, at least in the case of the atmospheric gases oxygen and nitrogen. Even though the areas covered by the existing filling plants may intersect, the Commission takes the view that here the relevant geographic markets are smaller than the EEA as a whole, and generally consist of one country only. This conclusion is supported by the price differences that the Commission has observed between Member States.

(26) As far as the distribution of cylinder gas is concerned, the notifying party has itself stated that there is very little cross-border delivery. Thus the relevant geographic markets for cylinder gas are to be defined in local terms. The areas in which deliveries can be made from the various filling plants overlap, and as a rule a large number of local markets cover an entire Member State seamlessly. At least between the large suppliers, then, competition is not merely local or regional but extends over the whole of a Member State. As the basis for its assessment, therefore, the Commission has taken the relevant geographic markets for cylinder gases each to comprise the entire territory of a particular Member State.

C. *ASSESSMENT*

(27) The transaction would create dominant positions: it would give Linde/AGA dominant positions on the markets in cylinder gases in the Netherlands and in liquefied and cylinder gases in Austria.

1. GERMANY

(aa) ***In Germany Linde and Messer both hold large market shares***

(28) Germany is by far the largest market for industrial gases in the EEA, and has the greatest number of competitors. The main suppliers of industrial gases in Germany are Linde and Messer Griesheim GmbH (Messer), in which Hoechst AG has a two-thirds holding and the Messer family a one-third holding. In 1997 Linde and Messer both had a [25-30] %* (*) share of the market in industrial gases ([5]). Other major suppliers in Germany are the AGA subsidiary AGA Gas GmbH & Co., KG ('AGA') and Air Liquide GmbH ('Air Liquide'), a subsidiary of L'Air Liquide SA. In 1997 AGA had a [10-15] %* share of the market in all industrial gases together, and Air Liquide had [10-15] %* ([6]). The international gas suppliers Air Products and Chemicals Inc., (Air Products) and Praxair Inc., (Praxair) also do business in Germany, though their shares are smaller. In 1997 Air Products had [less than 5] %* of the market in all industrial gases,

(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

([5]) Salomon Smith Barney, Industrial Gases: Industry Report, July 1998, p. 178.

([6]) Salomon Smith Barney, Industrial Gases: Industry Report, July 1998, p. 178.

and Praxair had [less than 5] %* (7). In 1997 the BOC Group plc (BOC) was still operating in Germany, and had a share of [less than 5] %* of the market in all industrial gases (8). Since then BOC's German operations have been taken over by Air Liquide.

(29) In 1997 other suppliers of industrial gases in Germany had a combined market share of [10-15] %* (9). These included Westfalen AG, which operates throughout the country, and other suppliers with largely regional operations, such as Sauerstoffwerk Friedrichshafen GmbH, Sauerstoffwerk Friedrich Guttroff GmbH, and basi Schöberl GmbH & Co. The Norwegian company Hydrogas AS (Hydrogas) also supplies carbon dioxide in Germany. The total number of smaller suppliers active in Germany is about 30.

(30) According to the investigations carried out by the Commission, market shares for liquefied gases in Germany break down as follows:

Liquefied gases	Oxygen		Nitrogen		Argon		Hydrogen		CO_2	
	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)
Linde	[20-25]* %	[30-35]* %	[25-30]* %	[25-30]* %	[20-25]* %	[30-35]* %	[20-25]* %	[20-25]* %	[10-15]* %	[10-15]* %
Messer	25-30 %	35-40 %	30-35 %	35-40 %	45-50 %	40-45 %	40-45 %	45-50 %	15-20 %	20-25 %
AGA	10-15 %	5-10 %	5-10 %	5-10 %	<5 %	5-10 %	<5 %	<5 %	25-30 %	30-35 %
Air Liquide	10-15 %	5-10 %	10-15 %	5-10 %	<5 %	<5 %	<5 %	5-10 %	25-30 %	25-30 %
Air Products	10-15 %	5-10 %	5-10 %	5-10 %	5-10 %	5-10 %	25-30 %	20-25 %	<5 %	<5 %
Praxair	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %
Other	5-10 %	<5 %	5-10 %	5-10 %	5-10 %	5-10 %	<5 %	<5 %	10-15 %	10-15 %

(31) According to the investigations carried out by the Commission, market shares for cylinder gases in Germany break down as follows:

Cylinders	Oxygen		Nitrogen		Argon and argon mixtures		CO_2		Hydrogen		Acetylene	
	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)
Linde	[25-30]* %	[25-30]* %	[20-25]* %	[25-30]* %	[25-30]* %	[25-30]* %	[10-15]* %	[10-15]* %	[5-10]* %	[15-20]* %	[40-45]* %	[40-45]* %
Messer	30-35 %	30-35 %	20-25 %	20-25 %	30-35 %	30-35 %	15-20 %	15-20 %	15-20 %	25-30 %	25-30 %	25-30 %
AGA	10-15 %	10-15 %	5-10 %	10-15 %	10-15 %	10-15 %	25-30 %	25-30 %	45-50 %	25-30 %	15-20 %	15-20 %
Air Liquide	10-15 %	10-15 %	5-10 %	5-10 %	5-10 %	5-10 %	25-30 %	25-30 %	5-10 %	5-10 %	10-15 %	10-15 %
Air Products	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %
Praxair	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %	<5 %
Other	<5 %	5-10 %	30-35 %	30-35 %	10-15 %	10-15 %	15-20 %	10-15 %	10-15 %	15-20 %	<5 %	<5 %

(7) Salomon Smith Barney, Industrial Gases: Industry Report, July 1998, p. 178.
(8) Salomon Smith Barney, Industrial Gases: Industry Report, July 1998, p. 178.
(9) Salomon Smith Barney, Industrial Gases: Industry Report, July 1998, p. 178.

