

VIA FACSIMILE

October 14, 1994

Richard Smith, Esq.  
Premerger Notification Office  
Bureau of Competition  
Federal Trade Commission  
6th Street & Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: [REDACTED]

Dear Mr. Smith:

[REDACTED] hereby requests the advice of the Federal Trade Commission as to whether a Hart-Scott-Rodino filing is required by it in conjunction with certain transactions involving [REDACTED], in which it currently holds a [REDACTED] interest.

In 1988, [REDACTED] submitted to the FTC a Notification and Report Form (Transaction Number [REDACTED] in conjunction with the formation of [REDACTED] and three individuals, Messrs. [REDACTED] and [REDACTED] (collectively, the "Investors"), to operate an industrial [REDACTED] business. On January 1, 1989, [REDACTED] transferred its worldwide industrial [REDACTED] business (including its shares in [REDACTED] to its wholly-owned subsidiary, [REDACTED]. In June 1992, all the shares of [REDACTED] distributed to [REDACTED] shareholders as a dividend, and [REDACTED] changed its name [REDACTED] is a New [REDACTED] company.

At [REDACTED] formation, [REDACTED] acquired approximately 83% of [REDACTED]s capital [REDACTED]. All such shares were, and continue to be, Class A common [REDACTED]. While Class B common [REDACTED]s outstanding, Class A common [REDACTED]s elect a minority of the directors and exercise voting rights only to block certain extraordinary transactions. When no Class B common [REDACTED] is outstanding, all directors are elected by and all voting power is (except as required by law) exercised by the Class A common [REDACTED].

The remainder of [redacted] original share capital was acquired by the Investors. It was all Class B common [redacted] and, as a result, they temporarily obtained operating control of [redacted]. This control is temporary because [redacted] original corporate documents contained the following provisions:

a. If an Investor ceases to be employed by [redacted] his shares automatically are converted into shares of [redacted] non-voting Preferred [redacted] (such a conversion occurred to the Class B shares acquired by [redacted] when he retired from [redacted]).

b. If an Investor transfers any of his shares (other than to another Investor or [redacted]) such shares are automatically converted into [redacted] of Preferred [redacted].

c. Upon the occurrence of January 1, 1994 all [redacted] of Class B common [redacted] are automatically converted into [redacted] of Class A common [redacted] (subject to conversion later into Preferred [redacted] as described above). The result of such conversion would leave [redacted] control of [redacted].

d. The Investors (but not [redacted]) have the right to "put" their [redacted] shares to [redacted] requiring the company to buy their GenEx [redacted] for cash at a price to be determined in accordance with an agreed formula.

Prior to 1994, the [redacted] shareholders decided to defer the automatic conversion date until April 1996 while leaving the other provisions described above in place. For [redacted] this provided assurance that [redacted] could be managed with a long-term view, rather than with a view of maximizing [redacted] value under the pricing formula as of January 1, 1994. It also assured that the services of Messrs. [redacted] and [redacted] would continue to be available to [redacted].

With the approach of 1996, the [redacted] shareholders again recognize that it is appropriate to review their arrangements. The Investors have indicated a willingness to continue to participate in [redacted] but want to reduce their [redacted] holdings in a tax-free transaction. They have proposed that [redacted] should undergo an "E" reorganization in which the capital [redacted] of the company would be reclassified as provided in Attachment A so that [redacted] will own at least 80% of each class of outstanding [redacted]. Following this transaction, no Class B shares would be outstanding and [redacted] would control [redacted].

After the "E" Reorganization is completed, the Investors would be able to exchange, on a tax free basis, approximately two-thirds of their [redacted] for [redacted] that the parties have valued at approximately [redacted] that

transaction is intended to be a "B" Reorganization for income tax purposes and could not be accomplished without the prior "E" Reorganization. Messrs. [redacted] and [redacted] are expected to continue as employees of [redacted] after the "B" reorganization.

[redacted] believes that the "E" Reorganization and "B" Reorganization requested by the Investors are separate transactions entered into for legitimate tax purposes and not as a device for avoiding the HSR filing requirements and that, as a result, no HSR filing should be required.

The "E" Reorganization, because it does not involve the acquisition of voting securities by [redacted] will not be a reportable event. The "B" Reorganization, although it does include the acquisition of voting securities, will occur at a time when [redacted] has "control" of [redacted] by reason of holding 80% of the outstanding voting securities and thus will qualify as an intraperson exempt transaction under 16 CFR 802.30.

