II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 10 October 2001

declaring a concentration to be incompatible with the common market

Council Regulation (EEC) No 4064/89

(Case COMP/M.2283 — Schneider/Legrand)

(notified under document number C(2001) 3014)

(Only the French version is authentic)

(Text with EEA relevance)

(2004/275/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 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 Council Regulation (EC) No 1310/97 of 30 June 1997 [2], and in particular Article 8(3) thereof,

Having regard to the Commission decision of 30 March 2001 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,

Having regard to the opinion of the Advisory Committee on Concentrations [3],

Having regard to the final report by the Hearing Officer in this case [4],

Whereas:

(1) On 16 February 2001 the Commission received notification, pursuant to Article 4 of Council Regulation (EEC) No 4064/89, of a takeover plan whereby Schneider Electric was to acquire, within the meaning of Article 3(1)(b) of Council Regulation (EEC) No 4064/89 (hereinafter 'the Merger Regulation'), sole control of Legrand by way of an exchange of shares announced on 15 January 2001.

I. THE PARTIES

(2) Schneider Electric (hereinafter 'Schneider'), a French limited company, is the parent company of a group whose business is in the production and sale of products and systems in the electricity distribution, industrial control and automation sectors. It is active worldwide.

(3) Legrand (hereinafter 'Legrand'), a French limited company, is the parent company of a group whose business is in the production and sale of low-voltage switchgear and accessories. It is active worldwide.

[1] OJ L 395, 30.12.1989, p. 1; corrected version: OJ L 257, 21.9.1990, p. 13.
[2] OJ L 180, 9.7.1997, p. 1; corrected version: OJ L 40, 13.2.1998, p. 17.
[3] OJ C 86, 6.4.2004.
[4] OJ C 86, 6.4.2004.

II. **THE CONCENTRATION**

(4) The concentration involves an offer for an exchange of shares made by Schneider for all shares in Legrand held by the public. It therefore constitutes acquisition of sole control within the meaning of Article 3(1)(b) of the Merger Regulation. The public offer closed on 25 July 2001 and Schneider holds 98,1 % of Legrand's capital.

III. **COMMUNITY DIMENSION**

(5) The firms involved achieve total turnover worldwide in excess of EUR 5 000 million ([5]) (Schneider: EUR 8 750 million; Legrand: EUR 2 791 million). Each of them achieves turnover in the Community of more than EUR 250 million (Schneider: EUR 4 095 million; Legrand: EUR 1 684 million), but neither achieves more than two thirds of its turnover in a single Member State. The acquisition therefore has a Community dimension.

IV. **PROCEDURE**

(6) Having examined the notification, the Commission concluded that the acquisition notified fell within the scope of the Merger Regulation and raised serious doubts about its compatibility with the common market and the EEA Agreement. By decision of 30 March 2001, it therefore initiated proceedings under Article 6(1)(c) of the Merger Regulation.

(7) In order to be able to examine the notified acquisition, the Commission sent a request for information to Schneider and Legrand on 6 April 2001, pursuant to Article 11 of the Merger Regulation. The deadline for replying to the request expired on 18 April 2001. However, Schneider and Legrand did not provide all the information requested within the period set.

(8) The Commission therefore adopted two decisions, addressed to Schneider and to Legrand, in accordance with Article 11(5) of the Merger Regulation. Pursuant to Article 10(4) of the Merger Regulation, the period within which a decision must be adopted under Article 8 of the Merger Regulation was accordingly suspended on 6 April 2001 until the date on which all the information requested by the Commission was received, this being 25 June 2001.

(9) The Commission addressed a statement of objections to Schneider on 3 August 2001. The parties replied to the statement of objections in a document (hereinafter 'the reply to the statement of objections') transmitted on 16 August 2001. A hearing was then held on 21 August 2001.

V. **COMPATIBILITY WITH THE COMMON MARKET**

A. *THE LOW-VOLTAGE ELECTRICAL EQUIPMENT SECTOR*

A.1 INTRODUCTION

(10) The effects of the merger would be felt primarily in the low-voltage electrical equipment sector, where all of Legrand's sales are made and almost half of Schneider's business is conducted.

(11) This sector comprises equipment found in industrial, commercial or residential buildings downstream of connection to the medium-voltage electricity supply. It includes all the equipment needed for electricity distribution and connection to the grid in a building (such as electrical switchboards, cable ducts and junction boxes, sockets and switches), as well as communication and control components (for air conditioning, lighting, etc.) and other equipment used in buildings, such as security systems and fire or intruder detection and alarm systems.

(12) More specifically, the merger would essentially affect the following three business categories:

(a) low-voltage switchboards, which essentially distribute electricity to the various levels of the installation (building, floor, apartment, etc.) and protect installation and user from overcurrents and short circuits.

([5]) Turnover 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). Where the figures relate to turnover for a period preceding 1 January 1999, they are calculated on the basis of the average ecu exchange rates and converted to euros on a one-to-one basis.

These boards, consisting mainly of a cabinet and protective components (circuit breakers, fuses or earth leakage switches), can be subdivided into three further categories, corresponding to different levels of electricity distribution: (i) main switchboards (for connecting large industrial or commercial buildings to the medium-voltage network), (ii) distribution boards (typically used for floors in buildings) and (iii) final panelboards (for end users with low energy requirements, such as the occupant of an apartment);

(b) cable trays and busbar trunking, which support the routing of electric cables in the basement, service duct or false ceiling of a building;

(c) electrical equipment downstream of the final panelboard, which comprises six categories of product: (i) wiring accessories, constituting the final part of the electrical installation (sockets, switches, etc.), (ii) control systems, that control a specific application (such as heating) in a specific part of a building, (iii) systems for the protection of property and life (alarm systems, fire detection systems, emergency lighting, etc.), (iv) data connectors for data networks (data connectors, wiring cabinets, etc.), (v) fixing and connecting equipment, for the connecting, fixing and cabling of installations downstream of final panelboards and (vi) cable trunking components (trunking, floor boxes and distribution columns).

(13) The notified merger would also have an effect on other types of product with industrial applications, such as control and signalling units, also called 'industrial pushbuttons', and electricity supply and transformation equipment.

(14) The parties propose the following segmentation of the sector, which will be taken as the starting point for the definition of the relevant markets in this Decision:

Table 1

Segment		Name	Products
Segment 1		Main low-voltage switchboards	Cabinet components, circuit breakers, fuses, etc.
Segment 2		Distribution boards	Cabinet components, circuit breakers, fuses, etc.
Segment 3		Cable trays and busbar trunking	Cable trays and busbar trunking
Segment 4		Final panelboards	Cabinet components, circuit breakers, fuses, earth leakage switches and circuit breakers, etc.
Segment 5	Segment 5A	Electrical equipment downstream of the final panelboard	Wiring accessories Control systems Security and safety systems Components for data networks
	Segment 5B	Installation accessories	Junction boxes, fixing and cabling equipment downstream of the final panelboard and upstream of the wiring accessories
	Segment 5C	Trunking systems	Floor boxes, wall trunking, distribution columns, etc.
Industrial components		Transformation and power supply equipment Control and signalling units	Equipment designed to ensure that industrial equipment is supplied with alternating current or direct current electricity Switching devices designed to control industrial equipment

A.2 PRESENTATION OF THE SECTOR

A.2.1 ***Market participants***

(15) There are six distinct types of participant in the market for the equipment concerned, on the supply and demand sides: manufacturers, wholesalers, panel builders, installers, project managers (architects, engineering consultants, etc.) and end users.

A.2.2 ***Manufacturers of low-voltage electrical equipment***

(16) Manufacturers of low-voltage electrical equipment are industrial groups which develop and manufacture the equipment concerned. According to Schneider's internal segmentation ([6]), there are three types of player: 'mega-players', 'dilemmas' and 'mature players'.

(17) Schneider distinguishes the major international groups ('mega-players') principally by their large size, diverse product range and capacity to undertake major repositioning of their activities. In addition to Schneider itself, the major groups found in this category at world level are ABB, Siemens, General Electric, Tyco, Matsushita and Emerson. Only four of these groups carry on significant business in low-voltage electrical equipment in Europe. They are Schneider, ABB, Siemens and GE, which all have a vast range of low-voltage products and carry on significant business in medium and high-voltage equipment. ABB, Siemens and GE are also vertically integrated to some extent and are active as installers of electrical equipment and/or panelbuilders. Emerson is present primarily in the United States, Matsushita is practically absent from Europe, and Tyco's business in Europe is restricted to a few niches in equipment downstream of final panelboards and in cable trays.

(18) According to Schneider, the 'dilemmas' […]* (*) are more specialised firms with their main focus on cyclical sectors […]* that are suffering from a temporary lack of growth. These firms are also characterised by major changes in their range of activities, and they have not been able to form a coherent group, which is reflected in a significant drop in their stock-market value.

(19) The 'mature players' […]* are smaller companies specialised in low-voltage equipment. They most frequently have a range of mature activities that changes very little, but have seen sustained growth in their turnover thanks to external acquisitions. This description would also fit […]*.

(20) The above segmentation is essentially based on size and product range, which is in line with Schneider's commercial and strategic vision. Nevertheless, it also reflects how internationally diversified the firms are. The 'mega-players', principally Schneider, ABB and Siemens, are generally active in a large number of Member States, while some of the 'mature players' tend to restrict their business to a small number of territories. […]*, for example, focuses mainly on France, Germany, the Netherlands and Portugal, while […]* achieves more than half its turnover in Germany and […]* focuses essentially on Italy.

(21) To summarise the above, the following table shows the activities of the main manufacturers (***= vast range of products sold in most Member States, **= gaps in product range or coverage, *= large gaps in product range or coverage):

([6]) 'Evolution of the strategic positioning of our main competitors'.

(*) Parts of this document have been omitted to ensure that no confidential information is disclosed; these are contained in square brackets and marked with an asterisk.

Table 2

Name	Main switchboards	Distribution boards	Cable trays and busbar trunking	Final - panelboards	Equipment downstream of final panelboard
Schneider	***	***	***	***	**
Legrand		**	*	***	***
ABB	***	***	*	***	**
Siemens	***	***		**	*
GE	***	***		**	*
Hager		**	*	***	*
Moeller	**	**	**	**	*
Gewiss		*		*	*

A.2.3 ***Wholesalers***

(22) Wholesalers are local distributors offering the whole range of equipment needed by installers or panel builders to carry out an electrical installation. As indicated by the parties, they perform a local-level distribution and logistical function, but they also have a product selection role and sometimes, for certain products and customers (such as small installers), a financing role for the purchase of the products, even providing technical advice. It is wholesalers that purchase directly from the manufacturers.

(23) Relations between wholesalers and manufacturers are governed by contracts, which generally last one year but which are renewable. These contracts are negotiated at various geographic levels (essentially local and national) and for various product lines. Generally speaking, they include discounts per product line from the manufacturer's catalogue price. These discounts are in relation to the volume of sales for the products concerned. In addition to this first discount, contracts with wholesalers contain further rebates designed as incentives (they are progressive, for example) to develop certain product lines or increase general sales of the manufacturer's products. The rebates are calculated at the end of a period. These distribution agreements may sometimes be governed by European agreements, but which tend to be general in scope and contain no financial provisions.

(24) The role of wholesalers and their importance in the logistical chain varies significantly from one type of equipment to another. The data provided by the parties and corroborated by the Commission's investigations show that wholesalers are more or less absent from the market in sales of equipment for main switchboards, but they are involved in some 80 % of sales of distribution board equipment and cable trays, and in almost all sales (more than 90 %) of equipment for final panelboards and downstream of them.

(25) These differences mainly reflect the fact that installers tend to make most of their purchases from wholesalers, while large industrial customers and panel builders more frequently buy directly from the manufacturers. Products bought mainly by installers or small and medium-sized panel builders (components for distribution boards and final panelboards, cable trays and busbar trunking, and equipment downstream of the final panelboard) are mostly sold by manufacturers via wholesalers. Products for large industrial customers or panel builders, on the other hand, such as components for main switchboards, will generally be supplied directly by the manufacturer.

(26) The Commission's investigation also shows that the size and the degree of concentration of wholesalers may vary significantly from one Member State to another. Distribution is highly concentrated in France around the

Rexel and Sonepar groups, but seems to be much more fragmented in Spain and Portugal. According to internal documents ([7]) of the parties, these differences in structure affect the conduct of wholesalers in the countries concerned. It would appear that in countries where wholesalers are more fragmented, such as Portugal, competition between wholesalers is generating a price war which is felt at the level of the manufacturers.

A.2.4 ***Panel builders***

(27) Panel builders are the professionals that assemble the various components of an electrical switchboard for a building. In practice, they perform four functions: (i) they design and adapt switchboards to meet the specific needs of each customer; (ii) they supply and mount the various switchboard components (cabinet components, circuit breakers, fuses, etc.); (iii) they wire up the switchboard, and (iv) they check that the switchboard works properly. They then supply the ready-to-use cabinets to an installer, who will place them for the final customer. In practice, panel builders primarily work on main switchboards and distribution boards. Final panelboards are simpler and are usually adapted and assembled directly by the installer.

(28) The size and number of panel builders varies depending on the currents (and thus the complexity of the installation) involved. According to the parties, there are some 3 000 panel builders in France capable of assembling switchboards up to less than 630 amperes, but only 300 for switchboards up to 1 600 amperes. Furthermore, some panel builders may be vertically integrated. For example, a number of manufacturers such as ABB and Siemens have their own panel building outfits in certain countries. Likewise, some panel builders may also make or modify certain switchboard-related components (such as busbars or protective sheet metal), or even work directly on the installation.

(29) A further point to note is that large panel builders working on complex jobs (such as main switchboards) more often than not obtain their supplies directly from the manufacturer, whereas smaller panel builders that essentially work on distribution boards tend to purchase their components from wholesalers. For logistical reasons, purchases made by large panel builders directly from the manufacturer may sometimes pass through a wholesaler (which acts in a purely logistical role).

(30) Lastly, panel builders may be approved by manufacturers. Such approval certifies that a panel builder has the technical capacity to use the manufacturer's products. In most cases, a panel builder is approved by a single manufacturer, which will then be the panel builder's main supplier.

A.2.5 ***Installers***

(31) Installers are the professionals that install low-voltage electrical equipment for the end customer. They frequently also choose the range and brand of equipment, except in the case of components for main switchboards, which are selected by the panel builders or specified by the project managers, and of 'visible' components (sockets, switches, etc.), which are traditionally chosen by project managers for large commercial or residential buildings or together with the end customer for small residential buildings.

(32) This category is relatively fragmented and diverse, comprising a large number of participants (more than 30 000 in France) ranging from sole artisans to firms with more than 10 employees and a design office. None the less, as with panel builders, the parties consider that a relationship can generally be established between the size of the firm and the complexity of the installation. Small installers tend to work on final panelboards and wiring accessories (sockets, switches, etc.) in small buildings. For example, the parties state that since final panelboards are less technical than distribution boards, 'artisans are often companies of 2 or 3 people comprising the owner with a worker and/or apprentice; it is the owner's wife who orders from the distributor. For reasons of availability and ease of assembly, they buy the whole [of the panelboard in the same brand]*' ([8]). Medium-sized installers (3 to 10 employees) are generally hired for projects involving distribution boards. Larger installers (10 employees plus) focus on main switchboards. Large installers can be compared to panel builders.

(33) As indicated above, installers obtain supplies almost exclusively from their local wholesalers. Moreover, they

([7]) Legrand, Medium-term plans.

([8]) Message from the parties dated 25 July 2001.

tend to keep very limited stocks of products. Wholesalers may supplement their traditionally logistical role with financing services (since the artisan is usually paid only on acceptance of the installation). It has also been found that, in a growing number of cases, installers may require technical advice or even specification services from the wholesaler, especially where complex systems are involved.

(34) Installers are also increasingly using electrical installation design software supplied with or without charge by the manufacturers. This kind of software saves installers time on the design of the installation and the choice of products and they are specific to each manufacturer. The Commission's investigation showed that, in practice, installers use only one or two different manufacturers' programs on account of the time, and thus the cost, required to learn how to use them. The distribution of such software therefore has the purpose and effect of strengthening the loyalty of installers to a manufacturer's products.

A.2.6 ***Project managers***

(35) Project managers are architects, engineering consultants, construction and public works firms or property developers responsible for projects involving the installation of electrical equipment. They are usually involved only in major projects (industrial and commercial as well as residential) and do not buy the products themselves. However, by defining technical specifications for the installation (and sometimes the brand of product), they can end up in the role of specifier.

A.2.7 ***Customers***

(36) End customers are individuals or firms that own the buildings in which the electrical equipment is to be installed. The sector has traditionally divided end customers (on a basis taken up by Schneider and Legrand) into two main groups: industrial applications and construction. The construction sector is then sometimes further subdivided into commercial and residential customers.

(37) With the exception of certain components specifically for industrial use (such as control and signalling units or transformers and supply equipment), a given item of low-voltage equipment (such as a circuit breaker) can be used in an identical way by the two categories of customer. This is particularly true of electricity distribution components, cable trays and most installation accessories.

(38) Nevertheless, there are important differences between industrial and construction projects. In particular, most construction projects involve small-scale installations carrying relatively moderate levels of electrical power (distribution board or final panelboard level). Moreover, for projects of this type, end customers and specifiers have significant influence over the choice of range and brand only as regards 'visible' equipment (sockets, switches, trunking, etc.). The choice of brand and range of other equipment (panel components, cable trays, etc.) is made by the installer or, as appropriate, the panel builder.

(39) Industrial projects, on the other hand, often involve high currents (such as those distributed by main switchboards). Furthermore, they may go beyond the simple distribution of electric power and also involve specific equipment for automation, process control, etc. Lastly, the end customer or project manager has greater influence over the choice of brand.

(40) The extent of equipment supplied for industrial applications may therefore differ from that for commercial or residential applications. The type of demand (current, value of the contract) from industrial customers may also significantly exceed that of an average construction contract and be comparable to the largest contracts of this type.

(41) It follows that, in most industrial contracts and major construction contracts, manufacturers sell the electrical equipment concerned directly to the end customers (for large industrial sites) or large panel builders. The situation therefore differs from that of traditional construction contracts, where sales are usually made via wholesalers. Furthermore, contracts in this sector are more predictable and fewer in number and, according to Schneider's internal documents ([9]), […]* than in most

([9]) Schneider document (reply to question 316): 'Developing switchboard business'.

construction deals. Lastly, the specifications may be quite distinct, for example, with greater emphasis on the use of Community standards than on national installation standards or habits.

(42) In practice, it follows from the above that, although manufacturers are as a rule all present on all the segments, their reputation and competitive position may vary significantly from one type of application to another. Legrand, for example, has a reputation for excellence in the residential sector, while Siemens and ABB seem to have traditionally focused on industrial customers.

A.3 IMPORTANCE OF STANDARDS

(43) Since low-voltage electrical equipment will enter into contact with electric current, the various categories of equipment are subject to rules designed to ensure that their use does not endanger human life or health or property. These rules affect the design of the products. In addition, to the extent that there is a variety of standards applicable within the EEA, the rules also affect the scope for marketing products in the different Member States.

(44) Various categories of rule and standard must be distinguished:

A.3.1 ***The Low Voltage Directive***

(45) First, there are mandatory rules, primarily Council Directive 73/23/EEC of 19 February 1973 on the harmonisation of the laws of Member States relating to electrical equipment designed for use within certain voltage limits ([10]) ('the Low Voltage Directive'), subsequent directives and the national legislation adopted by the Member States to apply them.

(46) The Low Voltage Directive does not contain precise rules regarding the manufacture of products but is confined to setting a minimum safety level that such products must reach ('essential requirements') in order to move freely within the EEA. It leaves it to European standardisation bodies such as the European Committee for Electrotechnical Standardisation (Cenelec) to draw up, on a mandate from the Commission, harmonised European standards, which do not have any legal force but which guarantee to manufacturers and users, by way of a legal presumption, that the products which comply with them also meet legal requirements.

A.3.2 ***Product standards issued by standardisation bodies***

(47) Besides harmonised European standards, which are linked to European legislation in that they flesh out the essential requirements of the directives, other standards exist that have been adopted by various standardisation bodies at international, European and national level, such as the International Electrotechnical Commission (IEC), Cenelec, the Union technique de l'électricité (UTE) in France, the Deutsche Elektrotechnische Kommission (DKE), a joint German standards institute (DIN) and German electrotechnology association (VDE) body in Germany, and so on. These standards also lay down precise requirements regarding the manufacture of the products concerned. Compliance with them is not required by law.

(48) The main interests (manufacturers, users, etc.) are represented within the standardisation bodies. The IEC is the international federation, and Cenelec the European federation, of the national bodies. Within these two bodies, technical committees and sub-committees exist for the various categories of product, made up of delegations from the corresponding national committees and sub-committees. Only the chairpersons and secretaries of each committee and sub-committee are appointed for a fixed period. The members of the national delegations are appointed on an *ad hoc* basis for a specific meeting or series of meetings. The manufacturers usually try to be represented on committees dealing with the products that they make, so as to be involved in the standardisation process. An international presence is therefore an advantage since it enables participation at several levels. Each of the parties devotes considerable resources to their involvement in standardisation work.

(49) Cenelec standards are usually (in 80 % of cases ([11])) adopted following the production of a standard by the IEC, and they follow the IEC standards, sometimes with certain adaptations. Cenelec standards are binding on the national standards bodies. They have to be adopted as national standards without modification, and any national standards that do not comply with Cenelec standards must be abolished ([12]).

([10]) OJ L 77, 26.3.1973, p. 29.

([11]) www.cenelec.org/Info/about.htm.

([12]) www.dke.de/en/wir/normung.

(50) The parties state that harmonised European standards exist for most electrical distribution equipment. However, the harmonisation process in Europe remains incomplete. Many products are covered by European standards that do not harmonise all their characteristics. For example, no attempt has been made to harmonise the pin configuration of electric sockets.

A.3.3 ***Installation rules and habits***

(51) Installation rules and habits do not apply to the manufacture of the actual products, but to the way in which they must be connected to the network (e.g. neutral point treatment), which often has repercussions for the configuration of the products themselves. These rules are normally laid down by standards bodies (IEC, Cenelec or national bodies). They are sometimes adopted by public authorities (such as in the case of the French decree of 2 October 1978 regarding establishments open to the public, which contains certain rules on emergency lighting ([13])). Lastly, there may be mere habits or traditions followed by installers in a given country or region. While such installation habits are not obligatory in any way, they oblige manufacturers de facto to make products in a certain way if they hope to have any success in marketing them in the countries concerned.

(52) Among installation rules and habits, mention must also be made of requirements laid down by certain companies. Electricity distribution companies, for example, lay down rules on the equipment to be connected to the mains supply. These rules, binding de facto on electrical equipment manufacturers, may be national in scope, such as in the case of Electricité de France (EDF), or may be regional or even local, as in the case of certain regional distribution companies in Germany and Austria.

A.3.4 ***CE marking and national quality labels***

(53) There are two types of marking: CE marking and national quality labels.

(54) The Community directives require the CE mark to appear on all products covered by the Low Voltage Directive. The manufacturer has sole responsibility for affixing the mark on its products and by doing so declares that they comply with the Directive's requirements. The requirements cover the product characteristics and the conformity assessment procedures that must be applied before they are placed on the market. Manufacturers may refer to 'harmonised' standards to show that their products comply with the essential requirements of the directives, although the procedures laid down may require the intervention of a third party. The CE mark ensures in law the free movement of goods within the EEA.

(55) Quality labels (such as NF in France, VDE in Germany or CEBEC in Belgium) are granted by an independent certification body at the manufacturer's request following tests carried out by a recognised laboratory and on payment of a fee. The quality label certifies that the product complies with the applicable standards (international, European or national).

(56) It is not usually compulsory to obtain the quality label. However, there are exceptions. In France, for example, the French quality label is compulsory for emergency lighting systems. Even though it is not a legal requirement for manufacturers to obtain a country's quality label in order to sell their products there, it is a commercial necessity. Installers and end customers often require it, since the quality label constitutes an assurance that the products bearing it are safe and reliable. This is particularly important for electrical equipment, which, if it is faulty, may cause serious accidents. Confidence in national labels is strengthened by the fact that, unlike the CE mark, they are issued by independent bodies.

(57) The relative importance of the CE mark and the quality label in the eyes of installers and consumers is reflected in their position and visibility on electrical goods. Where both markings are used on a product, the quality label is highlighted by the manufacturer, while the CE mark is often much less visible. On circuit breakers, for example, the quality label is placed on the front of the product and is often brightly coloured. The CE mark is

([13]) Reply by the parties dated 21 June 2001 to question 187.

generally placed on the side of the product, and its colour is more often than not the same as that of the product itself.

(58) Arnould, a Legrand subsidiary, summarises the importance to consumers of national quality labels as follows ([14]):

'The NF label reflects the voluntary commitment of the manufacturer, which chooses to submit its products to a rigorous certification procedure. **The NF label is evidence of compliance with French and European standards.** It is issued by an independent certification body on the basis of comprehensive product tests and audits of the manufacturing sites. It is maintained subject to regular checks. **The NF label is a guarantee of far more than just safety. It is a guarantee of the reliability and quality of electrical equipment.** In practice, using electrical equipment with the NF label ensures the smooth operation of your installation.'

(59) In its product catalogue for 2000, Legrand gives the following explanations on the CE mark ([15]):

'The CE mark appears on Legrand electrical and/or electronic goods or on their packaging. It is compulsory under European Community Council directives. […]* In no circumstances can the CE marking replace a quality label. In France, it allows customs officials and anti-fraud officers (from the DGCCRF) to authorise the free movement of any product bearing the CE mark. The manufacturer has sole responsibility for affixing the CE mark on its products or their packaging. The products are not checked for conformity (with national and international safety and performance standards) by an external body.'

(60) Likewise, CEBEC, the Belgian certification body, explains ([16]):

'Belgian and European law require goods to conform to Community directives and thus to bear the CE mark. All goods must bear the CE mark and any which do not are not authorised to be placed on the market. The CE marking as such serves only to enable products to be placed on the market and contains no additional information […]*.

Many directives applicable to electrical goods apply a conformity assessment formula that does not involve the intervention of an independent laboratory or recognised body. The CE marking is nothing more than a declaration by the manufacturer that the essential requirements have been met.