(32) In 1998 the atmospheric gases oxygen and nitrogen accounted for some 60 % of turnover from the distribution of liquefied gases in Germany, and the atmospheric gases oxygen, nitrogen and argon for some 78 % of all German turnover. Messer's share of the liquefied oxygen market, by value, is 35-40 %, while Linde has a share of [30-35]* %. Messer's share of the market in liquefied nitrogen, by value, is 35-40 %, while Linde has a share of [25-30]* %. Messer's share of the market in liquefied argon, by value, is 40-45 %, while Linde has a share of [30-35]* %.

(33) In 1998 more than 69 % of turnover from the distribution of cylinder gases in Germany was accounted for by oxygen, nitrogen, and argon and argon mixtures. Messer's share of the market in cylinder oxygen, by value, is 30-35 %, while Linde has a share of [25-30] %*. Linde's share of the market in cylinder nitrogen, by value, is [25-30]* %, while Messer has a share of 20-25 %. Messer's share of the market in cylinder argon and argon mixtures, by value, is 30-35 %, while Linde has a share of [25-30]* %.

(bb) ***Both market leaders have countrywide infrastructures, a countrywide distribution network and an extensive clientele***

(34) In air separation plants the individual atmospheric gases are extracted in liquid form. They may be vaporised and bottled in filling units on the same premises, and then supplied direct to large users of cylinder gas. But atmospheric gases are also delivered in liquid form by tanker direct to the final user, or to filling plants which are not directly connected to an air separator. There they are bottled and sold. Both liquefied and cylinder gas are bought not only by final users but also by dealers. For the most part these are small gas manufacturers or dealers who buy in liquefied gas for bottling in their own filling plants, or cylinder gas for sale to final consumers through their own distribution outlets.

(35) Transport costs are very important in the liquefied and cylinder gas business. Transport accounts for about 40 % of costs in the case of liquefied oxygen and nitrogen, and for 10 % even in the case of the very expensive liquefied argon. Transport costs are usually integrated into the price and passed on to customers. The denser a supplier's production and distribution network, the easier it is to minimise costs by supplying over only short distances. As the notification points out, production costs have a smaller impact on price competition today than the costs of distribution and administration.

(36) Linde and Messer have much denser production and distribution networks in Germany than their competitors. Messer also has a traditionally very strong position in the west (North Rhine-Westphalia, Hesse, Rhineland-Palatinate and Saarland), and Linde in the south (Baden-Württemberg and Bavaria); these are the two regions with the highest gross value added in manufacturing. The north (Lower Saxony, Hamburg, Bremen and Schleswig-Holstein) and the east (Mecklenburg-Western Pomerania, Brandenburg, Berlin, Saxony-Anhalt, Thuringia and Saxony) account for only 14 % and 15 % respectively of gross value added.

(37) Production and filling plants are distributed between the German regions as follows.

Air separation plant, or air separation plant and pipeline	North	East	South	West	All Germany
Linde	3	3	1	4	11
Messer	0	0	1	8	9
AGA	1	1	1	1	4
Air Liquide	1	1	0	1	3
Air Products	1	0	0	1	2
Other	0	0	1	2	3
Total	6	5	4	17	32

Filling plant or acetylene works	North	East	South	West	All Germany
Linde	7	5	11	8	31
Messer	1	9	3	8	21
AGA	2	3	2	3	10
Air Liquide	2	6	3	6	17
Air Products	1	0	0	1	2
Other	0	2	10	5	17
Total	13	25	29	31	98

(38) Manufacturers can also reduce their transport costs by agreeing to exchange volumes. Linde and Messer have such an agreement, under which Linde supplies Messer with liquefied oxygen and nitrogen from its air separation plants in Worms (in the western region) and Leuna (in the eastern region), and Messer supplies Linde with liquefied oxygen from its air separation plant in Hürth (in the western region). The volume contracted for is 7 million m^3 of oxygen a year.

(39) Linde and Messer also have the densest network of distributors.

Outlets and distributors	North	East	South	West	All Germany
Linde	107	251	254	186	798
Messer	226	258	163	202	849
AGA	143	155	151	141	590
Air Liquide	36	244	57	102	439
Air Products	47	41	0	73	161
Total	576	949	625	704	2 837

(40) According to the notifying party, there are about 450 000 customers for industrial gases in Germany. Linde has [less than 200 000]* customers in the country. [Of these, ...]* are large customers manufacturing at more than one site who are supplied by pipeline or from on-site plants. Another [...]* or so are customers who require gas in tanks but also in cylinders, or who use relatively high volumes of cylinder gases. These customers are dealt with direct by Linde's sales staff. The remaining [...]* or so are small customers with a requirement of one to 10 cylinders, accounting for a turnover of less than DEM [...]* a year. These are dealt with by Linde distributors, of whom there are just under 800. The distributors sell only Linde cylinder gas, for Linde's account ([10]).

(41) Messer has a clientele of 150 000 to 200 000 customers in Germany. It has 850 distributors to deal with small customers.

