

Secretary of State Department for Business, Energy and Industrial Strategy
3 Whitehall Place
London
SWIA2AW

26th November 2021

By email only: competition@beis.gov.uk

To whom it may concern,

Notification under Article 5 of the Competition Act 1998 (Carbon Dioxide) (Public Policy Exclusion) Order 2021, Statutory Instrument 2021 No. 1169 (the "Order")

1. In accordance with Article 5 of the Order, BOC Limited ("**BOC**") hereby submits notifications to the Secretary of State in relation to exclusion from Chapter I of the Competition Act 1998, as contemplated in Article 4 of the Order (the "**Notifications**").
2. In the Notifications expressions defined in the Order and used in the Notifications have the meaning set out in the Order, unless otherwise stated.
3. BOC confirms that the Notifications relate to "qualifying activities" (as contemplated in Article 3 of the Order) which:
 - a took place during the CO₂ negotiation period (i.e. between 30th September 2021 and 12th October 2021);
 - b had/have as their purpose to prevent or mitigate the disruption to the supply of CO₂ to distributors, consumers and, in particular, essential users in any part of the United Kingdom during the Chapter I exclusion period;
 - c do not relate to any agreement which arises out of or in connection with the qualifying activities that:
 - i has as its object or effect the prevention, restriction or distortion of competition within the United Kingdom, except in relation to qualifying activities specified in Article 3 of the Order in a market for the provision of CO₂ to distributors, consumers and, in particular, essential users in any part of the United Kingdom; and
 - ii expires later than the end of 31st January 2022.
4. As you will be aware, the distributors and CF had to work at pace to agree the terms of new CO₂ supply contracts during a very limited period of time that the Government was supporting CF in order to prevent or mitigate the unprecedented disruption to the supply of CO₂ to distributors, consumers and, in particular, essential users in any part of the United Kingdom. This required discussions and adjustment during a very limited period of time to ensure that the distributors and CF adequately addressed supply challenges in order to enable security of supply until end of 31st January 2022. For *inter alia* that reason, it is in some instances practically difficult to pinpoint the precise boundaries of a single agreement (which may be defined broadly, including a decision by

an association of undertakings or a concerted practice); and/or the date that agreement was entered into.

5. BOC also notes that there may be instances where it had initially considered potential agreements to address the disruption together with one or more of the other distributors, but ultimately decided (in light of bilateral discussions with CF) not to pursue the same action as discussed with the other distributor/s. Further, that there is also some overlap between the qualifying activities listed in Article 3 of the Order.
6. Despite these challenges and in the spirit of transparency, we have sought to provide as much detail as possible relating to the qualifying activities listed in Article 3 in which we have been involved up to and including 12th October 2021, including preparatory discussions and/or ongoing actions required to properly implement or manage such activity if necessary.
7. We provide the details required pursuant to Article 5(1) of the Order in the tables below.

Notification 1: Sharing information on a multilateral basis during the CO₂ negotiation period

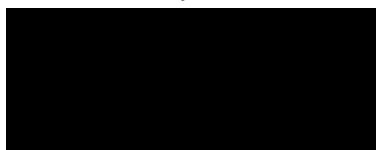
Information required by the Order	Comments
Names of the undertakings which are parties to the agreement (the " Parties ")	CF and the distributors
Description of the Agreement	<p>During the CO₂ negotiation period, the Parties participated in multilateral discussions hosted by BEIS (including attendance by members of HMT, DEFRA, and UKGI) and involving the exchange of information and/or preparatory discussions related to each of the qualifying activities set out in Article 3(2)(a) to (c) of the Order.</p> <p>Information of the type described in Article 3(2)(a) to (c) of the Order was exchanged at the multilateral discussions in order to prevent or mitigate the disruption to the supply of CO₂ to distributors, consumers and, in particular, essential users in any part of the United Kingdom during the Chapter I exclusion period including through and for the purposes of agreeing new supply contracts between CF and each distributor.</p> <p>Whilst BOC attended these multi-party discussions during the CO₂ negotiation period, BOC also conducted bilateral discussions (including negotiation calls and emails) on a number of occasions with CF directly during the CO₂ negotiation period. Further details on those bilateral discussions are detailed below.</p>
Date of the Agreement	The Parties were in discussions from 30 th September 2021 to 12 th October 2021 (inclusive)
Date of this Notification	25 th November 2021

Notification 2: New Supply Contract entered into during the CO₂ negotiation period.

Information required by the Order	Comments
Names of the undertakings which are parties to the agreement (the " Parties ")	CF and BOC
Description of the Agreement	<p>Following bilateral discussions/negotiations between CF and BOC during the CO₂ negotiation period, in order to prevent or mitigate the disruption to the supply of CO₂ to distributors, consumers and, in particular, essential users in any part of the United Kingdom during the Chapter I exclusion period, a new supply contract with an initial term of 13th October 2021 to 31st January 2022 was entered into between CF and BOC for the supply of CO₂.</p> <p>For those purposes, information of the type described under Article 3(2)(a) to (c) of the Order was exchanged on a bilateral basis between CF and BOC.</p> <p>Some of those bilateral discussions included attendance or recipients from BEIS, HMT, DEFRA and UKGI, in order to prepare for, facilitate and progress those meetings/discussions and the understanding of the contractual positions of CF and BOC.</p>
Date of the Agreement	The bilateral negotiations took place during the CO ₂ negotiation period. The new supply contract has an effective commencement date of 13 th October 2021 but was signed by BOC on 10 th October 2021 and by CF on 11 th October 2021.
Date of this Notification	25 th November 2021

8. To the extent necessary, BOC will provide subsequent notifications to cover any other qualifying activities in which we have or will engage post-12th October 2021, in due course as contemplated in Article 5 of the Order.
9. We would be grateful if you kindly acknowledge receipt.

Yours faithfully,



For and on behalf of BOC Limited