The CEBEC label reflects ongoing conformity with international safety standards, as certified by an independent and reputable certification body.

Consumers will continue to demand electrical goods with an independent certification. The equipment and installation industry needs ongoing conformity with international standards. The CE mark does not guarantee this, but the CEBEC label does.'

(61) In most Member States, national certification bodies are also responsible for product standardisation. In some countries (such as Germany or the United Kingdom), there are several certification bodies.

(62) Under the Cenelec Certification Agreement (CCA) concluded between most of the member organisations of Cenelec, any product that has been granted the quality label of a member organisation may obtain the quality label issued by any other body on request and in return for a reduced fee, without further tests being necessary. The fact remains that there is a different quality label in each Member State of the EEA and that electrical goods bear the national label of the country in which they are marketed.

A.4 FUNCTIONING OF THE SECTOR

A.4.1 ***Description of the vertical chain***

(63) The chain of distribution linking all these participants together may be summarised as follows. Demand originates with the end user, who entrusts the design of the electrical installation either to an installer or, for large-scale projects, to a project manager. Once the design of the electrical installation has been outlined, the electrical equipment is generally selected, purchased and placed by an installer, who in most cases obtains

([14]) General catalogue for 2001, p. 319 (bold characters as in the original).
([15]) Catalogue for 2000, p. 800.
([16]) www.cebec.be/leaflets/cebec.html.

supplies from a local wholesaler, which may be a subsidiary of an international wholesaler. The wholesaler itself is supplied by various electrical equipment manufacturers (such as Schneider and Legrand).

(64) When the installation includes switchboards, they must be specifically adapted to the needs of the customer. This means determining the type, number and characteristics of the various pieces of equipment (circuit breakers, fuses, earth leakage switches) to be included in the switchboard. As indicated above, the adaptation and assembly of final panelboards is usually done directly by the installer, since this type of switchboard is relatively simple. The operation is more complex, however, in the case of main switchboards and distribution boards, and must be done be a specialist, the panel builder. In such cases, it is the panel builders that select and purchase the various components, either from wholesalers or, in the case of the larger panel builders, directly from the manufacturers.

(65) For the sake of completeness, it must lastly be pointed out that manufacturers may sometimes sell directly to certain end users (e.g. certain producers of machinery or equipment using low-voltage electrical equipment such as plug and socket outlets or control and signalling units). Moreover, some end users sometimes choose and place their electrical equipment themselves, purchasing it from hypermarkets or DIY shops. The volume of such sales is minimal however, and does not call into question the general description above.

A.4.2 ***Importance of installers and panel builders***

(66) As indicated above, end users and project managers tend to be involved to a significant extent only as regards the choice of 'visible' equipment (sockets, switches, trunking, etc.), for which, according to Legrand's internal documents ([17]), their main selection criteria are 'aesthetic and functional'.

(67) Components for main switchboards and distribution boards are generally chosen and purchased directly by the panel builder. The other equipment concerned (components for final panelboards, cable trays, etc.) is chosen by the installer.

(68) It follows that installers (and, to a lesser extent, panel builders) play a dominant role in the choice of the electrical equipment concerned. As pointed out by Legrand ([18]), 'demand for Legrand goods is principally determined by the extent to which electricians and project managers require Legrand products from wholesalers'.

(69) Attracting this population therefore constitutes one of the critical factors of competition between electrical equipment manufacturers. It is all the more important given the fact that medium-sized installers and panel builders tend to remain loyal to the brand that they habitually use.

A.4.3 ***Importance of wholesalers***

(70) As indicated above, small and medium-sized installers and panel builders obtain supplies from wholesalers within the locality of their business. Only large industrial customers or panel builders (working on the main switchboard market) may find it worthwhile to purchase directly from the manufacturers.

(71) There is therefore a split between large projects (or projects involving large amounts of power), for which the manufacturers will sell directly to end customers and large panel builders and installers, and other installations, for which wholesalers will be the unavoidable intermediary between manufacturers and installers (or panel builders). As explained above, wholesalers are not involved in sales of components for main switchboards, but they are the outlets for between 80 % and 90 % of other types of electrical equipment.

(72) It follows that access to wholesalers constitutes an extremely important factor of success for manufacturers of electrical equipment other than components for main switchboards. It is important to note that, according to the parties, all manufacturers will not necessarily have access to the same wholesalers. The largest manufacturers tend to work with major international groups (such as Rexel, Sonepar or Hagemayer in

([17]) Legrand document 'Overview medium-term plan July 2000'.

([18]) Legrand, Form 20-F SEC.

France), while smaller manufacturers have more of a regional presence and work with smaller wholesalers.

A.4.4 ***Selection criteria***

(73) It follows from the above that the competitive position of the various manufacturers will largely be determined by (i) their ability to establish brand loyalty amongst installers and panel builders and, therefore, to meet their expectations; and (ii) their access to wholesalers, at least in those Member States in which wholesalers are sufficiently established.

(74) Reports by certain analysts ([19]), confirmed by Legrand documents ([20]), indicate that the main criteria on which installers base their choices of product are (i) quality and safety of equipment, (ii) ease of installation (which cuts installation time and thus the installer's costs), (iii) compatibility with local tastes and standards and (iv) long-term availability of the product (which means faulty parts can be replaced and new manufacturers do not need to be found for each job).

(75) The findings of the Commission's investigations confirm the importance of these factors. They also show that quality and safety of the products are essential requirements, without which a manufacturer cannot hope to sell its goods. Lastly, they show that the relative weight of the different criteria can vary as between installers and panel builders. The immediate availability of the goods is a determining factor for installers, which do not keep stocks, but is less crucial for panel builders. Likewise, panel builders appear to place less importance on brand than do installers.

(76) The Commission's findings also confirm that price is not the fundamental criterion in the choices of installers in most Member States. This is explained by the fact that (i) electrical equipment represents only a relatively small (usually around 20 %) part of the contract, the rest being accounted for essentially by labour costs, (ii) installers (like project managers or panel builders) will tend to give priority to the safety and quality of the installation (for reasons of liability, and to avoid having to return to the site, etc.) and (iii) a difference in price can be more than compensated for by other factors, such as installation time (given the importance of labour costs as a proportion of the total contract, a 10 % gain in installation time would be more profitable to the installer than a 10 % discount on the price of the equipment).

(77) These selection criteria also go a long way to explaining the loyalty of installers and panel builders to brands. As explained by one manufacturer ([21]), 'the attitude of the participants in the distribution chain is very conservative. Reasons of quality, safety and civil liability are certainly strong incentives for purchasing known brands'. Installers and panel builders also have a strong incentive to use products of one brand or of a small number of brands as this gives them better knowledge of the products and, ultimately, implies substantial gains in installation time and thus labour.

(78) The criteria on which wholesalers select goods must obviously follow the criteria of their customers, installers and panel builders. However, there are also a number of factors specific to wholesalers. In particular, the parties state that wholesalers tend to keep down the number of their suppliers and the brands that they distribute for each category of product, for reasons of cost, storage, computer systems operation, technical and commercial training of staff, etc. This tends to favour manufacturers with well-established brands and manufacturers with a wide range of products.

A.5 CONCLUSION

(79) To summarise, low-voltage electrical equipment is used in three types of application: industrial plants, commercial buildings and residential buildings. For industrial and large construction contracts with high power requirements and thus involving the design of main switchboards, the equipment is generally chosen by a project manager or large panel builder and supplied directly by the manufacturer. For other types of contract, most equipment is chosen and purchased directly by an installer or panel builder (via a local wholesaler), and the end user tends only to choose the 'visible' components on the basis of aesthetic or possibly practical considerations.

([19]) Crédit Suisse First Boston report on Legrand (11 September 2000), Williams de Broë report on Schneider (4 January 2000).

([20]) Legrand, Form 20-F SEC.

([21]) Hager, reply to phase I questionnaire.

(80) Excepting main switchboards, the primary concern of manufacturers is thus to obtain sufficient listing with wholesalers and to convince installers and panel builders to choose their products on the basis of the reputation of their brands, their range of products and their immediate availability.

(81) Installers are swayed by the safety and reliability, availability and ease of installation of products, which tends to make them loyal to a given brand. Wholesalers follow the wishes of their customers (installers and panel builders), and look for suppliers with the widest possible range of products.

(82) Manufacturers therefore compete primarily on brands, by which they attempt to distinguish themselves from their competitors and retain the loyalty of installers and panel builders. Manufacturers also seek to develop the widest possible range of products, which is vital as regards switchboards, and a significant advantage as regards other types of component.

(83) These characteristics, which are common to all the product markets affected by the merger, create significant barriers to entry (access to wholesalers, development of a brand and an extensive product range), and diversification increasingly takes place by way of external growth (acquisitions). Generally speaking, markets are becoming increasingly concentrated.

B. *DEFINITION OF RELEVANT MARKETS*

B.1 ELECTRICAL SWITCHBOARDS

(84) This section looks at the effects of the merger on electrical switchboards, i.e. main switchboards, distribution boards and final panelboards. Schneider and Legrand both produce distribution boards and final panelboards. Schneider also produces main switchboards.

B.1.1 ***Electricity distribution equipment and how it is organised***

(85) Electricity distribution within a building (residential building, commercial building, factory, etc.) is handled by a number of successive equipment stages which allow electricity to be supplied from the grid connection to the various items of electrical apparatus used in the building.

(86) A low-voltage electricity distribution system thus uses a number of interconnected switchboard stages from the main switchboard (or distribution board in smaller installations) to the final panelboards. Further downstream, wiring accessories such as sockets and switches are connected to the switchboards by means of cables and wiring.

(87) Electricity distribution and the protection of electrical equipment and/or persons are carried out within the electrical switchboards, which are accordingly the key components of the system. Two switchboards belonging to two consecutive equipment stages are interlinked by means of electrical cables. Current levels in cables and switchboards decrease with each successive step away from the point of connection to the power grid. The main switchboard is thus the point at which the current is highest. Current strengths decrease at each successive stage, i.e. distribution board, final panelboard and sockets and switches. Annex 1 shows the typical layout of a low-voltage electricity distribution system and the position within it of the various types of equipment described above.

B.1.2 ***Selecting components***

(88) Switchboards comprise various components enabling them to perform their protective function, and these are housed in a cabinet (steel or plastic). Such components include circuit breakers, fuses (for the protection of equipment), earthing (for the protection of persons) and various other items.

(89) The type, number and size of these components depend essentially on the relevant distribution level and on the type of equipment being used downstream. Thus, main switchboards essentially contain heavy-duty circuit breakers and moulded case circuit breakers. Distribution boards mainly contain moulded case circuit breakers

and miniature circuit breakers. Lastly, final panelboards contain miniature circuit breakers and earth leakage switches.

(90) In practice, each type of switchboard has to be designed specifically to meet the particular requirements of the installation it has to protect (these are dictated by the layout of the premises and their use). Its size will depend on the characteristics of the electrical installation in use downstream (electrical power, number of circuits handled, etc.). Consequently, each switchboard is a one-off design, and the combination of components used can vary substantially from one contract to another. The information provided by Schneider ([22]) thus suggests that a component in a given final panelboard (even one of the most widely sold) is generally used in less than one board out of five.

(91) Main switchboards are situated downstream of the connection to the medium-voltage electricity supply, generally just after a transformer substation. Main switchboards are used to control electricity distribution mainly in large commercial buildings (more than 5 000 m²). Distribution boards are used to control electricity distribution on a floor of a large commercial building and are thus, within the electricity distribution system, situated downstream from a main switchboard. Final panelboards are the last stage in an electricity distribution protection and handling system. Panelboards are generally situated at the level of an individual dwelling or small group of offices. In contrast to main switchboards and distribution boards, final panelboards are generally installed in such a way as to be accessible to non-professionals and are therefore required to meet stricter protection standards than main switchboards and distribution boards.

(92) Main switchboards essentially consist of (i) heavy-duty circuit breakers with a nominal rating of between 630 and 6 300 A; (ii) moulded case circuit breakers with a nominal rating of 400 to 1 600 A; (iii) fuses (400 to 1 600 A); (iv) cabinets and cabinet components; and (v) wiring.

(93) Distribution boards essentially consist of (i) moulded case circuit breakers with a nominal rating of between 100 and 250 A; (ii) miniature circuit breakers with a nominal rating of up to 125 A; (iii) fuses; (iv) cabinets and cabinet components, generally metal; and (v) wiring.

(94) Lastly, final panelboards essentially consist of (i) miniature circuit breakers; (ii) earth leakage protection; (iii) fuses; (iv) an enclosure (generally plastic), similar to the cabinet used for distribution boards. One of their features is that they provide for a system of fixing to the board by clipping on to DIN (i.e. standard) rails.

(95) The price (excluding installation and labour) of these various types of switchboard is made up as follows:

Table 3

Name	Main switchboards	Distribution boards	Final panelboards
Heavy-duty circuit breakers	17,5 %		
Moulded case circuit breakers and fuses	32,5 %	18,4 %	
Miniature circuit breakers and fuses		40,5 %	43 %
Earth leakage protection			29 %
Switchboard cabinet and components (or enclosures)	24,4 %	17,6 %	21 %
Wiring	18,6 %	17,5 %	
Miscellaneous	7 %	6 %	7 %
TOTAL	100 %	100 %	100 %

(96) This table shows that the various components account for widely differing proportions of the overall price. In particular, it may be seen that circuit breakers (and, where applicable, earth leakage protection) often play a key role in the choice of manufacturer, since these are the components which determine almost all of the performance and most (between 50 % and 70 %) of the value of the switchboard.

(97) The following paragraphs look at the role and use of each type of active component (circuit breakers, earth leakage protection, etc.) and at the parameters determining the selection of the type of component and the performance of each component, with a view to their integration into an electrical switchboard.

([22]) Schneider, reply to question 109.

Two types of protection to deal with two types of risk

(98) The type of products used (circuit breakers, fuses, earth leakage protection, etc.) is initially determined by the type of protection to be provided by the switchboard. In practice, two types of protection may be distinguished: first, the protection of property, equipment and the electrical installation itself (in particular, against the risks of fire and overheating in the event of electrical overcurrent ([23]) or short circuit); and, second, the protection of persons (against the risk of electrocution resulting from a leakage of current due to accidental contact between a live conductor and a user).

Protection of the system: circuit breakers or fuses

(99) Protection against overcurrent and short circuits is provided either by circuit breakers or by fuses. These two types of component cut off the current in the event of an overcurrent or short circuit and thus perform the same protective function. However, they do not work in the same way. Circuit breakers are electromechanical devices which interrupt the current by tripping a switch. Fuses interrupt the current through the melting of a conductor brought about by overheating due to an abnormal increase in the electric charge passing through it.

(100) The technology used in circuit breakers and fuses is thus different. Furthermore, once the cause of the overload or short circuit has been eliminated, a fuse must be replaced (since it has melted in order to cut off the current), whereas a circuit breaker will simply have to be reset (i.e. the circuit breaker switch must be reset to the normal operating position).

Protection of persons: earth leakage protection or circuit breakers

(101) The risk of electrocution may result either from direct contact between the user and a live conductor (phase conductor) or from indirect contact. Indirect contact arises where the user touches part of an electric apparatus which is itself accidentally in contact with a live conductor.

(102) In the event of direct contact between a person and a live conductor, an electric current may pass through the person's body. The seriousness of the situation depends both on the strength of the current and the period of time during which the person is exposed to the current. The greater the strength of the current, the shorter the period of time of exposure to the current must be.

(103) Protection against electrocution is provided by devices which detect the current leakage (i.e. the current passing through the user's body in the event of accidental direct contact with a live conductor) and cut off the electricity supply immediately (generally in less than 0,1 second). Such devices are known as earth leakage protection or residual current devices. The principle on which they work is to measure the difference between the strength of the current entering and leaving the installation. Normally, the difference is zero. Where there is accidental contact between a person and a live conductor, there is a leakage of current through the person's body. This leakage, entailing a difference between the current entering and leaving the installation, is detected by the earth leakage protection, which automatically cuts off the current in order to protect the person.

(104) In a low-voltage electrical installation, the use of highly sensitive earth leakage protection is the main means of protecting persons against the consequences of accidental direct contact with a live conductor, whatever the neutral point treatment used. Earth leakage protection is thus an essential element in ensuring the safety of persons. However, the conditions under which it has to be provided are not identical in all Member States.

(105) As stated above, the risk of electrocution may also arise through accidental indirect contact. This occurs when a

([23]) The electrical power of an item of equipment or an installation depends on two parameters: the strength of the electrical current (which characterises the rate of electrical charge flowing through the relevant conductor), measured in amperes (A); and the electrical voltage (which determines the force ensuring the flow of electric charge and hence the creation of electric current), measured in volts (V).
Overcurrent occurs when the electric current circulating is greater than that for which the relevant electrical circuit was designed (for example, if the downstream installation requires more power than was allowed for). This results in the overheating of the electrical conductors, which may lead to the failure of the installation or indeed to a fire. A short circuit involves a current leakage within an installation. The leakage may, for example, be caused by accidental contact between a person and a live wire: in such cases, the person will establish the electrical connection between the wire (which the person touches) and the ground (on which the person is standing). The potential difference between the wire and the ground will then create an electrical current (leakage), which will pass from the live wire to the ground through the person.

live wire within a piece of equipment accidentally comes into contact with an external part of the equipment which the user can normally touch without incurring any risk. When the user touches the electrical equipment (for example, an oven), the person may then be in contact with the electrical current transmitted indirectly by the equipment.

(106) In this second case (accidental indirect contact), the protection of the user is based essentially on earthing, i.e. the establishment of an electrical connection between the ground and the electrical device, certain parts of the electrical installation and/or certain items of equipment.

(107) Earthing requires either the use of earth leakage protection (as in the case of direct contact) or the use of circuit breakers. The choice depends on the neutral point treatment, i.e. the way in which the exposed conductive parts ([24]) and the neutral conductor ([25]) are connected to the ground.

The importance of neutral point treatments

(108) There are three types of neutral point treatment, depending on how the exposed conductive parts and the neutral conductor are connected to the ground. These types of treatment are designated by two letters, the first indicating how the neutral conductor is earthed and the second how the exposed conductive parts are earthed: 'TT' (exposed conductive parts and neutral conductor directly connected to the ground), 'TN' (exposed conductive parts connected to the neutral conductor, which is itself directly connected to the ground) and 'IT' (neutral conductor connected to the ground through an impedance, exposed conductive parts directly connected to the ground). There are also two variants of the TN method: 'TNC' (in which a single conductor is both the neutral conductor and the protective conductor) and 'TNS' (in which the neutral conductor is distinct from the protective conductor).

(109) Where there is a leakage of current (through faulty insulation or accidental contact with a live conductor), the neutral point treatment is of crucial importance, since it determines the intensity of the leakage current (fault current), and hence the strength of the shock received by the person. Thus, the TT method results in fault currents which may amount to several amps or tens of amps. The TN method may result in fault currents of the order of several hundreds (or indeed thousands) of amps, since, in this method, a fault current produces an immediate short circuit between a phase ([26]) and the neutral conductor. Lastly, under the IT method, the fault current is weak (several tens of milliamps), since it is limited by the impedance of the neutral-earth connection.

(110) All this has important consequences for the design of the electricity distribution installation.

(111) Under the TT method, an insulation fault or accidental contact between a phase and an exposed conductive part produces a current leakage through the earth electrode of the installation. The exposed conductive part (i.e. the external part of electrical equipment which the user can normally touch) is then live. In order to protect the user from the risk of electrocution as a result of accidental contact with the conductive part (electrocution through indirect contact), current leakage through the earth electrode must be detected and the electrical power supply cut off very rapidly. This is the function of the earth leakage protection described earlier. The TT method thus necessarily involves the use of earth leakage protection in order to protect persons against the risk of electrocution through indirect contact. The sensitivity of the earth leakage protection used in the TT method to protect persons against indirect contact varies generally between 30 milliamps (high sensitivity) and 300 or 500 milliamps (medium sensitivity).

(112) Under the TN method, an insulation fault or accidental contact between a phase and an exposed conductive part does not result in an actual current leakage, but in a short circuit (between phase and neutral). The neutral conductor then carries a very strong current. Protection of the user against the risk of electrocution through indirect contact is provided in this situation mainly through circuit breakers (and not by earth leakage protection, except under the TNS method) with a low tripping threshold (ensuring that they are tripped rapidly). Fuses may also be used instead of circuit breakers.

(113) Lastly, under the IT method, as stated previously, the leakage current in the event of an insulation fault or accidental contact between a phase and an exposed conductive part is weak and does not require the cutting-off of the electricity supply. The IT method thus ensures continuity of electricity supply in the event of an initial fault. It is the preferred neutral point treatment in applications (hospitals, airports, etc.) which require

([24]) The parts of electrical equipment with which the user can normally come into contact without danger.

([25]) Conductor which normally is not live. The neutral conductor is to be distinguished from phase conductors, which are live. In single-phase current, electricity circulates normally between one phase and the neutral point. In three-phase current, electricity circulates between phases.

([26]) I.e. a live conductor.

such continuity of service. However, it is important that the initial fault be detected so that it can be remedied. If a second fault occurs, the installation using the IT method becomes equivalent to an installation using the TN method (or TT, if the exposed conductive parts are not connected with one another) and a large short circuit (or leakage) current then occurs.

(114) In practice, the IT method results in the use of two types of apparatus: first, an insulation monitoring device to detect the weak leakage current resulting from the first fault; and, second, a circuit breaker or earth leakage device to provide protection against the second fault.

Performance of the components

(115) The next step is to select the size, i.e. the performance, of the components. This means, for example, determining the most appropriate circuit breaker technology (heavy-duty circuit breaker, moulded case circuit breaker or miniature circuit breaker) and, within the relevant category, selecting the most appropriate type. Circuit breakers are characterised essentially by (i) their nominal rating (rating beyond which the circuit breaker is tripped and breaks the circuit); (ii) breaking capacity (maximum current which can be withstood without damage by the circuit breaker in the event of a short circuit); (iii) the number of poles (i.e. the number of conductors, from 1 to 4, which are cut simultaneously by the circuit breaker when triggered); and (iv) their typical tripping curve (reflecting tripping time as a function of current). All these characteristics are directly linked to the neutral point treatment, the power carried by the installation and the other equipment situated upstream or downstream.

(116) The information provided by the parties suggests that the choice of components is generally imposed by the installation. More particularly, it appears that the configuration of the building or industrial unit generally determines the electrical arrangement to be adopted by the installer, and that the relevant arrangement will in its turn determine the performances of the components used in the switchboards.

(117) As Schneider, for example, states, 'the increase in the price of a 16 amp circuit breaker, such as is generally used downstream from the installation […]* and hence used in large numbers in final panelboards, may have a significant impact on the price of the board (and hence, in certain particular cases, lead to a change in the architecture of the installation). However, […]* it is more the layout of the installation and the need to ensure operating safety that determine the operator's and hence the installer's final choice.'.

(118) The parties thus indicate that there is generally an optimum electrical arrangement for a given building, apartment or industrial unit. For example, although one can in theory conceive of a large number of different electrical installations for a given dwelling (with a different circuit breaker for each room, or a circuit breaker for two rooms, etc.), the installer's main concern is operating safety and quality, which will prompt him to increase the number of protective devices (in order to isolate each circuit in the event of a fault and thus ensure that power continues to be supplied to all the circuits which are not affected by the fault). In practice, the layout is often determined using computer software, such as the ECODIAL system provided by Schneider, designed to guide the customer towards an arrangement that will provide optimum service quality, i.e. one not necessarily orientated towards the lowest installation cost. The parties also stress that selecting multiple protection may also make economic sense, since it means thinner (and less costly) electrical wiring.

(119) The arrangement decided on then directly defines the characteristics of each circuit, and hence the performance expected from the various components.

(120) These parameters subsequently determine the choice of the most appropriate components, i.e. those which meet the required performance without exceeding it unnecessarily (for reasons of cost). Although one can in theory use higher-performance components, that would not entail any advantage for the user while at the same time adding significantly to costs. As Schneider points out, 'one can in theory use high-breaking-capacity circuit breakers used in Segment 2 for Segment 4, in accordance with the saying "he who can do more can do less". But the cost of these items is prohibitive'.

(121) Switchboards may contain the following products:

Table 4

Name	Main switchboards	Distribution boards	Final panel-boards
Heavy-duty circuit breakers	630-6 300 A		
Moulded case circuit breakers	400-1 600 A	100-250 A	
Miniature circuit breakers		63-125 A	6-40 A
Earth leakage circuit breakers			X
Earth leakage switches			X
Fuses	400-1 600 A	< 250 A	6-40 A
Switchboard cabinet and components (or enclosures)	X	X	X

B.1.3 ***Definition of product markets***

(122) The parties have activities which overlap in the area of low-voltage electrical switchboards and the components incorporated into them.

Product market definitions proposed by the parties

(123) The parties suggest distinguishing three product markets amongst the systems used for protecting persons and equipment in low-voltage electrical installations. The parties propose that such product markets be defined by reference to the level of electrical distribution. They thus distinguish a market for main switchboards, a market for distribution boards and a market for final panelboards.

Solution markets

(124) Firstly, Schneider considers that competition between manufacturers does not take place at the level of switchboard components (which are sold by the manufacturers to wholesalers, and by wholesalers to panel builders and installers), but at the level of electrical distribution 'solutions' (i.e. the switchboards themselves) assembled on the basis of such components. The various manufacturers' solutions are, it is argued, substitutable for one another, since they perform the same functions and are subject to the same technical requirements. By contrast, the components supplied by the various manufacturers are not, it is argued, substitutable for one another, either on grounds of technical compatibility (in the case of main switchboards and distribution boards), or because the installers are in general loyal to a brand and thus buy all their components from one and the same manufacturer (in the case of final panelboards). To satisfy this demand, the manufacturers have developed a range of solutions, which means that they must be able to offer all the components comprising each solution. These solutions therefore constitute, it is argued, the product market.