(42) Linde's and Messer's dense networks of production plants and sales outlets ensure high product availability and security of supply over short distances, and give them decisive cost advantages over their competitors.

cc) ***Despite the market structure, in which both Linde and Messer have high market shares, the movement of market shares and prices over time indicates that there is real competition between them***

(43) As has already been explained, the structure of the markets in liquefied and cylinder gases in Germany is characterised by the high market shares held by the two leading suppliers, Linde and Messer, who also enjoy considerable advantages over their competitors in terms of infrastructure and distribution networks. That high market shares should be held by only two undertakings can be strong evidence for the existence of a dominant duopoly. But a market structure of this kind is not

([10]) Linde, Kompetenz vor Ort (Responsibility on the Ground), p. 32.

enough to prove that there is in fact joint dominance, at least where it can be shown that there is real competition between the two leaders.

(44) In the present case there is also the fact that industrial gases are homogeneous products, which usually facilitates oligopolistic parallel conduct. But it has to be borne in mind that on the markets in industrial gases there is some differentiation of the products on offer on the basis of the applications technology to be used. The development of new applications technologies by the gas manufacturers and the provision of assistance specific to the particular application stand alongside price as major parameters of action on these markets. Linde states that there are currently between 500 and 1 000 different uses for industrial gases. This figure is constantly growing. According to Linde, something approaching one third of the gas sold in recent years was used for purposes which even 10 years ago were not regarded as suitable applications for industrial gases.

(45) Nevertheless, the market structure described here and the fundamental homogeneity of the gases being sold does suggest the existence of a dominant duopoly. Against this conclusion, however, there is the movement of market shares over time, and the pricing of the different gases.

(46) In the course of the proceedings Linde has submitted extensive data showing the movement of market shares and average revenue from the separate gases from 1986 onward, or in the case of liquefied gases from 1989 onward; from 1994 these data are based on figures supplied by the German Chemical Industry Federation, the VCI. They show that Linde's and Messer's market shares have fluctuated in different directions for different gases. Average revenues on individual gases have also differed widely between Linde and Messer. Both of these things indicate that there is significant competition between Linde and Messer.

(47) For liquefied oxygen and argon, Linde's market share has fallen slightly over the last 10 years, oxygen by 1,6 percentage points and argon by 0,3 percentage points. For liquefied nitrogen its market share has risen slightly over the same period, by 1,6 percentage points. But there is no steady trend. In some years Linde's market shares were above those of 1989, and in other years they were lower. Messer's share of the markets in all three liquefied gases has fallen substantially: oxygen by 6,1 percentage points, nitrogen by 4,5, and argon by 8,5. But there is no steady trend here either. Nor did Linde's and Messer's shares of the markets in particular gases move in the same way. In some years Linde's share of the market in a particular gas would rise substantially, while Messer's share fell. In other years the reverse happened.

(48) On the market in liquefied oxygen, for example, Linde's share fell slightly between 1989 and 1992; Messer's rose substantially, by five percentage points. Between 1993 and 1995 Linde's market share rose a little, while Messer's fell. Between 1996 and 1999 Linde's market share fell slightly, and Messer's fell by eight percentage points. On the market in liquefied argon, Messer's share fluctuated widely between 1989 and 1999. Between 1989 and 1994 it fell by 11 percentage points; between 1995 and 1997 it rose by almost seven percentage points; and by 1999 had fallen back by four percentage points. Linde's share of the liquefied argon market, by contrast, stayed more or less constant over the whole period 1989 to 1999, with only minor variations. On the market in liquefied nitrogen, Linde's share grew by three percentage points between 1989 and 1995, with small variations from year to year, but between 1996 and 1999 it fell slightly. Messer's share of the liquefied nitrogen market fell by seven percentage points between 1989 and 1993, but since then, though with some fluctuations, it has risen by three percentage points overall.

(49) In the last 13 years, Linde's share of the cylinder gas market has fallen quite significantly overall, by 11 to 17 percentage points depending on the gas. This fall has been relatively steady. Messer's share, on the other hand, has remained roughly stable or fallen slightly, with the exception of acetylene, where Messer's market share has risen by nine percentage points.

(50) Turning to the outside competition, Air Liquide's shares of the markets in almost all types of industrial gas, both liquefied and in cylinder, have been growing strongly. This has meant that in the last 10 years Air Liquide has established a firm foothold in the German liquefied and cylinder gas markets. All of the other suppliers listed in recital 29, who are not among the seven largest gas manufacturers, have also had substantial gains in market share.

(51) In the course of the proceedings Linde has submitted a number of examples of prices which have been substantially reduced because of competition for existing customers. Given the large number of customers served by Linde, these examples can obviously involve only a relatively small proportion of the existing clientele. But the trend reflected in these examples and in the 'reviews of competition' (Wettbewerbsbilanzen) submitted with the notification is confirmed by shifts in average revenues (DEM per m^3).

(52) Like the movement of market shares, the movement of average revenues also presents a different picture in the two companies. For liquefied oxygen, Linde's average revenue fell by [...] %* in the period from 1994 to 1999,

and Messer's by [...] %*. In 1999, as in most years before, both suppliers' average revenues were above the average revenue on the market as a whole. For liquefied nitrogen, Linde's average revenue fell by [...] %* and Messer's by [...] %*. In both 1994 and 1999 Linde's average revenues were in line with those of the market as a whole, while Messer's were lower in 1994 and higher in 1999. For liquefied argon Linde's average revenue fell by [...] %* and Messer's by [...] %*. Despite that, over the same period Linde's average revenues were very far above the market average, and Messer's were well below. For cylinder gases there were similar variations. For cylinder oxygen, for example, Linde's average revenue was always well above the market average over the whole of the period 1994 to 1999; Messer's was sometimes roughly equal to the market average, depending on the year, and sometimes substantially below. For cylinder acetylene Linde's average revenue was well below the market average, and Messer's was substantially above. For cylinder argon both suppliers had average revenues below the market average, but the gap varied from year to year.