Kindly confirm whether the FTC agrees with [redacted]'s interpretation of this matter. The foregoing information (including Attachment A) constitutes confidential commercial and financial information under 16 CFR 4.10(a)(2) and thus it is exempt from disclosure under the Freedom of Information Act. Kindly mark your files so that if any FOIA requests are made, such information will not be divulged.

Very truly yours,

[redacted signature]

[redacted]

ATTACHMENT A

Transactions

have proposed the following transactions regarding capital stock:

I. E Reorganization

1. Prior to the transactions described below, one or more of and may transfer some of his shares to his spouse, and any shares so transferred will automatically be converted on a one-for-one basis into shares of Preferred Stock pursuant to bylaws.

2. A new class of stock, Class D common stock (non-voting), will be created having exactly the same rights and privileges as the Preferred Stock, and all the outstanding shares of Preferred Stock will be converted on a one-for-one basis into shares of Class D common stock (non-voting).

3. The rights of the Class C non-voting common stock will be amended to afford such shares dividend rights equivalent to the rights of other shares.

4. Sufficient shares of owned Class A common stock shall, on a one-for-one basis, be reclassified as Class D common stock and Class C common stock so that owns 80% of all the outstanding shares of each such class.

5. All outstanding shares of Class B common stock will be converted on a one-for-one basis into shares of Class A common stock.

As a result of these transactions, will own at least 80% of each class of stock having shares outstanding and will exercise control over through its Class A common stock, the only voting stock.

II. B Reorganization

Following the above reorganization, it is anticipated that will acquire of the shares currently owned by and (a total of 115,937 shares from each) in exchange for shares of Praxair common stock, par value \$.01 per share. The value of all the shares being exchanged is. The value per share is the same for Class A common stock and Class D common stock.

Current Capital Structure:

Total shares outstanding: [redacted] of which approximately 82.6% are Class A common stock, approximately 10.9% are Class B common stock, approximately 5.4% are Preferred Stock and approximately 1.1% are Class C non-voting common stock.

"Class A common stock" (limited voting rights while Class B shares are outstanding, but all voting rights, except as required by law, when no Class B shares are outstanding): [redacted] shares are outstanding, all are owned by [redacted]

"Class B common stock" [redacted] shares are outstanding, owned as follows:

- [redacted] - [redacted] shares
- [redacted] - [redacted] shares

"Preferred Stock" (non-voting, except as required by law)<sup>1</sup>: [redacted] shares are outstanding, all are owned by [redacted]

"Class C non-voting common stock" (non-voting, except as required by law) [redacted] shares are outstanding, owned as follows:

- [redacted] - [redacted] shares
- [redacted] - [redacted] shares
- [redacted] - [redacted] shares
- [redacted] - [redacted] shares

If no shares are transferred by [redacted], [redacted] and [redacted] to [redacted] the shares to be acquired by [redacted] in the B Reorganization will be Class A shares owned by [redacted] and [redacted] and Class D shares owned by [redacted]. Such individuals may transfer some or all of the [redacted] shares to be sold by them to [redacted], and pursuant to the bylaws those shares would automatically be converted into Class D common stock before being acquired by [redacted]. Because of the uncertainty of whether [redacted] transfers will be made, it is impossible at this time for [redacted] to determine the exact numbers, by class, of the Class A common stock and Class D common stock it would acquire from [redacted], [redacted] and [redacted] and such individuals' [redacted] or the exact numbers of shares of each class that [redacted] will hold after the transactions are completed. However, [redacted] would own at least 80% of each class of [redacted] stock with shares outstanding and would own approximately 92.6% of all outstanding shares.

<sup>1</sup> Preferred Stock and Class D common stock will have identical rights and privileges.

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**TELEFAX COVER LETTER**

Date: October 17, 1994

Fax Phone Number: (202) 326-2624

Number of Pages (including this cover sheet): 3

To: Melea Epps, Esq., Staff Attorney

Company: Premerger Notification Office Main Tel.#: \_\_\_\_\_

Originator: Suzanne Abair, Esq.

Client Name: \_\_\_\_\_ No: 31168

Matter Name: \_\_\_\_\_ No: 007

**MESSAGE:**

Ms. Epps:

In light of our telephone conversation this morning, I have revised the letter sent to you on Friday. The revised letter requests oral rather than written confirmation and states that the interpretation set forth is that of the Premerger Notification Staff. Please disregard the previous letter.

Thank you for your continued assistance and cooperation in this matter.

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