Three distinct markets

(125) Schneider also considers that each type of switchboard (main switchboard, distribution board and final panelboard) constitutes a separate market. In the first place, main switchboards are considered to differ in their technical performances from distribution boards and final panelboards (electrical current levels in particular) and are made up, in part at least, of components which are specific to such category of switchboard (heavy-duty circuit breakers, also known as open air circuit breakers). Conversely, main switchboards do not contain miniature circuit breakers, which are used to a large extent in distribution boards and final panelboards.

(126) Secondly, it is argued, distribution boards differ from final panelboards in that the latter are designed for lower levels of current (less than 125 amp) and distribution boards contain specific components (earth leakage protection in particular) which are not used in final panelboards.

Commission's analysis

(127) The following paragraphs look at the parameters governing competition in the markets linked to electrical switchboards. It is evident from the Commission's investigation that, generally speaking, electrical switchboards comprise a single brand. However, it must also be acknowledged that manufacturers of electrical equipment sell components to wholesalers and that there is therefore competition between manufacturers in selling components. In conclusion, the relevant markets to be taken as the reference in analysing the notified transaction under competition law are markets for components to be incorporated into electrical switchboards.

Switchboards are in most cases single-brand

(128) The Commission's investigation shows that in most cases electrical switchboards (particularly where they are

installed) contain components from a single brand. This is attributable to technical constraints (mainly in the case of distribution boards) and commercial habits (mainly in the case of final panelboards).

Technical constraints

(129) Competition between manufacturers is based not only on individual components considered on their own merits, but also on the performance of switchboards assembled through combining such individual components with other components. For example, a moulded case circuit breaker is of limited use if it is not compatible with the other protective devices (other moulded case circuit breakers, miniature circuit breakers, fuses, etc.) making up a switchboard.

(130) However, the information provided by the parties and the results of the investigation show that, in main switchboards and distribution boards, it would not be economically possible to ensure compatibility between certain components of different brands. For example, the parties state that combining components of different brands within a single main switchboard would require panel builders to carry out further tests in order to check whether the board thus assembled worked properly. The costs of such additional tests would amount to between EUR 10 000 and EUR 25 000 depending on the guarantees to be given, which would be prohibitive for any given switchboard.

(131) Similarly, in distribution boards, the cabinets and certain cabinet components (fixing devices, etc.) sold by a manufacturer are, it is reported, specifically designed for the manufacturer's components. This is because the manufacturers have all developed specific assembly devices designed to make it easier to assemble the board.

(132) A distribution board typically contains a moulded case circuit breaker as incomer to feed and protect a series of outgoings, which are themselves protected and fed by a series of miniature circuit breakers. So as to ensure that a fault on an outgoing results in the cutting only of the relevant outgoing and not all the outgoings connected to the board, any fault occurring on the outgoing must be cut by the protective device specific to that outgoing rather than by the incomer protective device. This is called 'selectivity'.

(133) However, it is apparent that, at least as far as distribution boards are concerned, such selectivity is based on extremely subtle features (speed of contact opening, quantity of energy which the circuit breaker allows to pass when the current is interrupted, etc.), which are linked to the way in which the products are designed and manufactured. Schneider estimates that two circuit breakers which are identical in terms of the relevant standards may nevertheless have different performances in terms of selectivity, with the result that it is impossible to guarantee the selectivity function as between the various manufacturers.

(134) Component compatibility and selectivity are of crucial importance to the panel builder or installer, since it is these parameters which enable the panel builder to guarantee the performance of the final switchboard and hence to meet the customer's requirements. Since compatibility and selectivity can be ensured only if a single brand is used, panel builders cannot mix components of different brands and will source all the electrical equipment required for a switchboard from one and the same manufacturer. As one panel builder states ([27]), 'there is no mixing of products of different brands. […]* Installation rules require one and the same brand to be used'.

(135) It follows that, in main switchboards and distribution boards, the choice of the brand of one key component, such as the moulded case circuit breaker for distribution boards, generally means that the same brand must be used for all the other protective components required in the relevant board. For example, once a panel builder has decided on the brand of the moulded case circuit breaker to be used in his board he has de facto restricted his choice as regards the other components (cabinet, miniature circuit breakers, etc.) in his board, since he can then use only the brands which will ensure compatibility with the moulded case circuit breaker selected.

(136) Nevertheless, all the board components do not necessarily have to be sourced from the same brand, and there is some mixing of brands in the case of certain components. This appears to be the case particularly for components that do not directly play a protective role, such as cabinet components. The parties' shares of sales can vary considerably in a given territory between the different components put together to make up a distribution board. Schneider's share of the French market in circuit breakers for distribution boards is thus said to be in the range of [50-90] % but not more than [30-40] % in the case of cabinets. The parties consider that these differences are explained by the variety of solutions that can be imagined for a given type of electrical switchboard. If that were the case, the above

([27]) Spie Trindel, reply to phase I questionnaire.

figures would show that, on average, distribution boards sold by Schneider contained nearly twice as many circuit breakers as those sold by its competitors. That is unlikely to be the case, among other things in view of the variety of Schneider's customers in France. A more plausible explanation would be that, while the mixing of brands is limited in the case of circuit breakers (for reasons of compatibility and selectivity), it occurs more frequently in the case of cabinet components, which are not subject to the same selectivity and compatibility rules as circuit breakers. The same applies to earth leakage protection devices, which are also supplied by specialist firms: for example Baco, a Legrand subsidiary which sells earth leakage protection under its own brand. Lastly, in the case of final panelboards, the market shares as presented by the parties in terms of component categories vary widely from one component to another.

Commercial habits

(137) Combining products of different brands within one and the same final panelboard is technically possible and is sometimes done. However, as the parties point out, final panelboards are essentially put together and selected by installers, who 'are in general loyal to a brand and purchase the complete kit from a single manufacturer, for reasons of ease of assembly of the board, the matching in appearance of the products, the functioning of the apparatus and confidence in the technical quality of a manufacturer' ([28]). Thus, although there are no technical obstacles to the mixing of components in final panelboards, installers usually purchase all their components from one and the same brand.

(138) These factors also demonstrate that having a complete range of products confers a significant competitive advantage on a given brand within this sector. As one manufacturer states ([29]), 'given the way the market is developing with the aim increasingly being to provide complete installations and integrated systems, the room available for small producers or for producers of single components is becoming more and more restricted'.

(139) The need to have complete ranges stems firstly from the fact that installers and panel builders will obtain their supplies primarily from brands which provide an assurance of safety and compatibility, whatever the configuration adopted, and hence whatever the choice and assembly of the various components in a switchboard. In view of the diversity of the components which may be incorporated into a main switchboard or distribution board (Schneider has more than 3 000 product types for distribution boards), the manufacturers must provide the whole range of protective equipment to be incorporated into such switchboards.

(140) The importance of having full ranges and of not significantly mixing products of different brands is further underlined by other features of the sector. Firstly, as General Electric (GE) states, 'panel builders and installers normally try to purchase all their products from a single supplier or make. This reduces their transaction costs, gives them better access to training and maintenance services and ensures that the various components are technically compatible'. Secondly, some panel builders and installers have pointed to the availability of price reductions or training sessions, linked to large-scale purchases or to annual purchase volume targets for products of one and the same make. As the results of the investigation show, it is also apparent that having a wide range of products confers a significant advantage in access to wholesalers.

(141) All the parties' main competitors (such as ABB, Siemens or Hager) have complete ranges of components. Any medium-sized manufacturers that do not produce the full range of components must generally make up for this by purchasing the missing type of component from other manufacturers and then integrating it into their own range. This is the case, for example, with Moeller (which obtains heavy-duty circuit breakers from Schneider), Gewiss (which has developed its distribution boards around moulded case circuit breakers supplied by ABB) and Schneider (which purchases fuse switches from ABB and fuses from Holec and Harvey Bubble).

Competition between manufacturers is also component-based

(142) However, the parties' position as regards the definition of the relevant product markets on the basis of the final combination of components in 'solutions' does not stand up to closer examination. As the following

([28]) Form CO, p. 54.
([29]) Gewiss, reply to phase I questionnaire.

paragraphs make clear, the parties' position is invalidated by the economic facts, and, as the parties' documents demonstrate, competitive constraints are also component-based.

The economic facts show that the market operates through the sale of components

(143) In its decision of 30 March 2001 pursuant to Article 6(1)(c) of the Merger Regulation ('Article 6(1)(c) decision'), the Commission stated that it did not rule out the possibility that each of the various component categories in electrical switchboards formed a relevant product market. If that were the case, the product markets would then have to be defined on the basis of component categories rather than in terms of 'solutions'. In its Article 6(1)(c) decision, the Commission noted in particular that many third parties had indicated that electrical components are generally sold as such by manufacturers, who supply them to their wholesalers or to panel builders without integrating them into a complete 'solution' (this is left to panel builders and installers).

(144) In the decision, the Commission also noted that some competitors did not seem to be able to manufacture themselves all the components needed for the 'solutions' (electrical switchboards) they supplied, that the parties' catalogues did not seem to apply the breakdown between main switchboards, distribution boards and final panelboards which the parties proposed and that, on the contrary, such catalogues divided components up by range or by category on the basis of their performance.

(145) The Commission's in-depth investigation has confirmed that wholesalers, installers and panel builders purchase, and manufacturers sell, components. There is strictly speaking no such thing as the sale of integrated switchboards. The role of panel builders and installers is precisely to build an electrical switchboard to meet the technical requirements of the installation for which it is intended. The design of a switchboard, its make-up, i.e. in particular the circuit breakers (heavy-duty, moulded case or miniature), fuses and earth leakage devices which it comprises and the choice of such components depend primarily on the technical specifications of the installation.

(146) There cannot therefore be any such thing as a 'standard switchboard', since each switchboard has to reflect the virtually unique features of the installation into which it has to be incorporated. As Legrand states ([30]), 'the diversity of the configurations observed is very wide and makes it very difficult to define a standard switchboard'. The switchboard is thus designed and assembled only at the level of the panel builder, installer and/or design office in contact with the end user.

(147) In their reply to the statement of objections, the parties do not dispute the virtual non-existence of standard switchboards but argue that standard solutions do exist. They stress that building a switchboard always involves mounting the same types of component (circuit breakers, earth leakage protection, cabinet or enclosure components, etc.) and that customers feel the need to obtain standard solutions, as can be seen from the development of software packages designed to assist the demand for which manufacturers have to cater, i.e. the demand from installers.

(148) The Commission does not dispute these remarks, but considers that they cannot under any circumstances be interpreted as proving the existence of standard switchboards. The fact that all switchboards of a given type tend to contain the same type of component shows that all those switchboards fulfil the same purpose, but not of course that they are all identical. The specific nature of each switchboard (and therefore the virtual non-existence of standard switchboards) is furthermore confirmed by the existence of switchboard design software, the purpose of which is to specify the component make-up that best serves the needs of each customer. The Commission therefore maintains that, with the exception of a few standard final panelboards, which relate to only a few specific configurations and account for only a tiny share of sales, there is no such thing as a standard switchboard, and what the parties call a standard solution appears to have more to do with brand cohesiveness.

(149) In general, an electrical equipment manufacturer neither designs nor sells switchboards, but rather sells (directly, or indirectly through the trade) to other companies (panel builders, installers) the components which they require in order to assemble their own customers' electrical installations. The parties' catalogues and those of their competitors are moreover broken down by component category, and not by switchboard type. The catalogues present the detailed technical specifications of the components, without necessarily referring to the switchboards into which they could be incorporated.

([30]) Legrand, reply to question 65.

(150) In addition, the parties have stated that more than 80 % of low-voltage distribution board or final panelboard equipment is sold through the trade. As Schneider states ([31]), '[each wholesaler] purchases from the parties the components or sub-assemblies needed to maintain a stock that will allow it to supply the various system configurations which its own customers have to install'. This reply confirms the fact that orders from wholesalers in respect of distribution boards and final panelboards relate to components and not to integrated solutions.

(151) In reply to questions put by the Commission ([32]), Schneider provided, for each EEA country, copies of the main orders for distribution boards and final panelboards and of the invoices relating to such orders. It is quite clear that the orders placed by Schneider's customers relate almost always to components, identified by their specific catalogue numbers, and not to solutions. The few exceptions almost all relate to direct sales to customers other than wholesalers or panel builders. However, as stated above, such sales are marginal (less than 5 % in the case of distribution boards, and less than 10 % in the case of final panelboards).

(152) It is evident from the above considerations that almost all of the parties' sales of distribution boards and final panelboards are in the form of components, and not 'integrated solutions'. The same applies to their competitors.

There are competitive constraints at component level

(153) A look at the reasons (technical constraints and commercial habits) why switchboard components tend to be of the same brand shows that a hypothetical manufacturer which, while offering the full range of components (a necessary condition for being present on the market), enjoyed a particularly strong position with regard to one type of component would be able to wield market power over that component type.

(154) As far as final panelboards are concerned, it is apparent that the only reason for the use of components of one and the same brand is installers' loyalty to the brand. However, a look at the conditions of competition shows that market shares may vary considerably from one component to another. For example, the results of the investigation show that, in the case of certain manufacturers, market shares can vary by a factor of two from one component to another. Such differences appear to show that competitive conditions are not uniform as between different components.

(155) As far as distribution boards are concerned, the parties, citing technical constraints (compatibility and selectivity), argued that analysis should be based solely on 'solutions'. They also stress in their reply to the statement of objections that choosing switchboard components of the same brand enables panel builders to make substantial time savings (between 25 % and 50 %) when assembling the switchboard.

(156) Nevertheless, as stated earlier, there does appear to be some mixing of brands, at least in the case of cabinet components. Furthermore, the fact that different brands of circuit breaker are not mixed does not rule out the existence of different competitive conditions between moulded case circuit breakers, key components the choice of which will determine that of the other protective components, and those other protective components. Manufacturers will naturally tend to focus the bulk of their R&D and promotion efforts on these key components rather than on the others. This is confirmed by the figures supplied by the parties in their reply to the statement of objections. These show that in Italy, over the period 1998-2000, the difference between the lowest price (corresponding to special offers) and the highest price (no special offers) was as much as [20-30] % in the case of moulded case circuit breakers but did not exceed [10-20] % in the case of miniature circuit breakers. This suggests that special offers traditionally play a more important role for MCCBs than for other circuit breakers.

(157) Focusing the analysis on components seems all the more appropriate as it is generally at this level that the value of a brand is based. This is also the level at which the parties analyse their own position on the markets for low-voltage electrical distribution equipment. For example, Legrand's 'Medium-term plans 2001-2005' for most of the EEA countries give a breakdown of market shares by component category ('power circuit breakers', 'distribution [board] circuit breakers', 'earth leakage switches', 'enclosures'). Conversely, the documents do not include any breakdown by 'solution' (i.e. by type of low-voltage electrical switchboard).

([31]) Replies by the parties to points 68 and 113 of the questionnaire of 6 April 2001.

([32]) Points 70 and 112 of the questionnaire of 6 April 2001.

(158) The parties' internal documents also include analyses which underline the importance of components as such. For example, Bticino, which forms part of the Legrand group, states ([33]): '[…]*'.Similarly, Legrand ([34]) has separate breakdowns for distribution circuit breakers and earth leakage circuit breakers. In its three-year plan for […]*, Schneider stresses the positive effects which it expects the arrival of a new range of […]* will have, providing a basis for the sale of other products. In […]*, Schneider expects its range of […]* to strengthen its position with industrial customers and, conversely, it regards its range of […]* as responsible for its weak competitive position with customers in the residential sector.

(159) The way these documents stress the strategic role of a component (in this instance, […]*) provides a clear illustration of the importance of these components in the various manufacturers' competitive strategies. The role of components is also apparent from the manufacturers' advertising aimed at installers and panel builders. Such advertising focuses on the performance of the relevant components and not on the complete solutions which may be assembled from them.

(160) Lastly, it should be noted that […]* ([35]).

(161) In their reply to the statement of objections, the parties dispute the existence of market power at the level of components. They take the view, among other things, that the hypothetical monopoly test cannot be applied to a particular type of component, since all manufacturers offer the full range of components. The case of a hypothetical monopoly over a single type of component is therefore, they argue, a scenario that is completely divorced from the reality of the market.

(162) The Commission cannot agree with that view. While the case of a hypothetical monopoly over a single type of component indeed does not correspond to the reality of the market, that does not rule out the existence of competitive conditions (and therefore of possible market power) that differ for each type of component. The fact that all manufacturers have to offer, and installers buy, all the components necessary for building an electrical switchboard does not mean that the competitiveness of the different manufacturers, the characteristics of demand and therefore price setting are necessarily equivalent for all components. In other words, the fact that the hypothetical monopoly test cannot technically be applied at the level of components (since all manufacturers sell all the products) shows that a monopoly situation probably cannot exist at the level of a single component independently of all the others. But this does not, in itself, rule out the existence of market power at component level.

(163) The mere fact (not disputed by the parties) that there are key components shows that certain components are more important than others and that competitive conditions for those components may differ from those prevailing for the others. Furthermore, as stated earlier, there is some mixing of brands in the case of certain components, in particular cabinet or enclosure components.

(164) This is amply confirmed by the figures supplied by Schneider, which show substantial differences between profit margins for the different types of component.

([33]) Bticino, Medium-term plan […]*.
([34]) Legrand, Medium-term plans.
([35]) Schneider, European price convergence.

Profit margins

Product	Main switchboards		Distribution boards		Final panelboards	
	Gross margin	Net margin	Gross margin	Net margin	Gross margin	Net margin
Heavy-duty circuit breakers	[40-60]* %	[20-40]* %				
Moulded case circuit breakers	[40-60]* %	[10-30]* %	[50-70]* %	[20-40]* %		
Miniature and earth leakage circuit breakers			[50-70]* %	[20-40]* %	[50-70]* %	[20-40]* %
Switchboard cabinet and components (or enclosures)	[20-40]* %	[0-20]* %	[50-70]* %	[20-40]* %	[20-40]* %	[0-20]* %

Source: Schneider, reply to the questionnaire of 6 April 2001.

Conclusion

(165) As the Commission stated in its notice on the definition of relevant market ([36]), 'the objective of defining a market […]* is to identify those actual competitors of the undertakings involved that are capable of constraining those undertakings' behaviour and of preventing them from behaving independently of effective competitive pressure'. The aim in defining the relevant market is thus to identify the areas in which a possible dominant operator could exercise market power and to provide a conceptual framework for analysing the conditions of supply and demand in such areas.

(166) The above analysis shows that the manufacturers' market power may be exercised at two levels: at the level of the brands (and therefore the combination of all the components to be incorporated into a switchboard) and at the level of each category of component individually.

(167) The fact that customers frequently choose components of the same brand requires manufacturers to offer a full range of products and guarantee the (technical and economic) performance of switchboards resulting from the assembly of those products. Furthermore, once a particular component (for example a circuit breaker) has been chosen, the other components of a given switchboard will normally be sourced from the same brand. This is the case particularly of the other types of circuit breaker incorporated in distribution boards, on account of the compatibility and selectivity considerations set out above. There is therefore an initial level of competition corresponding to all the components (or at the very least all the protective components).

(168) Nevertheless, it is also clear from the foregoing that (i) components of a single brand are not always chosen, in the case of both final panelboards and distribution boards; (ii) there appears to be more mixing of brands in the case of cabinet or enclosure components than protective components; (iii) the choice of brand is in practice determined by that of certain key components; and (iv) the competitive positions of the different manufacturers can vary greatly from one type of component to another. Competitive conditions are therefore not uniform for each type of component. This is broadly confirmed by the data supplied by the parties in their reply to the statement of objections. These data reveal the existence of special offers that are specific to each type of component (for example, a model of miniature circuit breaker or a type of enclosure), something which strongly suggests the existence of competitive pressures differing from one component to another. And, in the case of distribution boards, these special offers appear to be significantly more generous for key components (moulded case circuit breakers) and components that can be combined with those of other brands (cabinet components) than for miniature circuit breakers.

(169) In their reply to the statement of objections, the parties dispute this analysis and argue on the contrary that the competitive assessment should focus only on the whole switchboard, i.e. the group of components that go to make up a particular type of electrical switchboard. They base their argument in particular on (i) considerations of a technical (compatibility, selectivity, etc.) and economic nature (assembly time) which restrict the mixing of products of different brands, (ii) the tendency of installers and panel builders to choose components of the same brand and (iii) the fact that all

([36]) Commission notice on the definition of relevant market for the purposes of Community competition law (OJ C 372, 9.12.1997, p. 5).

manufacturers have to offer and do indeed offer all the components necessary for building an electrical switchboard. They also rely on the findings of a study they commissioned from the consultancy NERA, which in their view demonstrates a very close correlation between the sales volumes for each type of component. The parties consider that this correlation of sales volumes demonstrates the existence of a single market in components.

(170) As stated earlier, the Commission does not dispute the existence of an initial level of competition corresponding to all the components that go to make up a particular electrical switchboard, or the fact that such competition requires manufacturers to offer a full range of products and guarantee the technical and economic performance of switchboards resulting from the assembly of those products. It takes the view, however, that competition occurs not only at that level but also at the level of each type of component.

(171) The Commission also considers that the data supplied by NERA confirm rather than disprove the appropriateness of a component-based analysis. First, manufacturers run a large number of special offers concerning an individual type of component rather than all the components necessary for building an electrical switchboard. In June and July 2000, Schneider is thus said to have offered discounts of [0-20]* % on certain […]* and rebates of [20-40]* % on certain […]*. Likewise, Legrand is said to have run special offers specific to certain types of […]* for final panelboards and, at other times, special offers on certain […]*. The scale of these offers and the fact that they relate to a single type of component illustrate the existence of specific competition at the level of each type of component.

(172) Second, the data supplied by the parties also suggest that these special offers have a very substantial impact on sales of the items concerned by the offer, but only limited effects on sales of the other components designed to be combined with the item concerned in order to form 'solutions'. For example, when in January 2000 Bticino offered (in Italy) a discount of [0-20]* % on certain […]*, its sales of […]* went up by [0-20]* % in relation to December 1999, but its sales of […]* rose by only [0-20]* % on the previous month. The difference is even more marked if seasonal variations in sales are taken into account since, in that case, sales of […]* even fell by [0-10]* % on the previous month (sales of […]* having risen by [20-30]* %). This suggests that sales promotions on components do not have a uniform effect on all the components necessary for building an electrical switchboard, which again confirms the existence of a second level of competition at component level.

(173) Third, the data supplied by NERA show that there is no significant correlation between the variations in the prices of the different components. Since price variations reflect changes in the supply and demand conditions for the products concerned, this lack of correlation once more illustrates the specific nature of each type of component and confirms that the prices of each type of component are set to a large extent on the basis of considerations specific to that component type (rather than as a result of competitive changes affecting the switchboards into which they are incorporated).

(174) Lastly, the Commission takes the view that the correlation of component sales volumes as observed by NERA does not call into question the existence of specific competition at component level. NERA's correlation calculation takes no account of the seasonal nature of the business. Seasonal variations can, however, occasionally be very wide, in particular during August, when sales volumes can fall by more than 75 % from July levels. By failing to separate out these factors, the data supplied by NERA therefore significantly overestimate the real correlation of sales volumes. To measure the real correlation, the Commission has performed its own calculations on the basis of the data supplied by the parties. These calculations show that, if seasonal sales variations are separated out, the correlation drops significantly to ranges (in the region of 0,7) that do not allow precise conclusions to be drawn.

(175) It is clear that there will always be some relationship between sales of the different types of component, since final sales relate to finished switchboards and these are obtained by assembling the components in question. The Commission nevertheless takes the view that the existence of this relationship does not make it possible to conclude that all the components belong to a single product market. When transposed to another sector, the line of argument developed by NERA would be tantamount to considering that, since there is (probably) a relationship between sales of car tyres and engines (sales of both these components being linked to car sales), tyres and engines belong to the same product market. Such a conclusion would be absurd given the total lack of substitutability between the two products (on both the demand and the supply side) and

fundamental differences in the structure of competition between the two sectors (presence of integrated manufacturers, level of concentration, etc.). It is, furthermore, for this reason that econometric studies on the definition of product markets are generally based on price correlations rather than sales volume correlations ([37]). The Commission therefore considers that this relationship does not call into question the existence of competitive conditions specific to each type of component, in view in particular of the facts and considerations set out above. The fact that, despite the inevitable existence of a relationship between components, sales of certain components rise whereas those of others fall confirms this analysis once more.

(176) At all events, even if one accepts the importance of component brands and ranges in competition, a brand's strength rests mainly on the competitiveness of the various components. Since a possible monopolistic supplier of a component could derive market power from its position in respect of that component, the competitive analysis must be carried out at the level of each type of component.

(177) The Commission therefore concludes that the analysis of the effects of the notified merger on competition must be carried out at two levels: both at the level of the group of components necessary for building a particular type of electrical switchboard (this being the level adopted by the parties) and at the level of the various components to be incorporated into distribution boards and final panelboards.

Product segmentation

Distinction by function type

(178) The Commission notes that the various categories of components used in an electrical switchboard cannot be substituted for one another. For example, a cabinet or enclosure (i.e. a housing, generally metal, consisting of a frame on which external panels and a door are mounted) clearly cannot in any way be regarded as substitutable for a protective device (such as a circuit breaker or fuse).

([37]) See, for example, the seminal article 'The extent of the market' by Stigler and Sherwin, Journal of Law and Economics vol. 28, 555-585, October 1985.

(179) A distinction must also clearly be made, within protective devices, between circuit breakers and fuses (whose function is to protect the electrical installation against any overcurrent or short circuit), on the one hand, and earth leakage protection (whose function is to protect life), on the other. For the same reasons, earth leakage circuit breakers, which combine the functions of earth leakage protection and circuit breakers, do not seem to be substitutable for the other types of protection.

(180) This segmentation also exists on the supply side, since, according to the parties, each of these types of component is produced on a distinct and specific production line (and, in most cases, in a specific factory). This makes it impossible to switch to the manufacture of any other component category under acceptable economic conditions.