(53) Even with homogeneous goods, average revenues do not allow firm conclusions to be drawn regarding competitors' pricing. It is true that where the goods are homogeneous there are none of the difficulties which arise with differentiated goods offered as part of different product mixes by different suppliers. But even in the case of homogeneous goods there may be different customer structures, with correspondingly different delivery volumes, and this can affect the relationship between average revenues and actual prices. Nevertheless, where the goods are homogeneous the average revenues do provide important indications of the pricing practised by the individual suppliers. This is especially true here, where Linde and Messer have market shares of comparable size. It can safely be assumed, therefore, that their clienteles are also similar in structure. The different movement of Linde's and Messer's average revenues which has been outlined in recital 52 is therefore clear evidence of price competition between them.

(54) Taking all things together, then, it can be concluded that Linde and Messer are competing actively with one another. Despite the duopolistic market structure, the competitive relationship between Linde and Messer is too marked to allow it to be supposed that there is no real competition between them.

Finding

(55) It cannot be concluded that Linde and Messer currently form a dominant duopoly in Germany.

After the transaction

(56) As a result of the transaction Linde's share of most of the relevant markets would increase by 5-10 %. On a number of markets Linde would replace Messer as market leader. The gap between the two leading suppliers and their competitors would widen. But there is no reason to believe that the increase in Linde's market share would appreciably alter the competitive relationship between Linde and Messer, and would in the future lead to a position where the competition which currently exists between Linde and Messer would be decisively weakened. It is true that Linde's takeover of AGA would remove one undertaking currently competing with Linde and Messer. This would reduce the pressure for competition between the leaders which is exerted by outside competition. It has to be borne in mind here, though, that alongside AGA the other large suppliers of industrial gases are also active on the markets in liquefied and cylinder gases in Germany, and that among the outsiders competing would be Air Liquide, the competitor which has increased its market share by easily the largest proportion over the last 10 years. In so far as outside competition has in the past helped to ensure that there was active competition between Linde and Messer too, the situation would not change so drastically that there would in future be no real competition between the two leaders.

Finding

(57) The Commission is satisfied, therefore, that the transaction would not create a dominant duopoly formed by Linde/AGA and Messer on the markets in liquefied and cylinder gases in Germany.

2. THE NETHERLANDS

(aa) ***On the markets in liquefied and cylinder gases in the Netherlands there are four main suppliers***

(58) The main suppliers on the markets in liquefied and cylinder gases in the Netherlands are Linde, through a company it controls, NV Hoek's Machine en Zuurstoffabriek; AGA, through AGA Gas BV; Air Products, through Air Products Nederland BV; and Air Liquide, through Air Liquide BV. There are smaller operations run by

Messer, through Messer Nederland BV, and Praxair, through Praxair BV. BOC's Dutch operations have now been taken over by Air Liquide.

(59) Other, smaller suppliers are Westfalen Gassen Nederland BV, a subsidiary of Westfalen AG; Nederlandse Technische Gasmaatschappij BV, which is controlled by the Italian gas supplier SOL SpA; and Hydrogas Holland BV, a subsidiary of Norsk Hydro ASA in Oslo. Hydrogas Holland, however, essentially supplies carbon dioxide only.

(60) Linde operates two air separation plants and five filling plants for all kinds of gas in the Netherlands. AGA operates one filling plant for all kinds of gas, one filling plant for carbon dioxide, and one acetylene works in the Netherlands. AGA has no air separation plant of its own in the Netherlands, and therefore cooperates with Air Products in the production of liquefied atmospheric gases. Air Products has an air separation plant in Rotterdam, which is the largest in the world, and another in Terneuzen. Air Products also has a filling plant for all gases and another for hydrogen only. Air Liquide likewise has a filling plant for all gases and another for hydrogen. Since it took over BOC's Dutch operations, Air Liquide also operates an air separation plant in Terneuzen. Messer has a filling plant for all gases and an acetylene works. The smaller suppliers listed in recital 59 all operate one filling plant each.

(bb) ***The merged Linde/AGA would be the only large supplier of cylinder gases; the rest of the market is fragmented***

(61) According to the investigations carried out by the Commission, market shares for cylinder gases in the Netherlands break down as follows:

Cylinders	Oxygen		Nitrogen		Argon and argon mixtures		CO_2		Hydrogen		Acetylene	
	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)
Linde	[40-45]* %	[45-50]* %	[45-50]* %	[50-55]* %	[25-30]* %	[25-30]* %	[25-30]* %	[30-35]* %	[55-60]* %	[55-60]* %	[30-35]* %	[35-40]* %
AGA	25-30 %	25-30 %	15-20 %	15-20 %	35-40 %	35-40 %	50-55 %	45-50 %	<5 %	<5 %	45-50 %	40-45 %
Linde/AGA	[65-75]* %	[70-80]* %	[60-70]* %	[65-75]* %	[60-70]* %	[60-70]* %	[75-85]* %	[75-85]* %	[55-65]* %	[55-65]* %	[75-85]* %	[75-85]* %
Air Liquide	5-10 %	5-10 %	5-10 %	5-10 %	10-15 %	10-15 %	5-10 %	5-10 %	15-20 %	15-20 %	5-10 %	5-10 %
Air Products	5-10 %	5-10 %	10-15 %	10-15 %	5-10 %	5-10 %	<5 %	5-10 %	<5 %	5-10 %	<5 %	<5 %
Messer	5-10 %	<5 %	<5 %	<5 %	5-10 %	10-15 %	<5 %	5-10 %	<5 %	<5 %	5-10 %	5-10 %
Other	5-10 %	5-10 %	10-15 %	5-10 %	5-10 %	10-15 %	5-10 %	5-10 %	15-20 %	15-20 %	5-10 %	5-10 %

(62) Linde/AGA's joint share of the market in cylinder oxygen is [70-80] %*. The next largest competitor in cylinder oxygen is Air Products, with a market share of 5-10 %. The market share lead over other suppliers is 70 %. Linde/AGA's joint share of the market in cylinder nitrogen is [65-75] %*; the next largest competitor is Air Products, with a market share of 10-15 %. The market share lead over other suppliers is more than 60 %. Linde/AGA's joint share of the market in cylinder argon and argon mixtures is [60-70] %*. The next largest competitors in cylinder argon and argon mixtures are Air Liquide and Messer, both of whom have a market share of 10-15 %. The market share lead over other suppliers is about 50 %.

(63) Linde/AGA's joint share of the market in cylinder carbon dioxide is [75-85] %*. Air Liquide, Air Products and Messer all have market shares of 5-10 % of this market. Linde/AGA's joint share of the market in cylinder hydrogen is [55-65] %*. The next largest competitor in cylinder hydrogen is Air Liquide, with a market share of 15-20 %. The market share lead between Linde/AGA and the other suppliers is over 50 %. Linde/AGA's joint share of the market in cylinder acetylene is [75-85] %*. The next largest competitors in acetylene are Messer and Air Liquide, who each have a market share of 5-10 %; Linde/AGA's market share lead over the remaining competitors is over 70 %.

(64) The remaining small suppliers of cylinder gas are to a great extent dependent on supplies from the main suppliers. The transaction would substantially reduce the number of main suppliers, making aggressive competition appreciably more difficult. There is no reason to suppose, then, that Linde/AGA's freedom of action would be restricted by the remaining small suppliers.

(cc) ***The merged Linde/AGA would be the market leader in a number of liquefied gases in the Netherlands, but the transaction would not create dominant positions on these markets***

(65) According to the investigations carried out by the Commission, market shares for liquefied gases in the Netherlands break down as follows:

Liquefied gases	Oxygen		Nitrogen		Argon		Hydrogen		CO_2	
	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)
Linde	[15-20]* %	[30-35]* %	[20-25]* %	[25-30]* %	[15-20]* %	[15-20]* %	[40-45]* %	[35-40]* %	[5-10]* %	[5-10]* %
AGA	10-15 %	10-15 %	15-20 %	15-20 %	20-25 %	25-30 %	0 %	0 %	15-20 %	20-25 %
Linde/AGA	[25-35]* %	[40-50]* %	[35-45]* %	[40-50]* %	[35-45]* %	[40-50]* %	[40-50]* %	[35-45]* %	[20-30]* %	[25-35]* %
Air Liquide	45-50 %	20-25 %	30-35 %	25-30 %	25-30 %	25-30 %	35-40 %	35-40 %	15-20 %	20-25 %
Air Products	10-15 %	10-15 %	10-15 %	10-15 %	10-15 %	10-15 %	15-20 %	25-30 %	<5 %	<5 %
Praxair	5-10 %	5-10 %	5-10 %	5-10 %	5-10 %	5-10 %	0 %	0 %	<5 %	<5 %
Messer	<5 %	<5 %	<5 %	<5 %	5-10 %	<5 %	0 %	0 %	5-10 %	5-10 %
Other	<5 %	10-15 %	<5 %	5-10 %	<5 %	<5 %	<5 %	<5 %	50-55 %	35-40 %

(66) The most important liquefied gases in terms of volume and value are the atmospheric gases oxygen, nitrogen and argon. In terms of both volume and value these three account for more than 80 % of gases sold in liquefied form in the Netherlands. On the markets in atmospheric gases Linde and AGA together have shares of [40-50] %* by value of the market in liquefied oxygen, [40-50] %* of the market in liquefied nitrogen, and [40-50] %* of the market in liquefied argon. The next largest competitor is Air Liquide, with shares of 20-25 % by value of the market in liquefied oxygen, 20-25 % of the market in liquefied nitrogen, and 25-30 % of the market in liquefied argon. Air Liquide is followed by Air Products, which has shares of 10-15 % by value of the markets in these three liquefied gases. Praxair has shares of 5-10 % of the same markets. The smaller suppliers account for just under 20 % of the market in liquefied oxygen, just under 15 % of the market in liquefied nitrogen, and less than 10 % of the market in liquefied argon. With this distribution of market shares it cannot be assumed that after the transaction Linde/AGA would enjoy a freedom of action which was no longer subject to the control of their competitors.

(67) In the case of liquefied hydrogen the transaction would not result in any addition of market shares, because AGA does not do business on this market. In the case of liquefied carbon dioxide the merged Linde/AGA would have a combined market share of [25-35] %*, in second place behind the market leader, Hydrogas, which has a share of 35-40 %.

Finding

(68) The Commission is satisfied, therefore, that the transaction would give Linde/AGA dominant positions on the markets in cylinder gases in the Netherlands.