Distinction between circuit breakers and fuses

(181) Fuses perform a similar function to circuit breakers (protection against short circuits and overloads). However, the two components are technically different. Whereas circuit breakers contain an electromagnetic device, fuses work by breaking an electrical conductor which melts in the event of overload or short circuit. Consequently, fuses have to be replaced after a short circuit or overload, in contrast to circuit breakers, which have simply to be reset so long as the current strength has not reached their breaking capacity. Furthermore, a fuse must be accompanied by a disconnecting switch so that the power can be switched off when the fuse is replaced. Lastly, although a fuse is cheaper (to install) than a circuit breaker, it needs more maintenance, in particular for replacements, so that total costs are higher. In view of these differences and of the fact that circuit breakers are easier to use, circuit breakers are more frequently used than fuses and are tending to replace fuses in the long term.

(182) In view of the technical differences between fuses and circuit breakers, the impact this has on the maintenance of electrical switchboards, and the differences in production technologies between the two types of component, it could possibly be necessary to draw a distinction between the two types of product. However, this question may be left open, since it will not affect the competitive analysis of the transaction.

Distinction between types of circuit breaker

(183) Within circuit breakers, a distinction should also be made between heavy-duty circuit breakers, moulded case circuit breakers and miniature circuit breakers. In the first place, each of these types of circuit breaker performs a different function. Heavy-duty circuit breakers are circuit breakers used as incomers in main switchboards, while moulded case circuit breakers are used mainly as outgoings in main switchboards or as incomers in distribution boards, and miniature circuit breakers are used as outgoings in distribution boards or in final panelboards.

(184) As may be seen from Table 4, these differences in use are attributable to the differences in performance between the types of circuit breaker. The information provided by the parties also shows that there are significant price differences between categories. The transfer price within the Schneider group is between [EUR 1 000 and EUR 5 000]* for heavy-duty circuit breakers ([38]), between [EUR 1 000 and EUR 5 000]* for moulded case circuit breakers ([39]), and between [0 and EUR 50]* for miniature circuit breakers ([40]).

(185) Lastly, it should be noted that the products are manufactured on different production lines, so that a producer of one type of circuit breaker could not switch his production to other products and market them in the short term.

Distinction between cabinets and enclosures

(186) The information provided by the parties indicates that a distinction should be made between cabinet components for main switchboards, cabinet components for distribution boards and enclosure components for final panelboards. Cabinets and enclosures are metal or plastic items designed to protect the electrical components incorporated into low-voltage switchboards. Cabinets or enclosures form the housing of the electrical switchboard, and to them are added switchboard components (DIN mounting rails, copper busbars, etc.) used for mounting and holding electrical components.

(187) According to the information provided by the parties, there are thus important differences from one distribution level to another. In the first place, modular enclosures (made of plastic, with DIN rails and to a large extent standardised) differ widely from cabinets (made of metal, often including specific components, etc.). Secondly, cabinets used for distribution boards differ from cabinets used for main switchboards in that, in contrast to main switchboard cabinets, which may frequently comprise specific components incorporated by panel builders, distribution board cabinets are described as being more standardised, with the role of panel builders being generally restricted here to assembling 'kits' (Schneider's Prisma range, Legrand's Altis or MAS ranges) supplied by the manufacturers. In addition, main switchboard cabinets have to comply with strict technical requirements (relating to electromechanical constraints and short circuit levels) to which distribution board cabinets are not subject.

(188) These differences are also reflected at supply level, since the standardisation of distribution board cabinets and final panelboard enclosures has generally prompted manufacturers to assign specific high-capacity production lines to them, whereas main switchboard cabinets are frequently manufactured on low-volume versatile production lines which can be adapted to the particular requirements of each project.

Mains connection circuit breakers

(189) In addition to the components described above, mention should also be made of another category of products: mains connection circuit breakers. These are devices required by Electricité de France (EDF) in France and by the electricity distributor in Portugal.

(190) Mains connection circuit breakers differ from the other components in that they have (i) an earth leakage function which, as well as protecting the user, is intended to secure the distributor against the theft of electricity; (ii) a charge function (measurement of consumption); and (iii) a multi-calibration function which enables the electricity distributor to adjust the circuit breaker to the customer's requirements.

([38]) Annex, reply to point 25 of the questionnaire of 6 April 2001.

([39]) Annex, replies to points 25 and 64 of the questionnaire of 6 April 2001.

([40]) Annex, reply to point 64 of the questionnaire of 6 April 2001; memo submitted by the parties on 13 March 2001-'Definition of product market for segments 1, 2 and 4'.

(191) Two thirds of mains connection circuit breakers are sold to the electricity distributor and one third to installers. Since they are designed to meet the specific requirements of the electricity distributor, there are not at present any substitutable products. Furthermore, mains connection circuit breakers are not incorporated into electrical switchboards. These devices thus form a separate relevant product market.

Conclusion

(192) In the light of the above, the relevant product markets may be defined either at the level of each of the components individually or at the level of the categories of switchboard. This question may be left open since the effects on competition are similar irrespective of the definition adopted. The product markets may be broken down as follows:

Table 5

Group of components level	Components level
Main switchboard cabinets	Main switchboards
	Heavy-duty circuit breakers
	Moulded case circuit breakers and/or fuses for main switchboards
Distribution boards	Moulded case circuit breakers and/or fuses for distribution boards
	Distribution board cabinets
	Miniature circuit breakers and/or fuses for distribution boards
Final panelboards	Miniature circuit breakers and/or fuses for final panelboards
	Earth leakage protection
	Enclosures
Mains connection circuit breakers	

B.1.4 ***Definition of geographic markets for distribution boards***

Geographic market definitions proposed by the parties

(193) The parties take the view that the markets for low-voltage switchboards are European ([41]). In particular, the parties explained that transport costs are low (less than […]* % of the cost of the equipment), that production is generally organised on the basis of a limited number of production plants in Europe and that standards have, in their view, been harmonised in Europe.

Commission's analysis

(194) The detailed investigation carried out by the Commission confirms that the markets for equipment used in distribution boards or final panelboards are national. This conclusion is based on the following four considerations. In the first place, there are significant differences between products sold in the different Member States, mainly for reasons to do with the regulatory framework or standards applicable in the Member States and national traditions and habits. Secondly, prices continue to be determined at national level and certain products exhibit considerable price differences, in some cases costing twice as much in one Member State as in another. Thirdly, key competition parameters, both on the supply side (positioning of brands, access to wholesalers) and on the demand side (customer structure and expectations) depend on factors which are essentially national (such as the degree of concentration, the size and geographical scope of wholesalers, the way installers and panel builders view brands and ranges, etc.) and vary substantially from one country to another. Lastly, there are significant entry and growth barriers as between countries.

(195) The national scale of markets is moreover clearly apparent from the parties' own organisation. For example, strategic documents are drawn up country by country. The same applies to parties' presentations to

([41]) It should be noted that the parties base their arguments particularly on the Commission Decision of 3 June 1999 in Case IV/M.1434 — Schneider / Lexel, which they believe established such a European definition for the geographic markets. However, that Decision did not in fact reach any conclusion on the exact size of the geographic markets.

investors. As Legrand states ([42]), 'Legrand is confronted with different levels of competition, depending on the market and the type of products sold. Legrand's main competitors include Hager and Entrelec in France, Gewiss and Vimar in Italy, MK Electric in the United Kingdom […]*. Some multinational companies such as General Electric, ABB, Siemens, Schneider and Matsushita compete with Legrand on more than one national market'.

The products sold by manufacturers vary from one country to another

(196) Significant differences in products sold may exist between Member States. The information provided by Schneider, Legrand and various other manufacturers shows, for example, that the list of the five most widely sold miniature circuit breaker models varies significantly from one Member State to another and that one rarely finds a product model forming part of that list in more than three Member States. Thus, in Schneider's list of the five most widely sold miniature circuit breakers for final panel boards in fifteen EEA countries, the list comprises forty models. Of these forty models, […]* are sold in France, […]* in Italy, […]* in Spain, […]* in Portugal, etc. Furthermore, only two models are sold in […]* countries (and none in more than […]* Member States) and […]* are sold in fewer than five countries. Similar conclusions may be drawn as regards sales of miniature circuit breakers for distribution boards and sales of earth leakage switches. The same phenomenon is evident in Legrand's sales. Schneider's lists are often completely disjointed, for example as between Greece and Italy (in the case of miniature circuit breakers for distribution boards), or as between Spain and Belgium (in the case of earth leakage protection). Conversely, moulded case circuit breakers are generally sold in most of the countries (at prices which vary considerably, as will be shown below).

(197) This situation is attributable mainly to differing sets of rules or national habits, prompting installers and panel builders to use equipment which differs from one country to another.

(198) In the first place, it should be noted that there are regulatory barriers between Member States. For example, there are 'installation rules' which vary from one Member State to another. These rules relate in particular to safety aspects (earthing, cutting of neutral, earth leakage protection for specific high-risk areas, etc.). These standards are mandatory and any electrician who does not comply with them is liable to penal sanctions. The application of these standards results in differences in the components used in low-voltage electrical switchboards. For example, circuit breakers sold in Germany are single-pole (cutting of the phase only), whereas they have to be two-pole in France and in Italy (cutting of phase plus neutral). Similarly, a document issued by the IEC ([43]) suggests that some countries prohibit the use of earth leakage protection that does not cut neutral, and that some Member States restrict or prohibit the use of AC earth leakage protection.

(199) Secondly, it should also be noted that not all countries use all the neutral point treatments uniformly. In view of the differences of operation between neutral point treatments, the choice of a treatment will often be determined by the application (continuity of service, availability of a maintenance team, risk of fire) and by the quality of the relevant earth electrodes (and hence ground consistency). As far as residential applications are concerned, Germany tends to favour the TN neutral point treatment, whereas the Netherlands, Denmark and Spain prefer the TT method and Norway the IT method. The neutral point treatment may also be imposed by the electricity distributor. This is particularly the case in France, where Electricité de France requires domestic installations to use the TT neutral point treatment.

(200) These decisions influence the choice of components in the various countries. As stated above, the choice of neutral point treatment determines the type of device used for the protection of persons. The TT method will thus require the use of earth leakage protection, while the TN method will favour the use of circuit breakers and the IT method will in most cases require the use of insulation monitoring devices. However, the choice of neutral point treatment will also have an impact on the specifications of the circuit breakers used, and in particular on the number of poles and the tripping curve: the TT approach favours the use of two- and four-pole devices and C curve devices, whereas the TN approaches make greater use of single-pole and three-pole devices and B curve devices, while in the IT approach, one finds only two- and four-pole devices.

([42]) Legrand, Form 20-F SEC.

([43]) IEC 64/1167/CD provided by the parties further to their reply to point 320 of the questionnaire of 6 April 2001.

(201) It should also be noted that technical standards for switchboards have not been fully harmonised. In addition to the CE marking required by the relevant Community directives (notably, the Low Voltage Directive), it is often necessary to obtain the national quality label issued by the national certification authority when selling a particular product in a given Member State.

(202) The results of the Commission's investigation show that, while the national quality label is not statutory, it is in most cases required by installers and panel builders. This phenomenon is moreover borne out by the fact that, despite the cost EUR [10 000 - 15 000]* for sixty models) and the duration (three months) of each national certification operation, almost all of Schneider's circuit breakers and earth leakage protection devices bear several quality labels. This is also apparent from the parties' internal documents: internal Legrand documents ([44]) explain that in Belgium 'despite the establishment of European standards, the CEBEC quality label continues to be required by installers'. These documents also show that the main barriers to entry in Germany are VDE (certification body) approval and the national quality standards and label.

(203) In addition to these 'objective' criteria, there are also national habits (in installation, choice and isolation of circuits) in each Member State, and these often play an important role in the choice of equipment. For example, Schneider states that, in some countries such as Germany, circuit breakers are often connected from the bottom, whereas in other countries (France, Italy and Spain), they are connected from the top. This difference explains why products (known as Triconnect products) have been specifically designed for German installers. Similarly, internal Legrand documents ([45]) indicate that in Belgium 'the bulk of the market is made up of [miniature] circuit breakers with a breaking capacity of 3 kA', whereas in most other countries circuit breakers tend to have a breaking capacity of 4,5 kA or 6 kA. Lastly, in France the neutral is always wired to the left, and not to the right as in most of the other Member States. Schneider furthermore offers products specifically tailored to that demand by marking the neutral on the left of the appliance.

([44]) Legrand and Bticino, Medium-term plans.
([45]) Bticino, Medium-term plan.

(204) The large number of parameters resulting in specific national characteristics explains why the most widely sold products vary from one Member State to another. These differences may also lead to the development of products specifically designed for certain Member States. For example, internal Legrand documents ([46]) indicate that in Austria '[…]*'. Similarly, internal Schneider documents ([47]) indicate that in Germany '[…]*'.

(205) In conclusion, as one competitor states ([48]), 'there are local traditions and customs and national standards. They are significant, and they have a decisive impact on the characteristics of the products themselves', and it is unlikely that gradual harmonisation of standards will produce any rapid change in market conditions. As Legrand states ([49]): 'harmonisation of low-voltage equipment can create openings for new products, but Legrand's management expects that such market openings will develop at a slow pace'.

(206) In their reply to the statement of objections, the parties dispute these differences between Member States. They stress among other things that, although there are very slight differences in product models sold as between Member States (due in particular to different markings), the list of the five most widely sold products varies little from one Member State to another on the basis of identical industrial designs, and a model belonging to that list can frequently be found in most of the Member States. They thus argue that the 40 models of miniature circuit breaker produced by Schneider correspond to [0-20]* industrial designs, of which [0-20]* are sold in more than nine Member States, and that the 25 models of earth leakage switch produced by Legrand in fact constitute [0-20]* different industrial designs, of which [0-20]* are sold in at least six Member States.

(207) More generally, the parties take the view that national installation rules and quality labels do not in themselves require any particular product modification, and they also stress that all neutral point treatments are usually present in all countries (albeit in widely differing proportions).

([46]) Legrand and Bticino, Medium-term plans.
([47]) Schneider, Three-year plan (2001-2002-2003), country/zone: Germany.
([48]) Gewiss, reply to phase I questionnaire.
([49]) Legrand, Form 20-F SEC.

(208) The Commission acknowledges that, from a strictly industrial standpoint, there may be relatively minor differences between several models. For example, certain miniature circuit breakers are differentiated from other models only by the identification of the neutral (on the left, in accordance with normal practice on the French market) or the display of different quality labels. It also accepts that installation rules or quality labels do not always impact significantly on the production of the items concerned. Schneider's and Legrand's production facilities are integrated at European level.

(209) Nevertheless, the Commission considers that these factors do not significantly affect the analysis. The arguments raised by the parties relate only to the production of items. However, production is only one aspect of supply: as mentioned earlier, the competitive position of manufacturers depends not only on their production, but also on the strength and perception of their brands, the availability of their products at the main national wholesalers and their investments in promoting products and in customer relations with domestic installers and panel builders. By confining themselves to a simple producer approach, the parties are therefore overlooking essential aspects of supply.

(210) In addition, and more importantly, the parties are ignoring demand-related constraints. They thus do not challenge the main thrust of this section, namely that the existence of neutral point treatments, national installation habits and rules and national quality labels creates a specific demand in each country. The parties furthermore willingly acknowledge, in their reply to the statement of objections, that specific national characteristics lead to the choice of different models. The fact that these specific characteristics prompt the use of dedicated products (such as the Triconnect ranges in Germany), the display of a national quality label or even more simply the choice of specific products (single-pole and three-pole miniature and distribution circuit breakers in Sweden and Denmark or two-pole and four-pole devices in France and Italy) is not in itself fundamentally important. What matters here is that customers in each country display a specific purchasing behaviour which severely limits the scope for shifting demand according to differences in the prices charged by manufacturers.

The key parameters of competition are defined on a national basis

(211) As stated above, the competitive position of the various manufacturers will largely be determined by (i) their ability to establish brand loyalty amongst installers and panel builders and, therefore, to meet their expectations; and (ii) their access to wholesalers, at least in those Member States in which wholesalers are sufficiently established.

Brand strength and brand perception vary from one country to another

(212) The results of the investigation show that, in order to meet the selection criteria of installers and panel builders, manufacturers must offer safe, good-quality products which are easy to fit and are always available from wholesalers. However, these factors depend in most cases on national perceptions.

(213) The way products are perceived varies from one Member State to another. As stated above, there are significant differences in standards and habits between Member States. Such differences result in the choice of different equipment. Furthermore, these choices are also reflected in different weightings in the assessment criteria. For example, it may be seen that Legrand products are generally perceived as being of high quality, but expensive. Internal documents ([50]) show that […]*. Installers may also differ in the importance they attach to innovation. For example, while Legrand ([51]) considers that this factor underpins its competitive position in […]*, it seems to be of little importance in […]*, where there is […]*. Similarly, internal documents ([52]) show that […]*.

(214) The availability of products, which plays a significant role in customer decisions, also depends on specific national characteristics (i.e. access to national wholesalers and the manufacturers' national logistical chains). According to internal documents ([53]), […]*, whereas the ready availability of its products seems to be one of its strengths in […]*. Similarly, Schneider ([54]) considers that in […]* 'logistics are a key factor in achieving success. […]*'.

(215) As stated above, installers are generally loyal to the brand which they are in the habit of using (provided it

([50]) Legrand and Bticino, Medium-term plans.
([51]) Legrand and Bticino, Medium-term plans.
([52]) Schneider, Three-year plan (2001-2002-2003).
([53]) Legrand and Bticino, Medium-term plans.
([54]) Schneider, Three-year plan (2001-2002-2003).

is immediately available and meets the relevant requirement). In order to establish brand loyalty amongst their customers, manufacturers invest substantial resources in promoting products and in customer relations, directly focusing on the requirements of installers and panel builders. The parties also state that their sales staff maintain contact with customers to help them choose products and that they maintain agency networks and sale forces in each country. The parties also offer a whole range of products and services reinforcing customer relations with installers. In the case of products, this includes design and costing software for electrical installations or technical guides; and, in the case of services, training sessions (Legrand), telephone assistance services, answers to technical questions, etc. As indicated above, such investment may amount to [0-30]* % of brand turnover.

(216) The way in which a brand is perceived does not therefore depend only on the positioning of its products, but also on the extent and focus of customer-relations and promotional investment in each country. Sales forces are organised on a national basis, and promotional efforts are generally country-specific, with their volume (and indeed the proportion of sales which they represent) varying significantly from one Member State to another. For example, the volume of sales campaigns undertaken by Schneider in respect of distribution boards may be up to [0-20]* times as much in one Member State as in another, and the proportion of turnover generated by such measures may be up to [0-40]* times as much.

(217) Manufacturers' competitive positions thus remain to a large extent determined by established habits and traditions. The structure and concentration of supply, and the respective positions of the various manufacturers, may thus vary from one Member State to another. This phenomenon is clearly reflected in the existence of national brands (such as Vinckier ([55]) in Belgium or Baco ([56]) in France) and in marked national variations in manufacturers' market shares. In distribution boards, for example, Schneider is particularly strongly established in France, but remains weak in Germany and in Austria; ABB, which has strong positions in Sweden and Norway, is almost absent from the Belgian and United Kingdom markets; and Siemens, which has significant market shares in Germany, has only a marginal share of sales in France. This analysis is also amply confirmed by the parties' internal documents.

Demand structure and expectations vary from one country to another

(218) The different perceptions and positions of brands between countries are also due to substantial national variations at demand level. The parties' internal documents ([57]) show that there are marked differences between countries as regards training and the behaviour of installers and panel builders. Thus, Belgian installers seem relatively reluctant to use higher value-added components, whereas German installers are becoming 'highly technical' and Italian installers seem to be seeking training and support services so as to adapt to the increasingly technical nature of their job.

(219) Furthermore, as stated above, final demand stems from three types of application (industrial, commercial and residential buildings), and the various manufacturers' positions may vary from one customer category to another. However, the three downstream sectors are developing differently in each country. The parties' internal documents ([58]) show that Austria is expected to enjoy strong growth in industrial demand but little or no growth in new buildings, whereas the situation is the reverse in the United Kingdom and Portugal, and demand in Greece is expected to be buoyed up by growth in the commercial sector.

(220) It is also apparent that the behaviour and expectations of wholesalers may vary significantly between Member States. The investigation establishes clearly that the degree of wholesaler concentration differs very widely from one country to another and that wholesalers' purchases are nationally based. This is illustrated by Table 6 below, which shows the levels of concentration by Member State as estimated by the parties as regards sales of main switchboards, distribution boards and final panelboards.

([55]) Belonging to GE.
([56]) Belonging to Legrand.
([57]) Legrand, Medium-term plans.
([58]) Legrand, Medium-term plans.

Table 6

Schneider's estimate of the market shares of the five groups of international wholesalers on the markets for electrical switchboards

	Rexel	Sonepar	Hagemeyer	Solar	Edmundson
Germany	[0-10]*	[0-10]*	[10-20]*	[0-10]*	—
Austria	[30-40]*	—	—	—	—
Belgium	[10-20]*	[10-20]*	—	—	—
Denmark	—	[0-10]*	—	[0-10]*	—
Spain	[0-10]*	[0-10]*	[0-10]*	—	—
Finland	—	[0-10]*	[0-10]*	[0-10]*	—
France	[40-50]*	[30-40]*	—	—	—
Ireland	[0-10]*	—	[0-10]*	—	[0-10]*
Italy	[0-10]*	[0-10]*	—	—	—
Norway	—	[10-20]*	[0-10]*	[0-10]*	—
Netherlands	[0-10]*	[30-40]*	[0-10]*	[0-10]*	[0-10]*
Portugal	[30-40]*	[0-10]*	—	—	—
Sweden	[10-20]*	[10-20]*	[10-20]*	[10-20]*	—
United Kingdom	[0-10]*	—	[20-30]*	—	[10-20]*

Source: e-mail sent by the parties on 16 July 2001.

(221) The parties' internal documents also show that the way wholesalers are organised may have a significant impact on how manufacturers compete with one another. For example, it seems that, in the countries in which the wholesale trade is the most fragmented, such as Portugal and Spain, competition between wholesalers is resulting in a price war whose effects are felt at manufacturer level. As a Legrand internal document ([59]) states, '[…]*'.

(222) In addition, the Commission's investigation has shown that wholesalers are organised on a national, or indeed sub-national, basis. Even the large international groups, such as Rexel, Sonepar and Hagemeyer, have a very largely decentralised organisation which grants a large degree of autonomy to their national and local branches. In most cases, the group's central holding company is a lightweight structure whose centralised functions comprise only marketing, accounting and consolidation of accounts at group level and management control. This decentralised structure goes hand in hand with a logistical organisation which is national and which is not designed to function on a cross-border basis. The sales outlets in a given country are thus supplied from national logistical channels. The mainly national basis on which wholesalers are organised is also reflected in the nature of their relations with manufacturers. Even international groups organise their purchasing contracts with manufacturers on a national, or indeed local, basis.

(223) The Commission's investigation established that business negotiations between manufacturers and wholesalers, notably as regards the choice of suppliers, determining the range of products to be bought and sold and the setting of price and rebate levels, take place almost entirely at national or regional level. As one large wholesaler states ([60]), 'to the best of [our] knowledge, there is no price list at EEA level on the basis of which discounts and rebates are negotiated. On the contrary, all the terms are discussed at the level of each country'. One manufacturer ([61]) also confirms that 'for the relevant products, prices are set and rebates granted on a national basis'. This is also the way the parties operate.

(224) According to Schneider, the setting of the selling prices of its products to wholesalers is worked out on two

([59]) Legrand, Medium-term plans.

([60]) Hagemeyer, reply to phase II questionnaire.

([61]) GE, supplement to its reply to the phase II questionnaire.

levels. First, the manufacturers issue a national price list. Subsequently, the manufacturers negotiate with each wholesaler an individual rebate policy worked out on the basis of the national price list. These rebates can sometimes exceed [30-60]* % of the catalogue price and are granted on individual product lines.

(225) It should, however, be noted that rebates on the total volume of purchases are negotiated by some international manufacturers with the parent companies of some groups of international wholesalers. However, both the wholesalers and the manufacturers have informed the Commission that a manufacturer wishing to enter a national market or establish a marginal presence on it cannot make do with negotiating agreements with the parent company of an international group of wholesalers if it wishes its products to be properly distributed in that Member State. The manufacturer will also, and especially, have to persuade the national and local branches of the group to stock its products.

(226) With that exception, the managements of the wholesaler groups allow their national or local branches a very wide margin of freedom in choosing their suppliers, the product ranges which they stock, the implementation of specific commercial strategies in collaboration with a given manufacturer, and even the negotiation of supplementary rebates with manufacturers. Conversely, the manufacturers conclude specific agreements with local branches, or indeed with individual warehouses, of the wholesalers, laying down reciprocal commitments with regard to the sale and purchase of products. Contrary to what the parties maintain, the increased concentration of wholesalers (which furthermore varies significantly from one Member State to another) does not therefore call into question the fact that markets operate on a national basis.

Prices are set at national level and vary widely between countries

(227) The Commission's investigation shows that there are considerable price differences between Member States. A look at Schneider's European price lists, for example, shows that the same moulded case circuit breaker is sold at EUR [40-80]* in […]* and EUR [130-170]* in […]*, and that a particular earth leakage protection product is sold at EUR [10-50]* in […]* and EUR [40-80]* in […]*. Similarly, in the case of Legrand, the same modular enclosure is sold at EUR [0-40]* in […]* and EUR [10-50]* in […]*, while the same miniature circuit breaker is sold at EUR [0-40]* in […]* and EUR [0-40]* in […]*. These differences are also confirmed by the parties' internal documents ([62]), which show that, in the case of miniature circuit breakers in France, 'average prices remain very high compared with the other countries'.

(228) Tables 7 and 8 below show the average prices for moulded case circuit breakers for distribution boards and earth leakage switches for final panelboards. The tables reveal substantial variations in price. A comparison of prices for the other components of distribution boards or final panelboards and of the prices given by the other manufacturers shows similar results.