3. AUSTRIA

(aa) ***The markets in liquefied and cylinder gases in Austria are already highly concentrated, with only three main suppliers***

(69) On the Austrian markets in liquefied and cylinder gases Linde, AGA and Messer operate through subsidiaries. Other suppliers in Austria are SIAD Vertrieb technischer Gase GmbH, a subsidiary of SIAD SpA; Sapio Produzione Idrogeno Ossigeno SRL; SOL SpA; and Sauerstoffwerk Friedrich Guttroff GmbH.

(70) Production and filling plants in Austria break down as follows:

	Linde	AGA	Messer	SIAD
Air separation plants	2	2	2	0
Filling plants, all gases	3	5	5	1
CO_2 filling plants	4	0	1	0
Acetylene works	2	3	1	0
Hydrogen plants	2	1	1	0

(71) According to the investigations carried out by the Commission, market shares for liquefied gases in Austria break down as follows.

Liquefied gases	Oxygen		Nitrogen		Argon		Hydrogen		CO_2	
	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)
Linde	[45-50]* %	[40-45]* %	[45-50]* %	[40-45]* %	[70-75]* %	[55-60]* %	[85-90]* %	[80-85]* %	[25-30]* %	[35-40]* %
AGA	25-30 %	35-40 %	20-25 %	20-25 %	15-20 %	25-30 %	<5 %	<5 %	20-25 %	20-25 %
Linde/AGA	[70-80]* %	[75-85]* %	[65-75]* %	[60-70]* %	[85-95]* %	[80-90]* %	[85-95]* %	[80-90]* %	[45-55]* %	[55-65]* %
Messer	10-15 %	10-15 %	20-25 %	25-30 %	5-10 %	5-10 %	<5 %	<5 %	45-50 %	35-40 %
Other	5-10 %	5-10 %	5-10 %	5-10 %	<5 %	<5 %	10-15 %	15-20 %	<5 %	<5 %

(72) According to the investigations carried out by the Commission, market shares for cylinder gases in the Netherlands break down as follows:

Cylinders	Oxygen		Nitrogen		Argon and argon mixtures		CO_2		Hydrogen		Acetylene	
	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)
Linde	[20-25]* %	[25-30]* %	[20-25]* %	[15-20]* %	[30-35]* %	[25-30]* %	[40-45]* %	[40-45]* %	[0-5]* %	[10-15]* %	[35-40]* %	[30-35]* %
AGA	35-40 %	45-50 %	30-35 %	30-35 %	30-35 %	40-45 %	15-20 %	15-20 %	20-25 %	20-25 %	35-40 %	40-45 %
Linde/AGA	[55-65]* %	[70-80]* %	[50-60]* %	[45-55]* %	[60-70]* %	[65-75]* %	[55-65]* %	[55-65]* %	[20-30]* %	[30-40]* %	[70-80]* %	[65-75]* %
Messer	15-20 %	15-20 %	30-35 %	35-40 %	20-25 %	20-25 %	25-30 %	25-30 %	65-70 %	60-65 %	15-20 %	20-25 %
Other	15-20 %	10-15 %	15-20 %	10-15 %	10-15 %	5-10 %	5-10 %	5-10 %	<5 %	<5 %	<5 %	5-10 %

(bb) ***The transaction would give Linde/AGA high joint shares of the markets in liquefied and cylinder gases***

(73) Following the transaction Linde/AGA would have combined shares of [75-85] %* of the market in liquefied oxygen, [60-70] %* of the market in liquefied nitrogen, [80-90] %* of the market in liquefied argon, [80-90] %* of the market in liquefied hydrogen, and [55-65] %* of the market in liquefied carbon dioxide. Linde/AGA's shares of the cylinder gas markets would be [70-80] %* in the case of oxygen, [45-55] %* in the case of nitrogen, [65-75] %* in the case of argon and argon mixtures, [55-65] %* in the case of carbon dioxide, and [65-75] %* in the case of acetylene. The market share lead between Linde/AGA and the only remaining large competitor, Messer, would be over [...] %* in the case of liquefied oxygen, just under [...] %* in the case of liquefied nitrogen, over [...] %* in the case of liquefied argon and hydrogen, and [...] %* in the case of liquefied carbon dioxide. For cylinder gases Linde/AGA's market share lead would be [...] %* in the case of oxygen, argon and acetylene, [...] %* in the case of carbon dioxide, and [...] %* in the case of nitrogen. The only market where Messer would still be market leader would be that in cylinder hydrogen, where Linde/AGA would have a market share of [30-40] %*.

Finding

(74) The Commission is satisfied, therefore, that the transaction would give Linde/AGA dominant positions on the markets in liquefied and cylinder gases in Austria.

4. FINLAND, SWEDEN, NORWAY AND ICELAND

(aa) ***The markets in liquefied and cylinder gases in Finland, Sweden, Norway and Iceland are highly concentrated***

(75) In Finland the main suppliers of liquefied and cylinder gases are AGA and Air Liquide. Other suppliers are Oy Woikoski AB, which supplies liquid hydrogen and smaller volumes of cylinder gases, and Messer.

(76) In Sweden the main suppliers of liquefied and cylinder gases are AGA and Air Liquide. Other suppliers are Hydrogas, which supplies carbon dioxide, and Hydrogas-Messer AB, which is a joint venture set up by Messer and Hydrogas.

(77) In Norway the main suppliers of liquefied and cylinder gases are AGA and Hydrogas. In Iceland there is only one supplier of industrial gases, namely AGA.