Table 7

Relative prices (base 100 in France), as invoiced by Schneider, for moulded case circuit breakers for distribution boards

Moulded case circuit breakers	Germany	Austria	Belgium	Denmark	Spain	Finland	France	Greece	Ireland	Italy	Netherlands	Norway	Portugal	Sweden	UK
[…]*	***	**	**	**	**	**	100	**		**	**	**	**	**	**
[…]*	*****	***	***	***	**	**	100	**	**	****	**	***	***	***	****
[…]*	****	**	***	**	***	**	100	**	**	***	***	***	***	**	**
[…]*	****	**	***	**	**	**	100	**	*****		**	**	*	**	**
[…]*	*****	***	***	***	***		100	**		**	***	**	***	**	***
[…]*	****	**	***	**	**	**	100	**	**	***	***	**	**	**	***
[…]*	***	**	***	**	**	**	100	**	**		**	**	**	**	**
[…]*	***	**	***	**	**	**	100	**	**	****	***	**	****	**	**
[…]*	****	***	***	**	***		100	**		**	***		***		

Source: e-mail sent by the parties on 24 June 2001.
[Non-confidential version: * = 0-50; ** = 50-100; *** = 100-150; etc.]*

([62]) Legrand, Medium-term plans.

Table 8

Relative prices (base 100 in France), as invoiced by Schneider, for earth leakage switches for final panelboards

RCDs	Germany	Austria	Belgium	Denmark	Spain	Finland	France	Greece	Ireland	Italy	Netherlands	Norway	Portugal	Sweden	UK
[…]*	**						100			*			**		
[…]*	-	*		**		*	100	***	*		**	***	***	**	***
[…]*	-	**		**	**	*	100	**	***	**	***		**	**	
[…]*	-	**			***	**	100	**	**	**	***		**	**	
[…]*	-				***	***	100	**		**	***	***	**	**	
[…]*	-	*		*	***	**	100	**	**	**	***		**	**	
[…]*	-	**		**		**	100	**		**	***	***	**	***	
[…]*	-						100								
[…]*	-	***	***		***		100						***		****
[…]*	***	**	***		***		100						***		

Source: e-mail sent by the parties on 24 June 2001.
[Non-confidential version: * = 0-50; ** = 50-100; *** = 100-150; etc.]*

(229) The existence and persistence of these price differentials for each of the components used in distribution boards and final panel boards illustrates the difficulty on the demand side of taking advantage of these differences between Member States. The apparent difficulty of making use of the differences in prices between Member States may be due in particular to the low price sensitivity of final demand, as reflected in brand loyalty. This difficulty also contradicts the 'solutions' approach proposed by the parties, since there does not seem to be any willingness to pick out the optimum 'solution' amongst those available in the Member States. This difficulty is also confirmed by wholesalers, who explain that their national logistical organisation is not suited to seeking out the best prices. Furthermore, the need to be always able to supply installers and panel builders at very short notice limits their scope for seeking out the best prices, which would be risky in terms of product sources.

(230) The parties nevertheless stress that there is a tendency towards uniform pan-European prices. In an internal document ([63]), Schneider states that 'the arrival of the euro in 2002 […]* is prompting [Schneider] to harmonise European prices and avoid differences between countries' and that '[large customers] no longer accept being treated differently in different countries'. […]*

(231) […]*

([63]) Schneider, European price convergence.

(232) The document, which is cited by Schneider as evidence of the existence of Community geographic markets, thus corroborates the extent of the price differences currently in evidence. It also indicates that, despite the arrival of the euro, significant differences may continue to exist from one Member State to another until [2004-2005]* at least. Lastly, it confirms that prices are set at national level, since, in the document, it is 'the countries' which 'position their prices in relation to the [reference price]*' and 'adapt their price positions and rebate structures'.

(233) The parties consider that a breakdown of prices by component is not relevant to the customer, since the market, they argue, is determined on the basis of the technical and economic performance of the relevant 'solution'. The parties also point out that 'complete solution' price analyses show that there is convergence, at least if one excludes the smallest national markets, which are those of the countries at the edge of the European Union and/or of the countries which have recently joined it.

(234) The parties' arguments are invalidated by their own figures on the prices for average 'solutions', as illustrated in Tables 9 and 10 below. The tables demonstrate the substantial price differences between Member States, which do not seem to have narrowed over the years. It should be noted that the price differences illustrated in the tables are smaller than those given as regards components. This is no doubt due to the parties' accounting treatment of the initial data (the prices of components).

Table 9

Sales (relative prices) in current francs of an 'average solution' for distribution boards

	1994	1995	1996	1997	1998	1999	2000
Germany	**	**	**	**	**	**	**
Austria	**	**	**	**	**	**	**
Belgium	**	***	***	***	***	***	***
Denmark	**	**	**	**	**	**	**
Spain	**	**	**	**	**	**	**
Finland	**	**	**	**	**	**	**
France	**	**	***	***	**	**	**
Ireland	**	**	**	**	**	**	**
Italy	**	**	**	**	**	**	**
Norway	**	**	**	**	**	**	**
Netherlands	***	**	**	**	**	**	**
Portugal	**	**	**	***	***	***	**
Sweden	**	**	**	**	**	**	**
United Kingdom	**	**	**	**	**	**	***

Source: parties' reply to the Commission questionnaire of 28 February 2001.
[Non-confidential version: * = 0-50; ** = 50-100; *** = 100-150; etc.]*

Table 10

Sales (relative prices) in current francs of an 'average solution' for final panelboards

	1994	1995	1996	1997	1998	1999	2000
Germany	***	***	**	**	**	**	**
Austria	**	**	**	**	**	**	**
Belgium	**	**	**	**	**	**	**
Denmark	**	**	**	**	**	**	**
Spain	**	**	**	**	**	**	**
Finland	**	**	**	**	**	**	**
France	***	***	***	***	***	**	**
Ireland	**	**	**	**	**	**	**
Italy	**	**	**	**	**	**	**
Norway	**	**	**	**	**	**	**
Netherlands	***	**	**	**	**	***	***
Portugal	**	**	**	**	**	**	**
Sweden	**	**	**	**	**	**	**
United Kingdom	**	**	**	**	**	**	***

Source: parties' reply to the Commission questionnaire of 28 February 2001.
[Non-confidential version: * = 0-50; ** = 50-100; *** = 100-150; etc.]*

(235) Accordingly, the Commission cannot subscribe to the parties' argument that an examination of the prices of 'solutions' demonstrates the existence of a European market. In the first place, the Commission notes that the parties do not deny the existence of substantial price differences and acknowledge that, if there is any convergence, it does not apply to all Member States. Secondly, the Commission considers that any price convergence (not borne out by the facts) does not provide a basis for concluding that there is a single market: any reduction in price differences between the Member States depends much more on the pace of convergence than the mere fact that convergence exists. However, Schneider's internal documents referred to above indicate that, as far as components are concerned, price convergence will take place only slowly. Lastly, and in particular, the Commission does not share the parties' view that analysis at component level is not relevant. The prices of 'solutions' depend to a large extent on the price of the components incorporated into them. It follows that, if there are differences in prices between components, there will also be differences in prices at switchboard level.

(236) In their reply to the statement of objections, the parties do not dispute the existence of price differences for particular components. On the other hand, in their view the available data show that there is rapid convergence, speeded up by the introduction of the euro and the development of Internet portals, as demonstrated by the gradual emergence of a European Reference Price in the case of Schneider. They also argue that price difference is in any event only one of the factors to be taken into account for the purpose of defining the relevant geographic market.

(237) The Commission cannot endorse the parties' arguments concerning the existence of rapid price convergence. For one thing, the above tables, which show price differences that are considerable in some cases, in no way suggest the rapid appearance of convergence at Community level. Even taking the 'average solution' presented by the parties, the figures in Table 10 show for example that this solution was on average [40-60]* % more expensive in Germany than in Austria in 1994 and that it remained [40-60]* % costlier in Germany than in Austria in 2000. An analysis at the level of individual components would lead to the same findings. For another thing, despite the emergence of a European Reference Price in the case of Schneider, it is clear that differences in list prices of over [0-20]* % may persist in the medium term for the same product sold in two neighbouring countries. These differences may be further exacerbated by discount and rebate policies that are specific to each country and are not concerned by harmonisation efforts.

(238) The Commission readily accepts the parties' argument that price difference is in any event only one of the factors to be taken into account for the purpose of defining the relevant geographic market. However, in the case in point, it regards this criterion as sufficient on its own. How is it possible to account for the fact that identical products, manufactured in the same plant and distributed through the same logistical network and for which the transport cost is minimal, can frequently be sold for three times as much in one Member State than in another? The existence of such differences for similar products confirms, almost on its own, that there is no real scope for taking advantage of price differences between Member States. The persistence of these differences demonstrates that competitive conditions are not uniform in the common market.

(239) In any event, the Commission is convinced that the analysis of supply and demand, as carried out in the other parts of this section, confirms if need be the national nature of the markets as found by the price analysis.

Existence of significant entry barriers at national level

(240) The foregoing considerations indicate that there are significant barriers to entry between one country and another. To secure a toehold in a particular country, it is not enough to be able to offer 'solutions' in another country; an exporter has to overcome the conservatism of installers in order to create demand, gain access to wholesalers and (in the case of final panelboard components) obtain national quality labels. Since access to wholesalers depends on demand from installers, which in turn depends on the availability of products and therefore access to wholesalers, market entry can require very large sunk investments, particularly where well established brands already exist on the market.

Mains connection circuit breakers

(241) Mains connection circuit breakers have to comply with national specifications in Portugal and France. The relevant geographic market for these products is therefore a national one.

Conclusion

(242) In the light of the foregoing, the Commission comes to the conclusion that there are national markets for

distribution board and final panelboard components and for mains connection circuit breakers. As one manufacturer argues in summing up the situation, all market segments should be analysed on a national basis. First, national standards and habits differ significantly from one country to another. Second, given their vertical structure (end user/installer/wholesaler/manufacturer), national markets are extremely stable. Consequently, even if a manufacturer were able to convince a wholesaler to add its products to the brands it already lists (and therefore, in short, to increase the number of its suppliers), that does not however enable the manufacturer to convince local installers to choose its products.

(243) In their reply to the statement of objections, the parties dispute this definition, claiming in particular that the Commission has not taken sufficient account of the harmonisation of standards, the low level of transport costs and the organisation of production on a Community-wide basis.

(244) The Commission readily acknowledges these three factors. It nevertheless maintains that they do not in any way call into question its definition of the relevant geographic markets. As stated earlier, standards constitute only one of the factors determining demand and furthermore do not appear to play a key role given the overwhelming importance still attached to national habits and quality labels. And, in any event, the harmonisation of standards has not led to convergence in the prices of components, something which should have happened if standards had constituted a significant barrier to trade. Neither do the organisation of production at European level and the low level of transport costs call into question the national nature of markets since this is apparent instead from the specific characteristics of demand in different countries and, on the supply side, from the perception of brands and the way in which prices are set.

(245) The question of the definition of the geographic markets for main switchboard components can on the other hand be left open because, Legrand not being present in that segment, the transaction would not have the effect of significantly restricting competition in the EEA or in a substantial part of it.

B.2 BUSBAR TRUNKING AND CABLE TRAYS

B.2.1 ***Definition of product markets***

(246) The parties define a product market comprising both cable trays and busbar trunking.

(247) A cable tray is a prefabricated assembly consisting of a continuous conduit of perforated flanged sheet metal or ladders. It is designed to support insulated aluminium or copper conductors carrying the electric power inside a building. The parties state that cable trays are usually installed in the basements, metal ducts and false ceilings of buildings. The materials generally used for producing cable trays and ladders are steel, aluminium, PVC, polyester and wire mesh. These products are made in a large number of sizes ranging from 50 to 600 mm in width, from 50 to 100 mm in depth and from 1 to 3 m in length.

(248) The strength of the current that can be carried by cables mounted on cable trays is directly dependent on the technical characteristics and number of the cables. The parties state ([64]) that that they have no control over the electric power conveyed on their cable trays. Their guarantee covers the mechanical strength and not the amperage flowing through the cables, which may be of any type, thickness and weight. Cable trays may be installed horizontally or vertically in any building, between the main switchboard, distribution boards and final panelboards. The higher the power distributed and consequently the greater the weight of the cables (the thicker the conductors), the more the solutions used need to be robust. Metal cable ladders thus tend to be used between the main switchboard and distribution boards, while perforated tray systems are more often used between the distribution boards and the final panelboards. More rarely, welded wire mesh or perforated metal cable trays may be used downstream of the final panelboard to supply a machine.

(249) Busbar trunking consists of a set of copper or aluminium conductors supported by insulating spacers and enclosed in a metal housing, usually of galvanised steel. Busbar trunking is an assembly of several components. A power feed unit is mounted between the switchboard and the busbar trunking proper. The busbar trunking itself is installed by assembling several modules usually between 3 and 5 metres in length. These components comprise several superimposed layers on which the conductors are mounted. Power tap-off outlets are placed at regular intervals; these are designed to receive tap-off units for feeding electric power to one or more loads. Flexible elbow units, generally made of

([64]) Message dated 3 July 2001 in reply to a request for information made by the Commission on 2 July 2001.

plastic, allow access for connectors and enable trunking runs to be routed around corners in walls. Coupling sections enable two trunking components to be joined together. An end cover is fixed to the end of the trunking run. The dimensions of busbar trunking depend on the strength of the current it conveys. According to the parties, busbar trunking can carry currents of between 20 and 5 000 amps ([65]).

(250) Busbar trunking systems can serve four different purposes. In a heavy-duty 'link' system, they connect the medium voltage/low voltage transformer to the main switchboard. This is a short configuration, less than 10 metres in length, which conveys current of high strength (between 1 600 and 4 000 amps). In a lighter configuration, called a 'power distribution' or transport system, the busbar trunking conveys electric power from the main switchboard to the distribution boards. This application is longer than the preceding one (some 30 metres) and the current conveyed is in the region of 400 - 1 600 amps. The parties nevertheless state that the most commonly used busbar trunking configurations correspond to two other specific functions: supplying power for lighting systems and low-power electricity distribution ([66]). In a lighting distribution configuration, the busbar trunking will be up to 30 metres long and usually conveys current of between 16 and 40 amps. It will also be fitted with specific connectors for supplying the light fittings. In a low-power electricity distribution configuration, the busbar trunking will also be up to 30 metres long, but it will carry higher currents (between 40 and 100 amps). It will serve to distribute power to wiring accessories such as sockets and switches. To that end, it will be fitted with connectors and fuse boxes and/or circuit breakers in order to protect those accessories.

(251) Cable trays and busbar trunking thus both serve physically to convey electric power between the main switchboard and distribution boards. The parties state that busbar trunking is also used downstream of the distribution boards, in particular for supplying power to the final panelboards ([67]). Busbar trunking systems already incorporate, when they are manufactured, the conductors which convey the electric current. In the case of cable trays, the conductors have to be purchased separately ([68]). The parties confirm that they do not offer their customers combined supplies of cable trays and cables ([69]).

(252) According to the parties, cable trays and busbar trunking form one and the same product market. They explain that the two types of product serve an identical purpose, namely to act as a medium for the transmission of strong electric currents, often of several hundred amps, between the main switchboard and the distribution boards. They conclude that busbar trunking systems and cable trays are substitutable on the demand side.

(253) The investigation has shown, however, that for these two categories of product, substitutability is limited on the demand side and non-existent on the supply side.

Demand-side substitutability

(254) The parties state ([70]) that the decision to use one category of product rather than the other depends on the configuration of each building and the characteristics of the electricity distribution network installed therein. Busbar trunking is thus said to offer greater flexibility than cable trays with regard to the location of electric-powered equipment (computers, machinery, etc.). Special emphasis is placed on the latter point in a Schneider internal document ([71]), which states that busbar trunking is 'more competitive than cable' in situations where electric power has to be supplied to a large number of machines located in the same room; busbar trunking offers two major advantages: it is 'easily modifiable: a machine can be moved easily or a new machine added by simply connecting to a vacant tap-off outlet' and it is 'very adaptable: trunking can be added or removed to meet

([65]) Annex 39 to Form CO.
([66]) Reply by the parties dated 21 June 2001 to a request for information dated 13 June 2001.
([67]) Form CO, p. 52.
([68]) Reply dated 23 February 2001, point 6.
([69]) Reply by the parties to point 9 of the questionnaire of 22 March 2001.
([70]) Form CO, p. 52.
([71]) 'Busbar trunking — SBU presentation'. Document supplied in reply (Annex 8) to the questionnaire of 22 March 2001, p. 10.

changes in layout'. A similar claim is made in another Schneider internal document ([72]), which states that busbar trunking costs […]* times more than cable trays but that a tap-off can be installed on it at […]* the cost. According to the same document, it becomes more economical to use busbar trunking than cable trays once more than […]* power tap-offs need to be installed.

(255) A Schneider internal document ([73]) further states that busbar trunking is also 'more competitive than cable' for 'link' applications having to carry current of over 1 600 amps and for 'transport' applications carrying current of over 1 000 amps.

(256) The technical and operational features of busbar trunking and cable trays are also different. The parties state ([74]) that busbar trunking is much more effective in withstanding the strong currents generated by a short circuit. A Schneider internal document ([75]) also states that, in the event of a short circuit, busbar trunking offers the advantage of causing minimal disruption of the power supply: this is explained by the fact that 'protection devices are located within each load's tap-off unit, so only the one load is removed from supply, minimising "down-time" during maintenance and repair'. The same document also states ([76]) that busbar trunking is 40 % lighter and twice as fast to install as cable trays.

(257) On the other hand, the range of materials that can be used in the manufacture of cable trays enables them to be used in special environments. For example, aluminium cable trays are particularly resistant to damp atmospheres, while glass fibre-reinforced plastic cable trays can effectively withstand corrosive atmospheres. The former are consequently often used in the agri-foodstuffs industry and the latter in the chemical industry ([77]).

(258) Busbar trunking and cable trays therefore cater for different, specific needs. The former are a cheaper solution than the latter where the current to be carried between the main switchboard and the distribution boards exceeds 1 000 amps or where the current to be carried between the medium voltage/low voltage transformer and the main switchboard exceeds 1 600 amps. In a 'distribution' configuration, busbar trunking is a cheaper solution where more than five tap-offs need to be installed. Busbar trunking also offers technical features which make it particularly well suited and irreplaceable in buildings where continuity of the power supply is essential and a large number of tap-offs need to be installed, such as large commercial buildings, hospitals and airports. Buildings of that type are presented in a Schneider internal document as the natural market for busbar trunking ([78]). On the other hand, cable trays will be chosen in preference to busbar trunking in certain economic sectors or for use in certain specific types of atmosphere.

(259) There is therefore only partial demand-side substitutability between busbar trunking and cable trays, limited chiefly to low-power distribution, transport and link applications. Even for each of these applications, the characteristics of each of the two product types have the effect of limiting their demand-side substitutability.

(260) This finding is borne out by a Schneider internal document, which states that 'cables' are a technology that is only 'in indirect competition' with busbar trunking ([79]). The parties stress that cable tray technology is in indirect competition 'because it serves the same basic purpose albeit without offering the same flexibility of use' ([80]). A third party that answered the questionnaire, Pogliano, states that cable trays and busbar trunking genuinely compete with each other only in geographic markets where distribution of the latter is still limited and consumers are consequently not yet familiar with its comparative advantages ([81]).

([72]) Document supplied as Annex 39 to Form CO, p. 4.
([73]) 'Busbar trunking — SBU presentation', loc. cit., p. 9.
([74]) Form CO, p. 52.
([75]) 'Busbar trunking — SBU presentation', loc. cit., p. 10.
([76]) Loc. cit., p. 9.
([77]) Reply by the parties to point 4 of the questionnaire of 22 March 2001.
([78]) 'Busbar trunking — SBU presentation', loc. cit., p. 9.
([79]) 'Presentation of the busbar trunking marketing approach', document supplied by Schneider in reply (Annex 6) to the questionnaire of 22 March 2001, p. 4.
([80]) Reply by the parties dated 21 June 2001 to a Commission request for information dated 13 June 2001.
([81]) Reply dated 17 February 2001, point 6.

Supply-side substitutability

(261) Many third parties have pointed out that busbar trunking systems are a more technically sophisticated product than cable trays. As already mentioned, the electrical conductors are incorporated in busbar trunking during manufacture, whereas cable trays are merely designed to receive the conductors at a later stage.

(262) The technical differences between busbar trunking and cable trays are reflected in the standards with which the products have to comply. The IEC 60439-2 and Cenelec EN 60439-2 standards for busbar trunking systems lay down electrical requirements relating specifically to the dimensions of the conductors they incorporate, their insulation and the characteristics of the connections. Cenelec standards EN 10142 and EN 10088 for cable trays, on the other hand, lay down mechanical requirements to do with the cable weight which cable trays and their mountings must be able to withstand. Consequently, whereas the standards for busbar trunking lay down electrical requirements aimed at preventing short circuits and fires ([82]), the standards for cable trays establish requirements relating to the products' physical strength. Unlike cable trays, busbar trunking is therefore electrical equipment in the sense that electric current is intended to pass through it.

(263) These technical differences are likewise reflected in different manufacturing processes. Cable tray production is related to metalworking or sheet metal manufacture, whereas the production of busbar trunking is an activity of the electrical equipment industry. The parties acknowledge in Form CO (page 52) that cable trays are usually made by sheet metal manufacturers and busbar trunking by electrical equipment producers. The upshot of this is that, to the Commission's knowledge, there are only two companies that produce both types of product: Schneider and Hager. In both cases this is a recent development resulting from the acquisition of another company (Lexel by Schneider and Tehalit by Hager). Prior to those acquisitions, Schneider and Hager produced only busbar trunking.

(264) The fact nevertheless remains that each of the above two groups have subsidiaries specialised in the production of one or other of the two types of product. Within the Schneider group, Télémécanique and Normabarre thus manufacture busbar trunking while the subsidiaries Wibe, Stago and Mita produce cable trays. The main producers of busbar trunking in Europe (Moeller, MEM-Delta, Pogliano, Zucchini, etc.) do not manufacture cable trays. Lastly, the parties stress that cable tray producers are small companies specialised in the manufacture of that type of product ([83]).

(265) There is therefore no supply-side substitutability between busbar trunking and cable trays.

Conclusion

(266) For the above reasons, the Commission takes the view that cable trays and busbar trunking constitute two separate product markets. In their reply to the statement of objections ([84]), the parties did not contest this conclusion.

B.2.2 ***Definition of the geographic markets***

(267) The parties take the view that the market for the sale of cable trays and busbar trunking is Europe-wide. They base their position on the fact that the products sold in the different Member States are identical; they also state that more than […]* % of the output of Schneider and Legrand is sold in Member States other than the country of manufacture.

(268) The Commission's investigation has established, however, that competition in the sale of low-voltage electrical distribution products operates essentially on a national basis. The main points of that analysis, developed above ([85]) for distribution boards, apply likewise to cable trays and busbar trunking. More specifically, the following considerations support that analysis in the case of these product markets.

The selling price of cable trays and busbar trunking varies greatly between Member States

(269) There are significant price differentials between EEA countries for one and the same model, in the case of both busbar trunking and cable trays.

([82]) Reply by the parties to point 7 of the questionnaire of 22 March 2001.

([83]) Form CO, p. 53.
([84]) Point 472.
([85]) Points 126-224.

Busbar trunking

(270) The parties nevertheless supplied a price comparison for what they consider to be the two most commonly used standard configurations. These are: (i) the KLE 16 A two-pole lighting busbar produced by Télémécanique and (ii) the KNA 63 A low power distribution busbar produced by Télémécanique ([86]).

(271) Table 11 below gives the selling price for the […]* lighting busbar produced by Télémécanique, a Schneider subsidiary, in different EEA countries ([87]):

Table 11

	France	Italy	Spain	Belgium	Portugal	Greece	UK	Ireland
Price in FRF	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
Price: France base 100	100	**	**	***	***	***	****	***

	Germany	Austria	Netherlands	Sweden	Denmark	Norway	Finland
Price in FRF	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
Price: France base 100	**	***	***	**	**	**	**

Source: the parties.
[Non-confidential version: * = 0-50; ** = 50-100; *** = 100-150; etc.]*

(272) Table 12 below gives the selling price for the […]* low power distribution busbar produced by Télémécanique, a Schneider subsidiary, in different EEA countries ([88]):

Table 12

	France	Italy	Spain	Belgium	Portugal	Greece	UK	Ireland
Price in FRF	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
Price: France base 100	100	*	**	**	**	**	***	***

	Germany	Austria	Netherlands	Sweden	Denmark	Norway	Finland
Price in FRF	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*	[…]*
Price: France base 100	**	***	***	***	***	**	*****

[Non-confidential version: * = 0-50; ** = 50-100; *** = 100-150; etc.]*

([86]) Reply by the parties dated 21 June 2001 to a Commission request for information dated 13 June 2001.
([87]) Reply of 21 June 2001 to a Commission request for information dated 13 June 2001.
([88]) Reply of 21 June 2001 to a Commission request for information dated 13 June 2001.

(273) It is clear from the above two tables that the price of one and the same busbar trunking model varies considerably from one EEA country to another: the price of the same item can differ by more than [50-100]* % between two neighbouring countries. The […]* busbar is thus sold for FRF […]* in Norway and FRF […]* in Sweden; the price of the […]* busbar is FRF […]* in Spain and FRF […]* in France.

Cable trays

(274) Table 13 below gives the evolution in the relative selling price of steel cable ladders manufactured by Lexel, a Schneider subsidiary, between 1996 and 2000 in the different EEA countries in which Lexel markets those products:

Table 13

	1996	1997	1998	1999	2000
Sweden ([89])	100	***	***	***	***
Denmark	***	***	***	***	***
Finland	**	**	**	**	**
Germany	**	**	**	**	**
United Kingdom	***	***	***	***	***
Netherlands	***	***	***	***	***
Belgium	***	***	***	***	***

[Non-confidential version: * = 0-50; ** = 50-100; *** = 100-150; etc.]*

(275) It can be seen from Table 13 that the price of this category of cable tray varies greatly between Member States, even neighbouring ones, and that price differentials have not tended to narrow over the last five years: the price differential between Sweden and Denmark, which was [0-50]* % in 1996, stood at [0-50]* % in 2000. Likewise, the price differential between Germany and the Netherlands was [0-50]* % in 1996 and rose to [50-100]* % in 2000.

([89]) Price in Sweden in 1996 = Base 100.

(276) In their reply to the statement of objections, the parties argued that steel cable ladders produced by Lexel were not an appropriate choice for establishing the existence of price differences between Member States for cable trays generally, and that steel cable trays were more representative of the relevant product market as a whole since that product category accounted for around twice the sales of steel cable ladders. They maintained that, in any event, price differentials for steel cable ladders between certain neighbouring Member States (such as the Netherlands and Germany) were almost non-existent.

(277) It should first be pointed out that the parties' claim that steel cable trays account for twice the sales of steel cable ladders is based on a mere extrapolation to the European market of the situation prevailing in the United Kingdom. The parties have not provided any information demonstrating that the breakdown of sales between the different categories of cable tray in the United Kingdom could be generalised to the rest of the EEA.

(278) In addition, it can be seen from documents supplied by the parties ([90]) that there are also significant price differences between Member States, even neighbouring ones, in the case of steel cable trays. The table below shows the trend in the relative price of steel cable trays produced by Lexel, a Schneider subsidiary between 1998 and 1999, in the three Member States in which they are sold by that company:

Prices for steel cable trays

	1998	1999	2000
Netherlands ([91])	100	[100-150]*	[100-150]*
Germany	[100-150]*	[100-150]*	[100-150]*
Belgium	[50-100]*	[50-100]*	[50-100]*

Source: the parties.

([90]) Reply by the parties dated 19 July 2001 to point 1 of the questionnaire of 22 March 2001.

([91]) Price in the Netherlands in 1998 = base 100.

(279) It is therefore clear from the above table of prices for steel cable trays that while the price differential between the Netherlands and Germany is small, and even tended to narrow between 1998 and 2000, the differential between those two countries and Belgium was greater than [0-50]* % in 2000 and even tended to widen over the same period.

(280) In their reply to the statement of objections, the parties claimed that the comparison of cable tray prices between Member States made by the Commission was distorted because it failed to take account of three exogenous factors.

(281) First, according to the parties, the Commission failed to take into account the fact that, for historical reasons, customers in Sweden and Finland had a distinct preference for cable ladders rather than cable trays, with the result that competition was stronger in the case of the former; this partly explained why prices for those products were lower than in the rest of Europe.

(282) It should first be pointed out that selling price differentials for cable trays produced by Schneider are significant not only between Sweden and Finland, on the one hand, and the other Member States, on the other. It can be seen, for example, from Table 13 that the price differential between Germany and Belgium stood at [50-100]* % in 2000. Even if Germany is also regarded as a special case, the price differential between Denmark and Belgium was [0-50]* %. In addition, the fact that the share of sales represented by the different categories of cable tray differs substantially between the various Member States, because of the marked preference of national consumers for certain categories, as claimed by the parties ([92]), is a further important argument in favour of defining the relevant product market on a national basis.

(283) Second, the parties state in their reply to the statement of objections ([93]) that the price differences between Member States in the case of cable ladders marketed by Lexel were the result of fluctuations in national currencies: they quote the example of the Swedish krona, which lost nearly 30 % of its value as against the pound sterling, thereby reducing, so they claim, the price differential observed between Sweden and the United Kingdom for that product category. However, it can be seen from Table 13 above that the price differential for cable trays marketed by Lexel in those two Member States, which was [0-50]* % in 1996, stood at [0-50]* % in 2000, which contradicts the claim that prices narrowed between Sweden and the United Kingdom. It should also be noted that the differences in selling prices for cable ladders marketed by Lexel concern many EEA countries whose currencies have remained stable in relation to each other in recent years. Table 13 above shows, for example, that the price differential between Germany and the Netherlands stood at [50-100]* % in 2000.

(284) Third and last, the parties argue ([94]) that the selling prices they communicated to the Commission take account of the discounts and volume rebates applied to each sale; the amount of these discounts and rebates differed from one Member State to another, a fact which, in their view, accounted for the differences observed in average selling prices. It is sufficient to note here that the parties have not supplied any document establishing that the average level of sales volumes per deal differs from one Member State to another. If that were the case, it would in any event constitute a further important piece of evidence in favour of defining the cable tray market on a national basis.

The positions of the cable tray and busbar trunking manufacturers vary greatly between Member States

(285) The market shares of the main players on the busbar trunking and cable tray markets differ substantially from one Member State to another.

Busbar trunking

(286) Table 14 below, which was supplied by the parties ([95]), gives the market shares of the main players on the busbar trunking market in the main EEA countries:

([92]) Reply to the statement of objections, point 484.
([93]) Point 485 et seq.
([94]) Reply to the statement of objections, point 489.
([95]) E-mail message of 12 March 2001.

Table 14

	Schneider	Moeller	Zucchini	Pogliano	Others 1	Others 2
Germany	[30-40]* %	[50-60]* %	[0-10]* %	[0-10]* %	Siemens [0-10]* %	Lanz [0-10]* %
Austria	[60-50]* %	[30-40]* %	[0-10]* %	[0-10]* %	Lanz [0-10]* %	
Belgium	[50-60]* %	[10-20]* %	[10-20]* %		EAE [0-10]* %	
Denmark	[60-50]* %	[20-30]* %				
Spain	[40-50]* %	[30-40]* %	[10-20]* %	[10-20]* %		
France	[70-80]* %	[0-10]* %	[0-10]* %	[0-10]* %	Erico [0-10]* %	
Finland	[20-30]* %	[10-20]* %			MEM [30-40]* %	
United Kingdom	[10-20]* %	[30-40]* %	[10-20]* %		MEM [10-20]* %	
Greece	[60-50]* %	[10-20]* %	[0-10]* %		EAE [0-10]* %	
Ireland	[80-90]* %	[0-10]* %	[10-20]* %		MEM [0-10]* %	
Norway	[20-30]* %	[30-40]* %	[0-10]* %			
Netherlands	[40-50]* %	[40-50]* %	[0-10]* %		EAE [0-10]* %	
Portugal	[70-80]* %	[20-30]* %	[0-10]* %			
Total EEA	[20-30]* %	[30-40]* %	[0-10]* %	[0-10]* %		

(287) It is clear from Table 14 above that the positions of the main busbar trunking manufacturers vary significantly from one Member State to another. Confining the analysis to variations between neighbouring Member States, Schneider thus has [70-80]* % of the French market, but a market share of [50-60]* % in Belgium, [40-50]* % in Spain and only [30-40]* % in Germany. Likewise, Schneider's market share is [80-90]* % in Ireland but only [10-20]* % in the United Kingdom, and [70-80]* % in Portugal but only [40-50]* % in Spain. The other main player on the European market, Moeller, has a market share of [50-60]* % in Germany, but [30-40]* % in Austria, [10-20]* % in Belgium and only [0-10]* % in France.

Cable trays

(288) Table 15 below, which was supplied by the parties, gives the market shares of the main competitors on the cable tray market in the different EEA countries:

Table 15

	Schneider	Legrand	Hager	Others 1	Others 2
Germany	[0-10]* %	[0-10]* %	[10-20]* %	OBO	Van Geel
Austria	[0-10]* %	[0-10]* %	[0-10]* %		
Belgium	[10-20]* %		[0-10]* %	Vergocan	Van Geel
Denmark	[20-30]* %	[0-10]* %	[10-20]* %	RM Industrial Group	Van Geel
Spain	[0-10]* %	[0-10]* %	[0-10]* %		
Finland	[0-10]* %		[0-10]* %	Meka	Nordic Aluminium

	Schneider	Legrand	Hager	Others 1	Others 2
France	[0-10]* %	[0-10]* %	[0-10]* %	Tolmega [30-40]* %	Métal Déployé [20-30]* %
United Kingdom	[0-10]* %	[30-40]* %	[0-10]* %	RM Cable Tray [0-10]* %	Unitrust [0-10]* %
Greece	[0-10]* %	[0-10]* %			
Ireland	[0-10]* %	[0-10]* %		RM Cable Tray	Unitrust
Italy	[0-10]* %	[20-30]* %	[0-10]* %	Sati [20-30]* %	ABB [10-20]* %
Norway	[40-50]* %	[0-10]* %	[0-10]* %	Ögland	Van Geel
Netherlands	[30-40]* %	[0-10]* %	[0-10]* %	Van Geel	Gouda
Portugal	[0-10]* %	[0-10]* %	[0-10]* %		
Sweden	[70-80]* %	[0-10]* %	[0-10]* %	Meka	Van Geel
Total	[0-10]* %	[10-20]* %	[0-10]* %		

(289) It can be seen from the above table that Schneider is present in only six EEA countries. It has a market share of between [20 and 80]* % in five of them but is absent from all the other national markets. Legrand has the largest market share in the EEA although it is present in only three Member States (France, Italy and the United Kingdom) and has a significant market share in only two of those ([20-30]* % in Italy and [30-40]* % in the United Kingdom). With the exception of Hager, which is active in 11 countries, all the other competitors are present in only one or two Member States, usually neighbouring ones (Unitrust and RM Cable Tray in Ireland and the United Kingdom or Meka in Sweden and Finland). Van Geel appears to be the sole exception to this rule as it is active in Belgium, the Netherlands, Germany and also Scandinavia.

(290) Most of the players on the cable tray market are therefore present in one EEA country only. Those who are active in more than one EEA country have (i) a particularly large market share in one country and (ii) much smaller, fluctuating market shares in the others.

(291) In their reply to the statement of objections ([96]), the parties pointed out that there were several players on the relevant product market which were present in more than one Member State: they mentioned Schneider, present in seven Member States, Van Geel, present in six Member States and Hager, present in 11 Member States. They also argued that Hager had relatively uniform market shares in the different Member States in which it was active.

(292) It is sufficient to note here that the fact that only three players on the cable tray market are present in more than one Member State is not enough to prove the existence of competitors of a genuinely European size vying with each other throughout the EEA. This finding is reinforced by the fact that none of the three leading players in the EEA, namely Schneider, Legrand and Hager, have uniform market shares at national level.

The distribution of cable trays and busbar trunking is organised on a national basis

(293) The parties explain that on average between 75 % and 95 % of the turnover of cable tray and busbar trunking manufacturers is generated by sales to wholesalers ([97]). For example, Schneider states that its sales of cable trays to wholesalers account for all its sales in Sweden, the United Kingdom and the Netherlands. Schneider has not provided other information for the other Member States ([98]).

(294) As explained above, therefore, relations between electrical distribution equipment manufacturers and wholesalers are organised on a national or even regional

([96]) Points 506 and 509.

([97]) Form CO, p. 90.

([98]) Annex to Schneider's reply to point 98 of the questionnaire of 29 June 2001.

basis, even in the case of manufacturers and wholesalers operating on a European scale. This applies equally to cable trays and busbar trunking. Distributors of those products therefore compete chiefly on a national basis.

(295) In their reply to the statement of objections ([99]), the parties argued that a large share of the turnover of cable tray manufacturers was generated by direct sales to end customers; this was particularly true in the case of large projects, for which the wholesalers themselves required manufacturers to deliver the cable trays in their catalogues direct to customers. Relations between wholesalers and manufacturers did not therefore play a decisive role in assessing the geographic extent of the relevant product market.

(296) The point should first be made here that the parties have not supplied any information making it possible to gauge the importance of direct sales by manufacturers to end consumers on the cable tray market. The only data provided by the parties, concerning their own sales, show on the contrary that sales to wholesalers account for the bulk of their turnover. There is no available information suggesting that the situation might be different for the other market players.

(297) In addition, the parties' argument that wholesalers request manufacturers to deliver direct to end customers the cable trays appearing in the catalogues of products they distribute does not in fact mean that manufacturers sell the products in question direct to those customers. On the contrary, the wholesalers' involvement with regard to the products they have decided to include in their sales catalogues suggests instead that they purchase the products in question from the manufacturers and then resell them to the end consumer without those products physically passing through their stocks.

Barriers to entry

(298) The parties argued in their reply to the statement of objections ([100]) that barriers to entering the cable tray market were not significant. According to the parties, the products concerned are homogeneous in the sense that they require little or no adaptation in order to satisfy local demand; transport costs are relatively low and do not constitute a barrier to free movement within the EEA; and there are considerable trade flows between Member States. For example, [20-40]* % of cable trays produced by Schneider and Legrand are sold in a Member State other than the one in which they are manufactured.

(299) The existence of substantial price differentials between Member States and the unevenness of the players' market shares as noted above are two decisive factors which, from a factual standpoint, refute or at least severely limit the validity of the parties' claim that barriers to entering the cable tray market are not significant. The Commission's investigation has shown that access to the distribution channels is the main barrier to entry in the cable tray market given that the bulk of sales are made via wholesalers. Wholesalers' tendency to reduce the number of brands they distribute for each category of electrical equipment tends to increase barriers to entry.

Conclusion

(300) The relevant geographic markets for the sale of cable trays and busbar trunking are national ones.

B.3 ELECTRICAL EQUIPMENT DOWNSTREAM OF THE FINAL PANELBOARD

B.3.1 ***Definition of the product markets***

Introduction

(301) Electrical equipment products downstream of the final panelboard (also called 'installation products and accessories' by the parties) have in common their position at the final, or terminal, stage of the electricity distribution network, downstream of the final panelboard.

(302) The parties propose defining the following markets as separate product markets: (i) sockets and switches, (ii) control systems, (iii) security and safety systems for protecting life, (iv) security and safety systems for protecting property, (v) data network connectors, (vi) fixing and connecting equipment, and (vii) trunking equipment. Each of these categories of product, they say, fulfils different functions. The Commission's

([99]) Point 523.
([100]) Point 512 et seq.

investigation confirmed that it is not possible to group these different market categories into one and the same product market. The markets in control systems, security and safety systems for protecting property, data network connectors and trunking equipment are not affected by the proposed transaction.

(303) Each of the product market definitions proposed by the parties comprises products that are not mutually substitutable.

(304) However, the accessory markets concerned do share a number of characteristics which distinguish them from the markets in switchboards and in cable trays and busbar trunking. First of all, they primarily involve the residential and commercial sectors, to the exclusion of the industrial sector (except for certain categories of product such as weatherproof wiring accessories). In addition, installation accessories form the visible part of the installation. These two aspects mean that, unlike in the case of switchboards and cable trays and busbar trunking, the aesthetic dimension plays an important role in the choice of product and the end user is much more concerned to be involved in that choice. Furthermore, equipment downstream of the final panelboard is almost exclusively distributed via wholesalers, while panel builders and direct sales by manufacturers to end customers are not involved in the distribution of these products. This means that installers have a greater role in the choice of such products than they do in the case of electrical switchboards or cable trays and busbar trunking.

Sockets and switches

Introduction

(305) The low-voltage sockets and switches category, as presented by the parties, comprises the following products:

— basic plug and socket outlets for connecting electric loads;

— 'low-current' sockets: traditional telephone sockets, television sockets and 'VDI' (voice, data, image) sockets for connecting the telephone, television and data and communication systems respectively;

— switches, acting as control devices for power sources (lighting, motors), including remote control switches and time-lag switches;

— dimmers, for adjusting lighting levels.

(306) Furthermore, within the socket and switches segment, the Commission's in-depth investigation identified the existence of a product category called 'weatherproof wiring accessories', designed to withstand hostile environments (moisture, dust, impact, etc.).

(307) According to the parties, all these products, with the sole exception of VDI sockets, form one single product market, since they are indissociable for reasons of design and appearance. This, say the parties, is confirmed by the fact that they are supplied in aesthetically homogeneous ranges. A consumer's choice of one of these products (such as a socket) governs his choice of another (such as a switch) since it would not be aesthetically acceptable to have a socket and switch of different designs in the same room.

(308) For the reasons set out below, the Commission's investigation confirmed that there is a market in ordinary sockets and switches (including time-lag switches, remote control switches and dimmers) and that specific product markets exist for data sockets and weatherproof wiring accessories. The question of whether traditional telephone sockets and television sockets constitute separate product markets or whether they form part of the ordinary sockets and switches market can be left open, since the analysis of the competitive situation is the same in either case.

(309) The products in this category are very varied from the point of view of their function, technological content and unit value. First, the sockets and switches category as presented by the parties includes both products with low technological content, such as ordinary switches and sockets, and products with electronic components,

such as VDI sockets and dimmers controlling lighting intensity. These products share the characteristic of being installed in the living areas of dwellings and of being 'visible'. For this reason, their design and appearance constitute an important factor in consumers' choice.

Ordinary sockets and switches

(310) As regards ordinary socket outlets and switches, including remote control switches, time-lag switches and dimmers, the parties' argument that they form a single product market can be endorsed.

(311) The Commission's survey of competitors, wholesalers and installers confirmed that, as stated by the parties, the decisive factor for users, and therefore for wholesalers, in choosing products is the aesthetic dimension common to these products of varying functions.

(312) All the products concerned have in common the fact that they are visible to the user. Beyond their purely functional aspect, their appearance and compatibility with the decor are decisive factors in users' and specifiers' (architect, decorator, etc.) choice of a given product. For this reason, manufacturers give them a homogeneous finish or cover based on shared plates and embellishments. This aspect of demand from end users also affects wholesalers, who have to offer customers complete lines of sockets and switches of the same design. It is unlikely that, if a hypothetical monopolist of homogeneous product ranges were to raise the price of a specific product, demand for that product would switch towards a single-product manufacturer, besides which, there are no manufacturers that produce a single product or that do not supply homogeneous ranges. To be present on the market, manufacturers must be in a position to offer one or more full ranges with a common design.

(313) The Commission therefore concludes, for the purpose of these proceedings, that basic plug and socket outlets and switches, together with remote control switches, time-lag switches and dimmers, form a single relevant product market.

Traditional telephone sockets

(314) Traditional telephone sockets meet a specific need, namely the connection of telephones and other telecommunications equipment (fax or modem) to the network. At present, these sockets are made only for the residential market, since telecommunications equipment in commercial buildings is usually connected via VDI sockets, which can also be used to connect up computers and other telecoms equipment within a local area network. Traditional telephone sockets meet specifications laid down by telecoms operators. This distinguishes them from ordinary socket outlets and television sockets. Unlike VDI sockets, they contain no electronic components.

(315) However, the parties state that traditional telephone sockets require the same technologies as plug and socket outlets (thermoplastic moulding, cutting, machining, etc.). They assert that these sockets form part of the switch and socket ranges marketed by manufacturers of 'segment 5.A.1' accessories and are often installed at the same time by the same installer that is responsible for installing high-current equipment. This assertion by the parties can be endorsed only for socket and switch manufacturers such as Schneider and Legrand, which, in their catalogues, offer ranges that include telephone sockets. However, in addition to these switch and socket manufacturers, there are also specialised traditional telephone socket manufacturers such as the 3M group (Pouyet, Quante), Krone or Forgos, which do not offer a full range of sockets and switches.

(316) However, it is not necessary to resolve the matter of whether traditional telephone sockets form part of the ordinary switch and socket market or whether they should be considered as a separate product market. The analysis of the competitive situation is the same in either case.

Television sockets

(317) Like traditional telephone sockets, television sockets meet a specific need, namely the connection of television sets. They are intended exclusively for the residential market. They must comply with specifications laid down by television broadcasters, which distinguishes them from plug and socket outlets, telephone sockets and VDI sockets.

(318) The parties argue that television sockets require the same technologies as plug and socket outlets (thermoplastic moulding, cutting, machining, etc.). To the extent that they are marketed by general socket/switch manufacturers, they form part of their switch and socket ranges. They are often installed at the same time by the same installer that is responsible for installing high-current equipment. This assertion by the parties is contradicted by the fact that television socket manufacturers are mainly specialised firms that do not make high-current equipment, such as Philips, Bosch and Hirschmann.

(319) However, it is not necessary to resolve the matter of whether television sockets form part of the ordinary switch and socket market or whether they should be considered as a separate product market. The analysis of the competitive situation is the same in either case.

VDI sockets

(320) The parties consider that VDI sockets belong to the market in connectors for data networks. However, they sell VDI sockets within their socket and switch ranges and the market data for sockets and switches supplied by them to the Commission include VDI sockets sold as part of these ranges.

(321) VDI sockets are used for the connection of data and communications systems. Besides their primary purpose of data transmission (hence the name 'data sockets'), they also handle all telephony requirements in a commercial network, by comparison with simple, domestic uses, as well as certain video applications linked to data-type sources, thanks to digital technology. They are not part of the electricity distribution system, but of the communication network between neighbouring workstations within a building (LAN: local area network), primarily in commercial applications. It follows that they meet a specific requirement that differs from that met by other types of socket (such as plug and socket outlets, traditional telephone sockets, television sockets, and so on) and are not substitutable with them on the demand side.

(322) Furthermore, VDI sockets use different technology from plug and socket outlets, television sockets and traditional telephone sockets. Their main components are the various types (configurations) of connectors that meet specifiers' requirements in accordance with the standards developed by the manufacturers of IT equipment (RJ 11, RJ 12, RJ 45, Twinax, Thinnet, BNC, ACO, SUBD 9, SUBD 15, SUBD 25 and so on). VDI sockets are installed by specialists or electricians trained specifically in the requirements of such networks, which need maintenance as well as frequent modifications.

(323) A number of significant participants in the VDI socket market are specialised manufacturers such as Infra+, Lucent, Alcatel, Tyco and others, which are not active on the ordinary switch and socket market and thus do not supply an aesthetically homogeneous range. The production of VDI sockets is specific and cannot be done on converted equipment. The Commission's survey of third parties confirmed that a manufacturer of ordinary plug and socket outlets or of another category of low-current socket (traditional telephone or television) cannot start producing data sockets without considerable additional cost and time. Data sockets are therefore not substitutable on either the demand or the supply side with ordinary socket outlets, traditional telephone sockets or television sockets.

(324) The Commission therefore concludes that data sockets do not form part of the market in ordinary sockets and switches.

Weatherproof wiring accessories

(325) The category of weatherproof wiring accessories includes sockets and switches that, by dint of their construction or installation, are capable of resisting hostile environments (mainly moisture, but also dust and impact), for example in bathrooms, garages and cellars, outside a building, in factories, on building sites, and so on.

(326) The parties consider that weatherproof wiring accessories form part of the sockets and switches market, arguing that they perform exactly the same function, namely providing access to the electricity source, and that, except for the degree of weatherproofing, their characteristics are strictly identical and that the technology and manufacturing

process are also the same. They also state that these accessories are installed at the same time as ordinary sockets and switches by the same electricians and in the same building.

(327) However, weatherproof wiring accessories cater for a specific demand and ordinary switches and sockets cannot therefore be substituted for them on the demand side.

(328) Neither is there any supply-side substitutability between ordinary sockets and switches and weatherproof wiring accessories. The parties indicated that the development of the weatherproof casing alone accounted for around [0-50]* % of the cost and [0-50]* % of the time required to develop a complete line of sockets and switches from nothing. Legrand says it spent EUR [10-60]* million and almost [1-4]* years (including preparatory studies) on the Plexo product line, based on existing mechanisms, compared with EUR [20-70]* million and [3-5]* years for a complete product line ([101]). According to Infra+, a firm specialised in manufacturing components for computer networks, making a single water-resistant socket requires more or less twice the investment in tools and a development time of one year ([102]). The Commission's survey of third parties also confirmed that a manufacturer of ordinary sockets and switches cannot begin production of weatherproof wiring accessories without considerable additional cost and time.

(329) In their reply to the statement of objections, the parties challenged the Commission's analysis. They argued that weatherproof wiring accessories complemented other sockets and switches and that each range of sockets and switches offered a weatherproof version with the same design, dimensions and characteristics.

(330) However, products that are not substitutable but complementary do not as a general rule belong to the same product market ([103]). Ordinary and weatherproof sockets and switches cater for different needs, and a particular installation may either comprise only ordinary sockets and switches (for example in an apartment), or use both ordinary and weatherproof wiring accessories (for example in a house, where weatherproof sockets are installed in the cellar or outside), or consist exclusively of weatherproof wiring accessories (for example in industrial premises).

(331) The parties also assert that all the well-known manufacturers of sockets and switches also market weatherproof wiring accessories. Although this argument is valid for the competitors mentioned by the parties, it does not hold true for Sarel, a Schneider subsidiary which manufactures, in addition to other products (earth leakage switches, fixing and connecting equipment), a range of weatherproof wiring accessories and even claims in its catalogue to be 'the weatherproof specialist' ([104]). The demand can therefore be met by a dedicated supply.

(332) In Spain, furthermore, the market positions of the main competitors differ widely on the ordinary sockets and switches market and the weatherproof wiring accessories market. In ordinary sockets and switches Legrand is only number 2, with a [10-20]* % market share (after Simon, with [40-50]* %), but it is market leader in weatherproof wiring accessories, with a market share of at least [40-50]* %.

(333) The parties also challenge the Commission's finding that there is no supply-side substitutability between weatherproof and ordinary wiring accessories, claiming that the manufacture and marketing of a simple casing placed over the socket or switch does not require any great technological input and that the one-year lead time needed, according to Infra+, by a manufacturer of ordinary sockets and switches in order to produce weatherproof wiring accessories is much shorter than for a normal line (two to four years).

(334) Nevertheless, the claim that it takes still longer to develop and market a complete new line of sockets and switches from nothing than to develop a weatherproof line from an ordinary line cannot disprove the finding that there is no supply-side substitutability. The manufacturer of a neighbouring product cannot exert a disciplinary effect on the competitive behaviour of the

([101]) Reply dated 10 July 2001, question 15.
([102]) Reply dated 18 June 2001.
([103]) In its Decision of 28 September 1992 in Case IV/M.256 — Linde/Fiat, cited by the parties in support of their argument, the Commission relied on considerations of demand-side complementarity and supply-side substitutability, but left the question of the precise definition of the product market open.
([104]) Catalogue for 2001, p. 6.

companies involved unless it can switch production to the relevant products and market them in the short term without incurring significant additional costs or risks in response to small but permanent changes in relative prices ([105]).

(335) The lack of supply-side substitutability between ordinary and weatherproof wiring accessories is also illustrated by the fact that Eunea Merlin Gerin, Schneider's Spanish subsidiary, markets both ordinary and weatherproof ranges but itself produces only ordinary sockets and switches, while the weatherproof wiring accessories it sells are produced by Sarel in France.

(336) Lastly, the parties refer to several third parties surveyed by the Commission in the course of the investigation who, they claim, subscribed to the view that weatherproof wiring accessories form part of the sockets and switches market. However, the third parties cited in the parties' reply to the statement of objections have not disputed the facts discovered by the Commission in the course of its investigation, while others, such as Siemens ([106]), have clearly stated that there is no supply-side substitutability between these two types of product.