(bb) ***On a number of markets AGA's market share is well over 50 %***

(78) According to the investigations carried out by the Commission, market shares for liquefied and cylinder gases in Finland break down as follows:

Liquefied gases	AGA		Air Liquide		Other	
	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)
Oxygen	50-55 %	50-55 %	45-50 %	45-50 %		
Nitrogen	70-75 %	65-70 %	25-30 %	30-35 %		
Argon	25-30 %	30-35 %	70-75 %	65-70 %		
Hydrogen	45-50 %	45-50 %	<5 %	<5 %	50-55 %	50-55 %
CO_2	65-70 %	65-70 %	30-35 %	30-35 %		

Cylinder gases

Oxygen	80-85 %	75-80 %			15-20 %	20-25 %
Nitrogen	65-70 %	75-80 %			30-35 %	20-25 %
Argon/argon mixtures	75-80 %	75-80 %			20-25 %	20-25 %
CO_2	80-85 %	80-85 %			15-20 %	15-20 %
Hydrogen	75-80 %	65-70 %			20-25 %	30-35 %
Acetylene	65-70 %	60-65 %			30-35 %	35-40 %

(79) According to the investigations carried out by the Commission, market shares for liquefied and cylinder gases in Sweden break down as follows:

Liquefied gases	AGA		Air Liquide		Other	
	volume (%)	value (%)	volume (%)	value (%)	volume (%)	value (%)
Oxygen	80-85 %	75-80 %	15-20 %	24 %		
Nitrogen	65-70 %	65-70 %	30-35 %	32 %		
Argon	65-70 %	70-75 %	30-35 %	28 %		
Hydrogen	<5 %	<5 %	95-100 %	95-100 %		
CO_2	40-45 %	60-65 %	10-15 %	10-15 %	45-50 %	20-25 %
Cylinder gases						
Oxygen	65-70 %	75-80 %	30-35 %	20-25 %		
Nitrogen	60-65 %	60-65 %	35-40 %	35-40 %		
Argon/argon mixtures	70-75 %	70-75 %	25-30 %	25-30 %		
CO_2	60-65 %	65-70 %	35-40 %	30-35 %		
Hydrogen	85-90 %	90-95 %	10-15 %			5-10 %
Acetylene	75-80 %	80-85 %			20-25 %	15-20 %

(80) According to the investigations carried out by the Commission, market shares for liquefied and cylinder gases in Norway break down as follows:

Liquefied gases	AGA		Hydrogas	
	volume (%)	value (%)	volume (%)	value (%)
Oxygen	60-65 %	60-65 %	35-40 %	30-35 %
Nitrogen	65-70 %	60-65 %	30-35 %	30-35 %
Argon	25-30 %	30-35 %	70-75 %	65-70 %
Hydrogen	<5 %	<5 %	<5 %	<5 %
CO_2	15-20 %	15-20 %	80-85 %	80-85 %
Cylinder gases				
Oxygen	65-70 %	85-90 %	30-35 %	10-15 %
Nitrogen	50-55 %	65-70 %	45-50 %	30-35 %
Argon/argon mixtures	95-100 %	95-100 %	<5 %	<5 %
CO_2	50-55 %	35-40 %	45-50 %	60-65 %
Hydrogen	95-100 %	95-100 %	<5 %	<5 %
Acetylene	65-70 %	65-70 %	30-35 %	30-35 %

(81) On the markets in liquefied and cylinder gases in Iceland AGA is the only supplier.

(cc) ***The transaction would not strengthen the dominant positions currently held by AGA on a number of markets in liquefied and cylinder gases in Finland, Sweden, Norway and Iceland***

(82) The proposed transaction might strengthen AGA's dominant positions on the Scandinavian markets if Linde were a major potential competitor, a competitor which might choose to enter the Scandinavian markets. On the basis of the submissions made by the notifying party in its reply to the statement of objections and at the hearing, however, the Commission has reached the conclusion that this is not so.

(83) In the Community as a whole Linde operates on the markets in industrial liquefied and cylinder gases in the following Member States: Germany, France, the United Kingdom, Italy, Spain, the Netherlands, Belgium, Austria, Portugal and Greece. But by itself this does not justify the assumption that Linde is also a major potential competitor which might choose to enter the Scandinavian markets.

(84) Market entry requires heavy investment. In the notification Linde estimates the total costs of market entry as follows.

Phase I	
Rent of a 4 000 m³ site for a cylinder depot	DEM 15 000 per month
Portable buildings or office premises	DEM 40 000
Warehouse or roofing of storage area	DEM 40 000
DEM 5 000 cylinders, pallets, cylinder bundles	DEM 1 350 000
Fork-lift trucks and lifting gear	DEM 100 000
Vehicles	DEM 250 000
Investment volumes	± DEM 1 180 000
Monthly costs, including staff	± DEM 100 000
Phase II	
Purchase of site, 5 000 m³	DEM 1 500 000
Bottling plant, tanks etc.	DEM 2 500 000
Total	± DEM 4-5 million
Phase III	
1 air separation plant	DEM 40 million
5 filling plants	DEM 25 million
Stock of 110 000 cylinders, miscellaneous tanks	DEM 30 million
Vehicles, tankers	DEM 15 million
Cylinder bundles, pallets, buildings	DEM 10 million
Total	DEM 120 million

(85) The total costs estimated for Phase III are those which Linde actually incurred when it entered the market in Italy. [...] %* In its notification Linde also refers to its activities in France in the period 1989 to 1998, and submits that it had negative results in France over [...] %* years despite a total investment of more than DEM [...] %* million. Given the heavy investment and long period in which losses have to be accepted in order to set up in another Member State, the Commission takes the view that the probability and feasibility of a market entry have to be judged from the point of view of a supplier, in the light of the characteristics of the market under consideration. The size of the market and the degree of concentration obtaining there will be of primary importance.