(337) The Commission therefore concludes that weatherproof wiring accessories constitute a separate relevant product market.

Control systems

(338) Control systems are systems for controlling a specific application in a particular part of a building (such as a room, office, floor or building). The three main applications concerned are heating, lighting and air conditioning.

(339) The Commission's in-depth investigation showed that, even supposing each of the different categories of product were regarded as forming a separate product market, the notified acquisition would not raise any competition concerns. The precise definition of the product market(s) can therefore be left open for this category.

([105]) Commission notice on the definition of relevant market for the purposes of Community competition law, point 20.

([106]) Reply dated 22 June 2001.

Security and safety systems

Introduction

(340) Security and safety systems are designed to protect life and property by emitting the appropriate alarm signals in emergencies, or by providing emergency lighting in the event of failure of the mains supply. The main applications of such systems are:

— the protection of life: fire detection and emergency lighting systems (which include self-contained emergency lighting units and emergency lighting systems operated from a central source);

— the protection of property: intruder detection and access control systems.

(341) According to the parties, all security systems must be regarded as forming a single product market, since they are all concerned with ensuring safety. The various components of security systems have certain functions which all serve to fulfil one of the two basic functions (protection of life or protection of property) and they are thus complementary. Furthermore, the cohesiveness of the market is largely ensured by legislation that imposes the combined use of various types of security system. In the parties' view, this product market does not include products designed to provide physical protection (such as protective doors, fire doors, etc.) or suppression systems (such as automatic fire extinguishers). During the investigation, the parties nevertheless acknowledged that a distinction should be drawn between a market in systems for the protection of property and a market in systems for the protection of life.

(342) For the reasons set out below, the Commission's in-depth investigation during the second stage of the proceedings showed that there is a separate product market in emergency lighting systems.

(343) As regards other categories of security system besides emergency lighting, the precise definition of the product market may be left open since the notified acquisition raises no competition concerns, whatever the definition.

Emergency lighting, fire detection and other security systems

(344) Emergency lighting systems are designed to provide emergency lighting in the event of failure of the mains

supply so as to allow the evacuation of people where necessary. There are two alternative emergency lighting solutions based on different technologies:

— elf-contained emergency lighting units, with their own batteries within their housing;

— and slave luminaires without batteries, which are connected to a central power source.

(345) Systems for the protection of life (which include emergency lighting and fire detection systems) are not substitutable on the demand side with systems for the protection of property, since these different systems meet fundamentally different needs. Systems for the protection of property are used in all sectors of activity, from the residential sector to large commercial buildings, and are normally optional, except in the case of high-risk buildings (such as banks or museums). On the other hand, according to information provided by the parties, fire detection and emergency lighting systems are used in public venues and establishments and are usually compulsory. It follows that, from the standpoint of demand, systems for the protection of life and systems for the protection of property cannot be regarded as belonging to the same product market. This view is furthermore shared by the parties.

(346) Nevertheless, the parties maintain in their reply to the statement of objections that emergency lighting systems and fire detection systems form part of one and the same market, namely the market in systems for the protection of life.

(347) It should first be noted here that emergency lighting systems perform a different function from fire detection systems, even if, as the parties point out, the two types of system are 'synergetic' in that emergency lighting complements a general evacuation signal emitted by the fire detection system in the event of an emergency. They are therefore not substitutable on the demand side.

(348) In their reply to the statement of objections, however, the parties argue that the common purpose of emergency lighting and fire detection systems is to 'protect the safety of persons' and that the two types of system complement each other. But the existence of an ultimate purpose such as 'protecting the safety of persons', which the systems in question in any case share with a host of other products and systems, is not sufficient justification for including the two types of system in the same product market. The same conclusion should be drawn regarding the argument that they are complementary, as explained earlier in connection with weatherproof wiring accessories.

(349) It should also be noted that few manufacturers have strong market positions in both emergency lighting systems and other types of security system such as fire detection. Although, as stated by the parties in their reply to the statement of objections, many players are active in both segments, their market positions often differ widely between the two. According to an estimate by a third party, of the five biggest manufacturers of fire and intruder detection systems in France, only Legrand is also among the five main manufacturers of emergency lighting systems. And the leading competitor on the fire detection market in France and the rest of Europe, Siemens/Cerberus, is absent from the emergency lighting business.

(350) In their reply to the statement of objections, the parties argue that Schneider boosted its sales of fire detection systems after adding emergency lighting systems to its range, and that exactly the opposite had occurred in the case of Cooper France. The above example of Siemens/Cerberus nevertheless shows that being able to offer both fire detection and emergency lighting systems, while possibly constituting a competitive advantage, is not essential to the extent that the two types of system can be classed in the same product market.

(351) As far as supply-side substitutability is concerned, it should be noted that the various components of fire detection systems (smoke detectors, break glass call points, control panels, audible alarms and message systems, and fire-door closing devices), intruder detection systems (presence sensors, glass break and shock detectors, door or window opening sensors, control panels, sirens and diallers) and access control systems (audio and video entry phones, cameras, surveillance screens and coded keypads) are in no way interchangeable with self-contained emergency lighting units and components for central lighting systems (slave luminaires for connection to central sources and central supply sources).

(352) In this connection, the parties maintain in their reply to the statement of objections merely that all security systems perform the basic functions of detection and alert and that the technologies used in the manufacture of emergency lighting systems and fire detection systems are similar. This general assertion has not been spelled

out by the parties and is not sufficient to demonstrate that there is supply-side substitutability between the systems concerned.

(353) The Commission's in-depth survey of third parties showed that a manufacturer of fire detection systems cannot start producing emergency lighting equipment without considerable additional cost and time. For example, a competitor pointed out that very different technologies are used for fire detection and alarm systems on the one hand and for emergency lighting systems on the other. For a manufacturer to switch from one to the other would require very heavy investments and a lead time of about 18 months before he could hope to market the first products ([107]).

(354) This Commission finding was not disputed by the parties in their reply to the statement of objections. They simply argued that 18 months should be regarded as the normal duration of the product creation cycle. This does not, however, create scope for supply-side substitution with equivalent effects to those of demand substitution in terms of effectiveness and immediacy ([108]).

(355) Emergency lighting cannot therefore be considered part of the same relevant product market as fire detection equipment. The Commission therefore concludes that emergency lighting systems must be regarded as forming a separate product market.

Connection equipment for communication networks

(356) The communication network connection category, as presented by the parties, comprises the passive components included in a computer network at building or floor level. This principally includes all types of data connector (including VDI sockets), connecting cables and wiring cabinets and their components.

(357) The Commission's in-depth investigation showed that, even supposing each of the different categories of product were regarded as forming a separate product market, the notified acquisition would not raise any competition concerns. The precise definition of the relevant product market(s) in this category can therefore be left open.

([107]) Cooper Menvier S.A., reply to phase II questionnaire for competitors (segment 5) dated 29 June 2001.

([108]) Commission notice on the definition of relevant market for the purposes of Community competition law, point 20.

B.3.2 ***Definition of the geographic markets***

Ordinary sockets and switches

Introduction

(358) According to the parties, the geographic market for the sale of sockets and switches is national. However, they also stated in the notification that a number of trends on the market are pushing it towards internationalisation.

(359) The national limit to the markets is due to the considerable barriers to entry that exist from one national market to another. These barriers result primarily from the applicable standards and the traditions (mainly aesthetic) of end users and specifiers. These various factors are reflected in the way the market currently functions in terms of the presence of the various participants (manufacturers, distributors, etc.), their brands and products that are sold on the market, together with their prices.

Standards

(360) Standards covering sockets and switches reflect a lesser degree of harmonisation than those relating to other electrical distribution products, such as the components of electrical switchboards.

(361) For socket outlets, besides design standards (for example, the international IEC 60884-1 standard and the European HD 60884-1 standard), which cover socket performance and safety and are included in the texts of national standards, there are specific national standards for pin configuration. This relates to the spacing of the electrical connection zones. Pin configuration standards differ from one Member State to another and will apparently not be harmonised at international or European level in the short or medium term.

(362) There are three main pin configuration systems for ordinary plug and socket outlets within the EEA. The 'Franco-Belgian' configuration is used in France, Belgium and a number of border areas in Spain. The 'Schuko' configuration is used in Germany, the Scandinavian countries, Austria, Spain, Portugal, the Netherlands and Greece, and the 'British Standard' configuration is used

in the United Kingdom and Ireland. Denmark and Italy have their own standards, with Schuko socket outlets used in Italy as polarised sockets in addition to the Italian standard ([109])

(363) Table 16 shows the pin configuration standards that apply in the EEA countries:

Table 16

Country	Usual name	National standard
Belgium	Franco-Belgian	NBN 61112
Germany	Schuko	VDE 0624
Denmark	Danish	DK 107-2-D1
Spain	Schuko	UNE 20-315-94
France	Franco-Belgian	NF C 61-303/320
Finland	Schuko	
Greece	Schuko	ELOS 294
Italy	Italian	CEI 23-16
Ireland	British	IS 180
Luxemburg	Schuko	
Netherlands	Schuko	NEN 1020
Portugal	Schuko	NP 1260
United Kingdom	British	BS 1363
Norway	Schuko	NEMKO 31/68
Sweden	Schuko	SEMKO 107

Source: the parties.

(364) The difference in the pin configuration standards that apply in the different EEA countries means that socket outlets belonging to one system cannot be used in a country with another system.

([109]) This has a different pin configuration from the standard one which distinguishes one connection point and serves to prevent the connection of certain equipment that could introduce parasites into the circuit.

(365) However, the hypothesis that the existence of different pin configuration standards within one Member State implies a more narrow geographic segmentation of the markets than the national division was not confirmed. In two Member States, Spain and Italy, two parallel standards exist. However, in each of these two countries, one standard is largely dominant (in Italy, the CEI 23-16 standard at 92 %; in Spain, the Schuko standard at 95 %), with the second being confined to very specific applications (in Italy, the Schuko outlet is used as a polarised socket throughout the country) or to border regions (the Franco-Belgian standard in Spain).

(366) Like for the other low-voltage distribution products, the marketing of sockets and switches is in practice subject to a certificate of conformity with a national quality label issued by the relevant national certification body at the manufacturer's request. According to the parties, it takes between [two and seven]* months to obtain a first quality label in a country and costs some EUR [1 000-5000]* per product. Where there is a mutual recognition agreement between the certification bodies concerned, quality labels in other countries are obtained by administrative procedure without the need for further tests. For socket outlets, however, mutual recognition agreements exist only within one pin configuration area (e.g. the Schuko area) ([110]).

Finish

(367) The investigation also confirmed that the finish (appearance and physical characteristics of the switch) and outer design of sockets and switches varies from one Member State to another. Since sockets and switches are the main parts of the electrical installation that are visible, traditions in national taste have a decisive influence on the choices made by users. In Denmark, for example, the specific finish developed by LK (Danish subsidiary of Schneider/Lexel) has become quasi-standard since it is considered to correspond to national taste.

Telephone and television sockets

(368) As regards traditional telephone sockets, it has already been mentioned that they conform to the long-standing specifications of national telecommunications operators.

([110]) Reply by the parties dated 21 June 2001 to question 149.

They therefore differ from one Member State to another in terms of their pin configuration. Moreover, they form part of ranges, the design and appearance of which (shape, colour) are designed to correspond to national taste.

(369) Television sockets also form part of ranges designed to correspond to national tastes. Although the pin configuration side of television sockets has been standardised by the EN 50083-1, EN 50083-4 and EN 50083-7 standards at European level, different national standards for socket outlets exist ([111]).

Presence of participants and brands

(370) The differences in terms of pin configuration standards and traditions relating to finish and appearance result in significant differences in the presence of the various market participants and the prices of their products in the different Member States.

(371) First, the various manufacturers are present on the market to very varying degrees in the different EEA countries. Legrand has a strong market position in France, Italy, Greece and Portugal and, to a lesser extent, in Austria, Belgium, Spain, Ireland and the United Kingdom. However, it is practically absent from the German and Dutch markets and the Scandinavian countries.

(372) Schneider, via its subsidiary, Lexel, has a strong position in the Scandinavian countries, but is less strong in most of the other Member States, mainly Austria, Belgium, Germany, Spain, France and Greece, and is completely absent from the Irish and Dutch markets.

(373) Of the parties' main competitors, only ABB is well positioned in most Member States (but not in Belgium, Denmark, France, Greece, Portugal or the United Kingdom). Siemens is present in three Member States (Austria, Germany and Greece). Hager has a strong position in the United Kingdom only. All the other participants in the various markets are local manufacturers, which nevertheless may have considerable market shares in their own countries (such as Niko in Belgium or Simon in Spain).

([111]) The following standards were mentioned by the parties (reply dated 10 July 2001, question 10): TAE in Germany, TDO in Austria, RTT in Belgium, RITA in Portugal, RJ 12 in Spain, RJ 11 in Greece and Italy and BS in the United Kingdom.

(374) The fact that the same manufacturer is present on a number of national markets does not mean, however, that competition conditions are homogeneous. A manufacturer is often represented by different brands, which, for example, belonged to local firms that were bought by an international manufacturer at a given moment in time. Schneider's presence on the sockets and switches market is essentially due to its subsidiary, Lexel, bought in 1999, which in turn operates via local subsidiaries such as Alombard (France), Eljo (Sweden), Strömfors (Finland) and others. Legrand operates under the Legrand brand in France, Belgium and Italy. Bticino, an Italian subsidiary of Legrand, is the brand under which products are sold in Italy and, to a lesser extent, in France and other countries. ABB uses, besides the ABB brand, local brands in Germany (BJE), Spain (Niessen) and Italy (Vimar).

(375) As regards manufacturers of television sockets which do not make high-current accessories, information provided by the parties also indicates that their presence on the market varies considerably from country to country, even if, in addition to local players, a number of firms are present on several or most of the national markets (e.g. Philips, Kathrein, Hirschmann and Triax).

(376) The distribution market is even more fragmented. As explained above, wholesalers, via which most sockets and switches are distributed, are organised on a national scale, or even a regional or local scale.

Products and prices

(377) As regards products actually sold, the information provided by the parties shows that in each product category, the most widely sold Schneider and Legrand items vary considerably from one Member State to another. A large proportion of what are the most widely sold products in one Member State are not even on offer in all or most other Member States. Schneider did not name a single item that featured among the five most widely sold products in more than one Member State, and explained this fact by reference to 'local habits' ([112]). Legrand identified a total of 151 types of socket outlet, switch and dimmer (including weatherproof accessories) that are among the five most

([112]) See table annexed to reply to question 139 dated 21 June 2001.

widely sold products in at least one Member State, of which only two are among the five most widely sold products in three different countries, and eight are among the most widely sold products in two countries ([113]). However, it should be noted that none of these products is sold in France, where Legrand has its strongest market position.

(378) The prices of the products concerned vary considerably from one Member State to another, as illustrated by Table 17, which shows the averages given by the parties for various products:

Table 17

Spain	100
Portugal	***
France	
Italy	****
United Kingdom	****
Spain = 100,	selling prices for 2000

[Non-confidential version: * = 0-50; ** = 50-100; *** = 100-150; etc.]*

(379) Table 17 does not take account of the fact that most products actually sold in the various EEA countries are not identical. None the less, comparing the prices of products sold in a number of Member States reveals significant price differences. For example, for the Legrand socket and switch types that are among the five most widely sold in more than one Member State, the following differences were found between average net prices ([114]):

Table 18

Catalogue number	Country with the highest price	Country with the lowest price	Price differential (%)
[…]*	[…]*	[…]*	*
[…]*	[…]*	[…]*	*
[…]*	[…]*	[…]*	*
[…]*	[…]*	[…]*	*
[…]*	[…]*	[…]*	*
[…]*	[…]*	[…]*	*
[…]*	[…]*	[…]*	*
[…]*	[…]*	[…]*	*

[Non-confidential version: * = 0-50; ** = 50-100; *** = 100-150; etc.]*

Conclusion

(380) The relevant markets for the sale of sockets and switches are therefore national in scope.

Weatherproof wiring accessories

(381) According to the parties, that include weatherproof wiring accessories in the ordinary sockets and switches market, the geographic market is national. In fact, the geographic market for weatherproof wiring accessories must be considered national for much the same reasons as for the ordinary sockets and switches market.

(382) Furthermore, installation habits vary from one Member State to another. For example, habits require accessories to be either surface or flush mounted, or a different IP rating (indicator of the degree of resistance required) to be used, depending on the country, for the same application. Thus, for the same type of premises, it is customary to use IP 55 in France, IP 44 in the Schuko area and IP 56 in the British Standard area, the highest IP indicating the highest degree of resistance. These different habits mean that products made for the market of a country where a lower IP rating is accepted cannot be sold in a country with a higher IP rating, while products with a higher IP could be too expensive to be marketed on a large scale in a country with a lower IP requirement.

([113]) See document entitled 'LPR Annex' provided in reply to point 139 of the questionnaire of 6 April 2001.

([114]) *Source:* document 'LPR Annex' (see footnote 113).

(383) Products sold in the different Member States therefore vary considerably from one pin configuration area to another. Of the five Legrand products most widely sold in Germany (a Schuko country), four are also among the five most widely sold in Austria (also part of the Schuko area), but none are among the five most widely sold in France or the United Kingdom, which require a considerably higher IP rating.

(384) To the extent that the same products are sold in several countries, their prices can vary considerably. For example, for the five most widely sold Legrand products in France, Table 19 shows the selling prices in the other Member States where these products are also among the five most widely sold:

Table 19

Catalogue number (price in EUR)	B	E	F	I	IRL	L	P
[…]* Average selling price			*	*		*	
[…]* Average selling price		*	*		*		*
[…]* Average selling price		*	*				*
[…]* Average selling price	*		*			*	
[…]* Average selling price			*				

Source: information provided by the parties.
[Non-confidential version: * = 0-50; ** = 50-100; *** = 100-150; etc.]*

Emergency lighting systems

(385) According to the parties, the extent of the market in security and safety systems is European, or even wider. They state that the need met by such systems is present to the same extent in Europe and all developed countries. Firms involved in the security business are active in several European countries where legislation is similar and convergent.

(386) However, it must be noted that emergency lighting is installed in public buildings. It is therefore subject to national legislation on public buildings, which, in some countries at least, imply deviations from the applicable harmonised standards.

(387) The European standard applicable to emergency lighting is EN 60598-2-22, based on the international standard IEC 60598-2-22 and applicable in all EEA countries. However, in France there is a national deviation, mentioned in the European standard. This derives from the decree of 2 October 1978 regarding establishments open to the public and relates to temperature resistance, position in relation to other electrical equipment and independence from supply circuits ([115]).

(388) Like for other items of low-voltage electrical equipment, quality labels exist that are issued by national certification bodies. However, unlike with the other products concerned, it is compulsory to obtain this label in some Member States, including France. In France, this entails a cost of some EUR [1 000 - 8 000]* and a period of between [one and twelve]* months to obtain the label, unless the product has already been certified by the relevant body in another Member State that has signed the Cenelec Certification Agreement ([116]). In Belgium, government buildings are granted approval by the Buildings Department of the Home Affairs Ministry under a specific regulation. The parties stated that obtaining this approval costs EUR [1 000 - 5 000]* and takes [1-12]* months ([117]).

(389) The parties also concede that tastes and installation habits with regard to emergency lighting systems vary from one Member State to another. These variations relate, for example, to the voltage of the supply and the duration of the charge of the lighting units. This means that different products are required.

(390) Manufacturers' positions on the different national markets in emergency lighting vary considerably. Legrand, with its URA/Lumatic subsidiaries, has a market share of [60-70]* % in France ([70-80]* % according to an internal sales department document), [30-40]* % in Spain, [10-20]* % in Portugal and [10-20]* % in Belgium. In all other countries, Legrand's

([115]) Reply by the parties dated 21 June 2001 to question 187.
([116]) See point 62 above.
([117]) Reply by the parties dated 21 June 2001 to question 187.

market share is below [10-20]* %. Schneider has a significant market position only in France ([0-10]* % of the market).

(391) The names and market shares of other competitors also vary from country to country. Only Cooper/Menvier (present in Austria, Belgium, Portugal and the UK), Zemper (Spain and Portugal) and Beghelli (Austria, Belgium, Italy) are major competitors of the parties in a number of Member States ([118]).

(392) Legrand sells its emergency lighting equipment via wholesalers, which contributes to the national fragmentation of the markets ([119]).

(393) Where a manufacturer is present on different national markets, it sells different products on those markets. Of the five most widely sold types of self-contained emergency lighting unit in France, only two are among the five most widely sold Legrand types in another Member State of the EEA, namely catalogue numbers […]* in Austria and Portugal. However, these two products are sold at a higher price in […]* than in the other two countries, as illustrated by the following table:

Table 20

Catalogue number (price in EUR)	A	F	P
[…]* Average selling price	**	**	**
[…]* Average selling price	**	**	**

Source: the parties.
[Non-confidential version: * = 0-50; ** = 50-100; *** = 100-150; etc.]*

(394) The Commission therefore concludes that the relevant geographic market for the sale of emergency lighting systems is national, at least as far as the French market is concerned.

B.4 FIXING AND CONNECTING EQUIPMENT

B.4.1 ***Definition of the fixing and connecting equipment product market***

(395) The product market defined by the parties comprises fixing and connecting equipment used downstream of the final panelboard and upstream of the wiring accessories. It covers the following categories of products:

— flush-mounting boxes, i.e. boxes fitted into the wall, with rear and side entry for cables pulled inside the wall. The outside of the box is fitted with the appropriate equipment (switches and sockets). The parties have mentioned that boxes may differ slightly according to the type of wall (concrete, dry partition walls, brick walls);

— junction boxes, i.e. boxes for the protection of cable connections;

— equipped junction boxes, i.e. the accessories used to make cable connections;

— terminal strips, i.e. the accessories used to connect wires and cables;

— cable guides, i.e. the small tubing used to protect cable;

— cable clips, i.e. the accessories used to fix cables;

— cable ties, i.e. the accessories used to bundle cables together or onto a mounting;

— rigid conduits, i.e. tubing that carries and protects cable;

— tube fixing accessories, for surface mounting.

(396) The parties consider that these products constitute one and the same product market as they are all used in the wiring infrastructure of an electrical installation, from the final panelboard up to connection with the wiring accessories (sockets, switches, etc.). More specifically, these products, used in all electrical installations, are designed to carry, protect and join cable used in electrical installations ([120]). The parties add that the products are substitutable from the standpoint of supply and involve the same basic moulding, extrusion, cutting and machining techniques. They could be produced in a

([118]) Reply by the parties dated 10 July 2001 to question 31.
([119]) See points 202-210 above.
([120]) Reply by the parties to points 238 and 240 of the questionnaire of 6 April 2001.

single operation using relatively inexpensive inputs ([121]). The parties claim that, owing to the similarity of the technologies required to manufacture the various fixing and connecting products, companies already producing certain products could start manufacturing other products ([122]).

(397) A precise definition of the product market for the sale of fixing and connecting equipment is not required in the present case as the proposed operation raises identical competition problems however the relevant market is defined.

B.4.2 ***Definition of the geographic market for fixing and connecting equipment***

(398) The parties have not adopted a clear position on the geographic dimension of the market for fixing and connecting equipment. They state in Form CO that the geographic dimension of the market 'cannot be regarded as purely national'. The factors described below, as well as the general considerations outlined above in connection with distribution boards ([123]), confirm on the contrary that the relevant product market is national.

National specifications as well as international standards apply to mounting and junction boxes

(399) Mounting and junction boxes are covered by standard IEC 60 670, which lays down the 'general requirements for enclosures for accessories for household and similar fixed electrical installations'. The parties have pointed out, however, that the standard does not specify the dimensions of the boxes in question. The dimensions are in fact laid down by the national standards bodies, which leads to national differences. The bodies specify the dimensions for mounting and junction boxes on different bases, usually according to the particularities of the building industry in the Member State in question; these include the type of building materials used, the quality and diversity of walls and partitions (concrete, brick, masonry, dry partition walls, etc.). The parties state, however, that some groups of countries, such as the Nordic countries, have adopted similar dimensions. France, however, does not impose any dimensions for mounting and junction boxes ([124]).

National quality labels apply alongside international standards to several categories of connecting and fixing equipment

(400) Quality labels relating to several categories of connecting and fixing equipment exist in the different EEA countries. National quality labels are granted by independent national certification bodies and offer consumers a guarantee that the marked product complies with the technical requirements defined by the standards applicable to the products in question. The technical requirements may stem either from a European standard, directly or indirectly via a national standard transposing at domestic level the international standard, or from a national standard that is entirely unrelated to any international standard. Although labels are obtained on a voluntary basis, the parties acknowledge that there is clear commercial advantage in obtaining such labels in certain countries, notably France, Germany and Italy ([125]).

(401) The parties have thus obtained quality labels for the following products:

— for several types of flush-mounting boxes ([126]): OVE (Austria) and CEBEC (Belgium);

— for terminal strip: NF (France), KEMA (Netherlands), VDE (Germany), IMQ (Italy), AENOR (Spain), CEBEC (Belgium) ([127]);

— for rigid conduit: NF USE (France), awarded by LCIE ([128]).

([121]) Reply by the parties to point 240 of the questionnaire of 6 April 2001.
([122]) Reply by the parties to point 242 of the questionnaire of 6 April 2001.
([123]) Points 202-210.
([124]) Reply by the parties dated 11 July 2001 to a request for information made by the Commission on 6 July 2001.
([125]) Reply to point 246 of the questionnaire of 6 April 2001.
([126]) Annex to the parties' reply to point 66 of the questionnaire of 6 April 2001.
([127]) Reply by the parties dated 20 July 2001 to a request for information made by the Commission on 3 July 2001.
([128]) Reply by the parties dated 20 July 2001 to a request for information made by the Commission on 3 July 2001.

The most widely sold fixing and connecting equipment varies considerably from one Member State to another

(402) Schneider states that, as regards fixing and connecting equipment, the five most widely sold products differ from one country to another owing to local customs ([129]). In addition, the different entities of the Schneider group present on the relevant market, such as Alombard or Sarel, usually sell these products in only one Member State. The comparisons given below therefore essentially concern Legrand products.