(86) After Germany, France is the biggest market in industrial gases in the EEA. Italy is in fourth place, after the United Kingdom. The Swedish market in industrial gases is the largest in Scandinavia; in size it is the equivalent of 14 % of the German market. The gas markets in Finland and Norway are smaller than the Austrian market, which is the equivalent of 10 % of the German market. In 1998 the markets in liquefied and cylinder gases amounted to EUR 160 million in Sweden, just under EUR 62 million in Finland and EUR 65 million in Norway. For such

small markets it is hardly to be expected that Linde would be prepared to incur investment costs on the scale described, and then to accept a long launch period in which it would be making heavy losses.

(87) In addition, the markets in the production of industrial gases in these countries are already highly concentrated: in Finland, Sweden and Norway there are only two main suppliers, and in Iceland there is only one. It should be borne in mind, too, that on a number of markets in liquefied and cylinder gases in Finland, Sweden, Norway and Iceland one of the main suppliers, AGA, holds a dominant position. The other main supplier in Finland and Sweden is Air Liquide, which is the European and worldwide leader in the production and distribution of industrial gases.

(88) Given the small sizes of the markets in liquefied and cylinder gases in Scandinavia, and the stiff barriers to entry, the Commission takes the view that Linde cannot be regarded as a major potential competitor which might choose to enter the Scandinavian markets.

Finding

(89) The Commission is satisfied that the transaction would not strengthen the dominant positions held by AGA on the markets in liquefied and cylinder gases in Finland, Sweden, Norway and Iceland.

V. COMMITMENTS OFFERED BY THE NOTIFYING PARTY

1. COMMITMENTS

(90) In order to overcome the Commission's objections to the planned transaction, Linde has entered into the following commitments:

(91) In the Netherlands, Linde undertakes to dispose of the industrial cylinder gas business (nitrogen, oxygen, argon, carbon dioxide and acetylene) of AGA Gas BV. The commitment to dispose of the business extends to the industrial gas filling plant in Amsterdam, the associated staff (about [...]* employees), the current contracts with customers, suppliers and forwarding agents, the list of customers, and the associated gas cylinders (about [...]*). The commitment to dispose of the business does not apply to special gases, including Mison®, and gases for medicinal purposes.

(92) In Austria, Linde undertakes to dispose of the entire gas business operated in Austria by AGA through its subsidiary AGA GmbH. The commitment to dispose of the business extends to all air separation plants with the existing on-site supply agreements, all related liquefaction, filling and acetylene plants, the associated staff (about [...]* employees), current contracts with customers and suppliers, the list of customers, the tanks installed on customers' premises, the associated tankers and other transport vehicles, and the associated gas cylinders (about [...]*). Linde will not dispose of the shell of the company, with its name, and AGA GmbH's interests outside Austria.

2. ASSESSMENT OF THE COMMITMENTS OFFERED

Netherlands

(93) Under the commitment proposed, AGA's cylinder gas business in the Netherlands would be offered for sale to competitors. The disposal would ensure that Linde's position on the markets in cylinder gases would not be strengthened. After the commitment had been complied with the purchaser would be in the same position as AGA was beforehand. This would ensure that after the transaction there would still be another large supplier on the markets in cylinder gases in the Netherlands. The Commission is therefore satisfied that the proposed commitment would prevent the creation of dominant positions on the markets in cylinder gases in the Netherlands.

Austria

(94) Under the commitment proposed, AGA's entire gas business in Austria would be offered for sale to competitors. The disposal would ensure that Linde's position on the markets in liquefied and cylinder gases would not be strengthened. It would also ensure that there would still be three main suppliers in Austria. The disposal of the two air separation plants and the liquefaction plants is necessary in order to ensure that the purchaser is placed in the same competitive position that AGA occupied previously in both liquefied atmospheric gases and atmospheric gases in cylinder. Linde has not proposed that the commitment should be restricted to cylinder oxygen, nitrogen, argon, carbon dioxide and acetylene, thus excluding cylinder hydrogen. A restriction of that kind would in any event be difficult to apply in practice, because all cylinder gases are generally bottled together. The Commission is therefore satisfied that the proposed commitment would prevent the creation of dominant positions on the markets in liquefied and cylinder gases in Austria.

VI. **SUMMARY**

(95) On the grounds set out above, the Commission is satisfied that the proposed transaction would not create or strengthen any dominant position as a result of which effective competition would be significantly impeded in a substantial part of the common market, provided that the commitments entered into by the notifying party are complied with. With that proviso, therefore, the transaction should be declared compatible with the common market in accordance with Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration by which Linde Aktiengesellschaft would acquire sole control of the entire share capital of AGA AB is hereby declared compatible with the common market and with the EEA Agreement, provided that the commitments entered into by the notifying party and set out in the Annex to this Decision are complied with.

Article 2

This Decision is addressed to:

Linde AG
Abraham-Lincoln-Straße 21
D-65189 Wiesbaden

Done at Brussels, 9 February 2000.

For the Commission

Mario MONTI

Member of the Commission

ANNEX

The full original text of the conditions and obligations referred to in Article 1 may be consulted on the following Commission website:
http://europa.eu.int/comm/competition/index_en.html