Flush-mounting boxes

(403) The parties state that the most widely sold models vary considerably according to the Member State ([130]). The data supplied by Legrand show that the five most widely sold mounting boxes vary considerably from one Member State to another and that it is unusual to find one of the products on the list in more than three Member States. Thus, the list supplied by Legrand of the five most widely sold mounting boxes in eleven EEA countries in 2000 ([131]) contains 37 models. Of these, three appear in four countries (and none in more than four countries) and three appear in three countries.

Equipped junction boxes

(404) The parties explain that equipped junction boxes are used mainly in France and in only a few other Member States ([132]). According to an internal Legrand document ([133]), it seems that in 2000, Legrand, which is present on the market for connecting and fixing products in seven Member States, sold this product in only four Member States, i.e. France, Germany, Austria and Ireland ([134]).

Rigid conduit

(405) The parties state that rigid conduit diameters vary from one Member State to another. As a result, the diameters of the accessories used to fix the conduit also vary from one country to another. The parties add that in some Member States metal conduits are used whilst PVC is employed in others ([135]).

Cable ties

(406) The data supplied by Legrand show that the list of the five most widely sold models of cable tie varies significantly from one Member State to another, and that items on that list are only rarely found in more than three Member States. Thus the list supplied by Legrand of the five most widely sold types of cable ties in each of the 15 EEA countries ([136]) consists of 39 different models. Of these, only two appear in four countries (and none in more than four countries), whilst six appear in two countries.

(407) The parties also explain that, as regards cable ties, a particular category known as Colson cable ties is used very much more widely in certain EEA countries, especially France, than in others. The product has special weather- and tear-resistance qualities due to the fact that it is made of a stronger but also much more expensive plastic than that used for other cable ties. Its extensive use in France is due to the fact that it was adopted by EDF when the latter decided that the cost of replacing broken clips over a wide geographical area was prohibitive and unacceptable ([137]).

Significant price differences between Member States

(408) For each of the main categories of fixing and connecting equipment, the Commission asked the parties to provide it with the average selling price of

([129]) 'General comment' on the Annex to the reply from Schneider to point 139 of the questionnaire of 6 April 2001.
([130]) Reply by the parties to point 244 of the questionnaire of 6 April 2001.
([131]) Legrand annex to point 139 of the questionnaire of 6 April 2001.
([132]) Reply by the parties to point 244 of the questionnaire of 6 April 2001.
([133]) Annex to Legrand's reply to point 139 of the questionnaire of 6 June 2001.
([134]) Legrand annex to point 193 of the questionnaire of 6 April 2001.
([135]) Reply by the parties to point 244 of the questionnaire of 6 April 2001.
([136]) Annex to Legrand's reply to point 139 of the questionnaire of 6 June 2001.
([137]) Reply by the parties dated 25 June 2001 to a request for information made by the Commission on 21 June 2001.

each of the five most widely sold products in all the Member States in which the products are sold ([138]). Where the same products are among the five most widely sold products in more than one country, their prices differ significantly.

(409) In any event, the products in question generate a large proportion of Legrand's sales within each of those categories of fixing and connecting equipment. They are therefore representative of those categories of products.

Flush-mounting boxes

(410) Table 21 below shows the selling prices, in euros, of each Legrand mounting box on the list of the five types most widely sold in at least two Member States in 1999.

Table 21

Catalogue number	DE	DK	BE	FR	GR	NL	PT	ES	UK
[…]* Average selling price (Relative price: FR=100)				(100)	**				
[…]* Average selling price (Relative price: DE=100)	(100)					**			***
[…]* Average selling price (Relative price: DE=100)	(100)					**			
[…]* Average selling price (Relative price: DE=100)	(100)	***							***
[…]* Average selling price (Relative price: DK=100)		(100)	**				**		
[…]* Average selling price (Relative price: BE=100)			(100)		***		**	*	
[…]* Average selling price (Relative price: BE=100)			(100)		***		**	*	
[…]* Average selling price (Relative price: DE=100)	(100)				*	**		*	

Source: the parties.
[Non-confidential version: * = 0-50; ** = 50-100; *** = 100-150; etc.]*

(411) Apart from product No […]*, the price disparities between Member States for most types of flush-mounting box marketed by Legrand are particularly significant. A comparison between neighbouring or nearby Member States alone shows that:

— product No […]* sells at EUR […]* in […]* and EUR […]* in […]*, a difference of [0-50]* %;

— product No […]* sells at EUR […]* in […]* and EUR […]* in […]*, a difference of [0-50]* %;

— product No […]* sells at EUR […]* in […]* and EUR […]* in […]*, a difference of [0-50]* %;

([138]) Annex to the parties' reply to point 245 of the questionnaire of 6 April 2001.

— product No […]* sells at EUR […]* in […]* and EUR […]* in […]*, a difference of [50-100]* %;

— product No […]* sells at EUR […]* in […]* and EUR […]* in […]*, a difference of [50-100]* %.

Cable ties

(412) Table 22 shows the selling price in euros of each model of Legrand cable tie among the five most widely sold products in at least two Member States in 2000.

Table 22

Catalogue number	AT	BE	DE	DK	ES	FR =100	GB	GR	IR	NL	PT
[…]* Average selling price			***			(100)					
[…]* Average selling price			***	****		(100)	****	***			
[…]* Average selling price		***	**	***	**	(100)	****	****			
[…]* Average selling price				***	**	(100)					

Source: the parties.
[Non-confidential version: * = 0-50; ** = 50-100; *** = 100-150; etc.]*

(413) The price differences between Member States as regards most of the clips sold by Legrand are considerable. The differences just between neighbouring or nearby countries alone are striking:

— product No […]* sells at EUR […]* in […]* and EUR […]* in […]*, a difference of [0-50]* %;

— product No […]* sells at EUR […]* in […]*, […]* in […]* and EUR […]* in […]*, a difference of [0-50]* % between […]* and […]*, [0-50]* % between […]* and […]* and [0-50]* % between […]* and […]*;

— product No […]* sells at EUR […]* in […]* and EUR […]* in […]*, a difference of [0-50]* %;

— product No […]* sells at EUR […]* in […]* and EUR […]* in […]*, a difference of [0-50]* %;

— product No […]* (not shown in Table 20) sells at EUR […]* in […]* and EUR […]* in […]*, a difference of [0-50]* %.

Equipped junction boxes

(414) According to the data supplied by Legrand ([139]), it sold junction boxes in four Member States in 2000. The products referred to below were among the five products most widely sold in those Member States in that year. These products therefore generated a considerable volume of sales in the category of equipped junction boxes and are thus representative of the category as a whole.

(415) In 2000, Legrand product No […]*, listed as a '[…]*' sold at an average unit price of:

— [90-130]* EUR in France;

— [290-330]* EUR in Austria;

— [340-380]* EUR in Ireland.

([139]) Annex to Legrand's reply to point 139 of the questionnaire of 6 April 2001.

(416) In 2000, Legrand product No […]*, listed as a '[…]*' sold at an average unit price of EUR […]* in […]*, whereas in […]* in the same year it sold at an average unit price of EUR […]*, a difference of [50-100]* %.

(417) Lastly, in 2000, Legrand product No […]*, listed as a '[…]*' sold at an average unit price of EUR […]* in […]* and EUR […]* in […]*, a difference of [250-300]* %.

Cable guides

(418) Table 23 below shows the selling price in euros of each type of Legrand cable guide on the five most widely sold list in at least two Member States in 1999.

Table 23

Catalogue number (price in EUR)	DE	AUT	BE	DK	ES	FR = 100	GR	FIN
[…]* Average selling price	*****		9*			(100)		11*
[…]* Average selling price			8*			(100)		11*
[…]* Average selling price	****	*****	******	***	7*	(100)	******	11*
[…]* Average selling price	****	*****	******		7*	(100)	******	7*

Source: the parties.
[Non-confidential version: * = 0-50; ** = 50-100; *** = 100-150; etc.]*

(419) The price differences between Member States as regards most of the clips sold by Legrand are considerable. The differences just between neighbouring countries are striking:

— product No […]* sells at EUR […]* in […]*, […]* in […]* and EUR […]* in […]*, a difference of [50-100]* % between […]* and […]*, [50-100]* % between […]* and […]* and [300-350]* % between […]* and […]*;

— product No […]* sells at EUR […]* in […]* and EUR […]* in […]*, a difference of [50-100]* %;

— product No […]* sells at EUR […]* in […]* and EUR […]* in […]*, a difference of [50-100]* %.

No competitors other than the parties concerned are present in more than one Member State and the positions of the parties in the different Member States are asymmetrical

(420) It seems that few companies operating on the market for fixing and connecting equipment are present in several Member States. The documents submitted by the parties ([140]) show that only Schneider and Legrand market these products in more than one EEA country. Schneider is present in six EEA countries (Denmark, Finland, France, Italy, Sweden and Norway) and Legrand in seven (Spain, France, Italy, Ireland, Netherlands, Portugal and the United Kingdom). The parties' chief competitors, Hager, Siemens, ABB and Gewiss, are present in only one Member State despite the fact that at least the first three companies referred to are major groups located in a number of EEA countries.

([140]) Annex 16 to Form CO.

(421) Furthermore, the market shares announced by the parties ([141]) show very different positions in the various EEA countries in which they are present. Schneider has a market share of [20-30]* % in France, but only [0-10]* % in Italy. Similarly, it has a [60-70]* % share in Norway but only [30-40]* % in Sweden. As for Legrand, it has a market share of [50-60]* % in France but only [10-20]* % in Italy and [10-20]* % in Spain. The parties also report that 'there is often competition from small and medium-sized firms on the domestic market, which often have considerable shares of the local market' for fixing and connecting equipment ([142]).

Fixing and connecting equipment is distributed on a national basis

(422) The parties state that an average of 90 % of the turnover of manufacturers of fixing and connecting equipment stems from sales to wholesalers ([143]).

(423) As explained above, relations between manufacturers and wholesalers of electric distribution equipment are organised on a national basis, even in the case of manufacturers and wholesalers operating at European level. This is also true of fixing and connecting equipment, which is also distributed on a national basis.

Conclusion

(424) The relevant geographic market for the sale of fixing and connecting equipment is therefore national. In their reply to the statement of objections, the parties did not contest this conclusion.

B.5 TRANSFORMATION AND POWER SUPPLY EQUIPMENT

B.5.1 ***Product markets***

(425) Transformers and power supplies are utilised in low-voltage equipment for the control and automation of machinery used in industrial processes and buildings. They supply the appropriate voltages and currents to the control and power part of the automation equipment, which, for safety reasons, must be isolated from the main supply and often requires different supply voltages (e.g. lower or direct current voltages) from the mains supply.

(426) The parties state that transformers and power supplies belong to the same product market as they are the result of technological choices fulfilling the same need, which is to supply electricity to automation products. This claim, however, does not stand up to scrutiny.

(427) First, transformers and power supplies have different functions. The former are intended for alternating current control circuits and modify voltage and isolate the system from the main supply. The latter make it possible to provide direct voltages. The parties also stated in their reply to the statement of objections that power supplies often display a much higher level of sophistication and functionality (protection, fail safety, high-performance control, etc.), which, they claim, is reflected in their higher price as compared with transformers.

(428) Then the choice of automation device dictates the choice of transformer or power supply. The parties explained in the course of the investigation that the choice of one or other technology depends on an upstream choice relating to the automation itself. Thus, they claim, an automation/transformer combination and an automation/power supply combination can be substituted for each other. According to the argument put forward by the parties, transformers and power supplies for automation equipment are no longer substitutable on the demand side once the automation device has been chosen.

(429) Furthermore, the two types of product are complementary. The parties explain that modern automation devices usually include an isolation transformer and electronic power supplies in order to adjust and regulate voltage levels. The technologies concerned thus complement rather than compete against each other.

([141]) Annex 16 to Form CO.
([142]) Reply by the parties dated 16 July 2001 to a request for information made by the Commission on 3 July 2001.
([143]) Form CO, p. 102.

(430) In their reply to the statement of objections, the parties nevertheless maintain that the choice between transformers and/or power supplies remains wide open from one use to another even after the automation device has been chosen.

(431) However, this assertion not only contradicts the explanations provided by the parties in reply to requests for information made by the Commission during the investigation; ([144]) it is also disproved by the information given in the Télémécanique (Schneider) catalogue ([145]), which explains in detail, in the form of a 'selection guide', the different functions of transformers, filtered rectified power supplies and switch mode power supplies, and the applications (for example in terms of control circuits, environment, mains supply, load sensitivity) for which these types of product are suitable. In their reply to the statement of objections, the parties add other factors, such as reliability, maintenance conditions or standardisation of the automation device components, which may dictate the choice of either a transformer or a power supply, or even a particular type of power supply. It follows that there is only very limited supply-side substitutability between transformers and power supplies.

(432) The prices of transformers and power supplies differ significantly. Of the Schneider products on the list of the five products most widely sold in each of the EEA countries, the average price of transformers varies from EUR [10-50]* (type […]* in […]*) to EUR [40-80]* (type […]* in […]*), whereas the average price of power supplies ranges from EUR [10-50]* (type […]* in […]*) to EUR [480-520]* (type […]* in […]*). The corresponding prices charged by Legrand vary from EUR [0-40]* (type […]* in […]*) to EUR [180-220]* (type […]* in […]*) for transformers and from EUR [40-80]* (type […]* in […]*) to EUR [400-440]* (type […]* in […]*) for power supplies.

(433) In their reply to the statement of objections, the parties claim that these price differentials reflect the higher level of sophistication and functionality of power supplies in comparison with transformers.

([144]) Reply of 19 March 2001 to point 25 of the questionnaire of 14 March 2001.

([145]) Catalogue for 1999, p. 366/367.

(434) This assertion clearly implies that the two types of product are not substitutable on the demand side given their characteristics and prices ([146]).

(435) Transformers and power supplies are furthermore very different from a technological standpoint. The parties stated in the course of the investigation that power supplies are based on 'programmable logic' technology and consist mainly of electronic components (even though in most cases they comprise a transformer). Transformers are based on 'hardwired logic' technology consisting of electromechanical components and have no electronic components ([147]). Transformer technology has reached a stable plateau, whereas power supplies are a product of constantly evolving technologies ([148]). A competitor explained that transformers and supply equipment not only involve different production tools but also different testing and checking equipment. That is why a transformer manufacturer expends a considerable amount of time and money in order to start manufacturing power supplies and vice versa ([149]). There is therefore no supply-side substitutability between the two products.

(436) In response to this argument, the parties stated in their reply to the statement of objections that there was a wide range of specific functions served either by transformers or by power supplies and that associating transformers with certain 'hardwired logic' industrial products and power supplies with other 'programmable logic' products was 'simplistic'. The parties also take the view that switching production from transformers to power supplies and vice versa 'does not give rise to any difficulties', but they do not explain in detail the time and cost involved.

(437) Such an assertion cannot invalidate the finding that there is no supply-side substitutability between transformers and power supplies. However wide the possible range of power supply solutions, it is clear from the information supplied both by the parties and

([146]) Commission notice on the definition of relevant market for the purposes of Community competition law, point 7.

([147]) Reply of 19 March 2001 to point 25 of the questionnaire of 14 March 2001.

([148]) Supplement to Form CO of 14 March 2001, p. 12.

([149]) Polylux, reply dated 9 July 2001.

by the abovementioned third parties that all power supply variants are based on a fundamentally different technology from that of transformers.

(438) The parties also maintained that most of the market players sold both transformers and power supplies. It should nevertheless be pointed out that, although a considerable number of manufacturers are indeed present in both segments, of all the competitors with a market share of more than […]* % on the combined market in transformers and power supplies only Siemens and Cecla are active in both segments, while the others are present only in the power supplies segment, so that they do not exert any actual competitive pressure on the parties in the transformers segment.

(439) The parties also argue in their reply to the statement of objections that the use of transformers is declining in favour of power supplies given the market trend towards greater technical sophistication and the increasing use of electronics. This trend, so they claim, is forcing market players to switch production from transformers to rectified (electromechanical) power supplies, then filtered rectified (electromechanical) power supplies and finally to stabilised (electronic) power supplies.

(440) If such a trend indeed exists in the medium or long term, it is not likely, however, to exert sufficient competitive pressure on transformer manufacturers. As explained earlier, the choice of either a transformer or a power supply depends on the prior choice of automation device, so that the substitution described by the parties can operate only in terms of the choice between an automation/transformer solution and an automation/power supply solution. Since an automation device is not usually chosen exclusively with a view to the type of access to the electricity source, it is unlikely that an increase in the prices of transformers would suffice on its own to convert a sufficiently large proportion of the demand for an automation/transformer solution into demand for an automation/power supply solution. This is, moreover, illustrated by the price variations noted above.

(441) The Commission therefore concludes that transformers and electronic power supplies constitute separate product markets.

B.5.2 ***Geographic market***

(442) In geographic terms, the parties claim that the market has a European dimension. They state that transformers and power supplies are standardised at international level and that the main competitors have an international presence on the basis of a standard catalogue and a single brandname.

(443) The law applicable to transformers and power supplies is harmonised at European level. The relevant standards for voltage transformers are the IEC 61558 series standards and the EN standards in the same series. The standards deal with the electrical, thermal and mechanical safety aspects of transformers with a primary voltage of less than 1 000 volts and power supplies incorporating such transformers. Power supplies are covered by IEC standard 60950 and the equivalent European standard bearing the same number. There are no relevant national standards.

(444) At the request of a customer, transformer and power supply manufacturers commission independent laboratories to certify that their products conform to the standards applicable. As the parties have pointed out, all the laboratories recognised by the EEA countries are able to carry out the necessary tests and deliver a certificate of conformity with the standard. However, the reputation of the laboratory and its recognition by the market are decisive factors in the choice made. The parties estimate the time and the cost involved in obtaining a certificate at [1-18]* months and FRF [50-250]* respectively. Although such costs cannot be regarded as prohibitive, they do nevertheless constitute a barrier to market entry between Member States that is far from negligible, since certification has to be obtained for each model separately and certificates have to be renewed at regular intervals.

(445) Analysis of the prices quoted by the parties shows that there are substantial variations from one Member State to another. Table 24 below shows the selling price in euros of each type of Schneider transformer and power supply on the five most widely sold list in at least two Member States.

Table 24

Product (price in EUR)	B	D	DK	E	F	I	NL	UK	S	N
Transformer […]* Average selling price	*	*	**	*	*	*	*	*	*	
Transformer […]* Average selling price	*	*	*	*	*	*		*	*	*
Transformer […]* Average selling price	*	*	*	*	*		*		*	*
Power supply […]* Average selling price	**		**	**	**	**		11*	**	
Power supply […]* Average selling price					***	**	***			
Power supply […]* Average selling price	**		**		**					
Power supply […]* Average selling price					**				**	
Power supply […]* Average selling price					***					**

Source: the parties.
[Non-confidential version: * = 0-50; ** = 50-100; *** = 100-150; etc.]*

(446) It is clear from such price differences that supply can raise prices in some countries without running the risk of customers importing the products from neighbouring countries.

(447) In their reply to the statement of objections, the parties argue that the variations in Schneider prices do not provide any guidance for the purpose of defining the geographic market since they result from the fact that Schneider decided not to develop a Europe-wide pricing policy given the small quantities of products concerned and the minimal turnover generated thereby. But, in the absence of a group-level pricing policy, the prices set by Schneider subsidiaries in the different countries do reflect competitive conditions in the countries concerned. The price variations observed therefore reflect competitive conditions that differ significantly from one country to another ([150]).

(448) It should likewise be noted that there are also price variations, albeit to a lesser extent, in the case of Legrand products. Table 24a below shows the prices of the five most widely sold transformers in France which are also on the five most widely sold list in at least one other Member State.

Table 24 a

Product (price in EUR)	B	D	DK	E	F	I	L	NL	N
[…]*	[0-20]*				[20-30]*				
[…]*	[0-20]*				[20-30]*		[20-30]*	[0-20]*	
[…]*					[30-40]*				[40-50]*

Source: the parties.

([150]) Commission notice on the definition of relevant market for the purposes of Community competition law, point 8.

(449) According to the parties, 60 % of transformers and power supplies sold by them are distributed by wholesalers organised at national level. Schneider estimates that in France, where the overlaps between the parties are the greatest, its sales to wholesalers reach [70-80]* % for transformers and [70-80]* % for power supplies.

(450) In their reply to the statement of objections, the parties also mention the presence at international level of manufacturers of different sizes, including major players such as Omron, Siemens and Phoenix, but also numerous SMEs.

(451) However, the presence of a player in several countries does not necessarily mean that competitive conditions are sufficiently uniform there. The data provided by the parties in the course of the investigation suggest that the market positions of the different players vary considerably from one country to another. For example, Legrand's share of transformer and power supply sales exceeds [0-20]* % only in France ([20-40]* %), Belgium ([0-20]* %), the Netherlands ([0-20]* %), Italy ([0-20]* %) and the United Kingdom ([0-20]* %). Siemens' share varies between [0-20]* % in the United Kingdom and [20-40]* % in Germany; the share held by Phoenix ranges from [0-20]* % (Austria, Finland) to [20-40]* % (Belgium).

(452) The parties also claim that there are a great many exports, although without quantifying the proportion of imported products sold in a particular country. But the fact that products are exported does not prevent the extent of the market being national if other factors show that supply and demand are matched on a national basis, as in the case in point.

(453) As for the claim made by the parties in their reply to the statement of objections that the products sold were often the same in different countries, it is sufficient to note that the data supplied by the parties show that the Legrand models sold in the different Member States vary considerably. Of the five most widely sold models in France, for example, only one figures on the five most widely sold list in three other countries (including the Benelux countries) and two are found in no other Member State. It is also clear from the price variations observed that customers do not seek to take advantage of differences in prices to any appreciable extent.

(454) It should be mentioned here that the parties state in their reply to the statement of objections that there are customised products in addition to the standard catalogue range. This means that transformer manufacturers and their customers (original equipment manufacturers, or OEMs) need to maintain a close relationship. Since both transformer manufacturers and OEMs are often small or medium-sized enterprises that do not have a sales or purchasing network in more than one country, the need to maintain such a relationship limits the scope for customers to source from manufacturers in other countries.

(455) The Commission accordingly concludes that the markets for transformers and power supplies are both national.

B.6 CONTROL AND SIGNALLING UNITS

B.6.1 ***Product market***

(456) The parties define a product market consisting of control and signalling units, i.e. mechanical connection equipment designed to operate apparatus. The product market as defined by the parties includes the following categories of product:

— pushbuttons, i.e. a control switch with a device designed to be operated by a part of the human body, usually a finger or the palm of the hand, and equipped with a spring return;

— selector switches, i.e. a combination of switching elements of the push-button type activated manually by turning;

— pressure buttons, i.e. a pushbutton for use in applications where a shallow depth is required; the electrical connection is made by a printed circuit;

— pushbutton boxes, i.e. metal or plastic (polyester) pre-punched enclosures designed to accommodate the operator/machine interface. The end product constitutes a control panel;

— pushbutton keypads, i.e. mechanical connecting equipment that controls the operation of a connection device. A keypad consists of three main elements:

— a set of keys;

— an electronic data processing and data transmission unit;

— a connection interface;

— membrane keypads, a special keypad technology. The membrane is the part in contact with the operator, enabling the keypad to be customised to the needs of the end user;

— cam switches, i.e. a control switch operated by angular rotation which modifies the connections of one or more electrical circuits;

— rotational switch disconnectors, i.e. a mechanical connection device capable of establishing, carrying and breaking electrical current under normal operating conditions. It also satisfies the isolation requirements for disconnectors;

— master controllers, i.e. operating devices controlled by an angular positioning toggle switch;

— pilot lamps, i.e. a signalling device composed of a coloured head (light) designed to inform the operator about the status of the machine. It also includes terminal connections in the lower section which supply power. A pilot lamp head can be associated with a push button to form an illuminated push button.

(457) The different types of product described above are available in several cable and fixing diameters: 12 mm, 16 mm, 22 mm and 30 mm, in accordance with the standards laid down by the IEC and Cenelec ([151]). Historically, the 30 mm diameter appeared first and was particularly widely used in the steel industry. This diameter gives a solid and strong product. Gradually, the development of production techniques and customers' desire to reduce the size of the equipment led to the development of smaller diameters. The parties state ([152]) that, at present, the 30 mm diameter is gradually being replaced by the 22 mm diameter. The more fragile 16 mm and 22 mm diameters are chiefly used in electronic equipment in protected environments. Thus the 16mm diameter is, they claim, increasingly used for the pushbutton keypads and membrane keypads referred to above.

(458) The parties consider that these different products form a single product market as they all fulfil the same purpose, i.e. they provide the interface for the man-machine dialogue. More specifically, the products are designed to be incorporated into the control panels of low-power motors or automation products ([153]). According to the parties, the products are largely substitutable on the demand side. All control and signalling units could thus be used equally or replace each other in the machinery. The reason why manufacturers use one rather than another type of product is, according to the parties, essentially linked to the priorities of the end user in terms of aesthetics, dimensions and customs ([154]). The parties add that the products are substitutable on the supply side as they are all electromechanical products. Only the most complex membrane keypads require screen printing skills for button production ([155]).

(459) In this present case an exact definition of the market for control and signalling units is not necessary as, irrespective of the definition of the relevant market, the transaction raises identical problems of competition.

B.6.2 ***Geographic market***

(460) The parties consider that the geographic dimension of the market for control and signalling units is European or even worldwide. They rely firstly on the fact that the products are intended to be incorporated into industrial machinery that is sold in an identical form throughout the world. The export of industrial machinery is also bringing about a narrowing of the range of control and signalling units used to the 22 mm diameter category. The parties explained that, for a given function, punchout diameter and technical characteristics, there is

([151]) IEC and EN standards 60947-5-1.

([152]) Reply by the parties to point 29 of the questionnaire of 15 March 2001.

([153]) Supplement to Form CO, p. 15.

([154]) Reply by the parties to point 291 of the questionnaire of 6 April 2001.

([155]) Reply by the parties to point 290 of the questionnaire of 6 April 2001.

only one product on the market in Europe, as evidenced by the fact that the same reference number is used in the product catalogues distributed in the different Member States ([156]). The parties add that the products are covered by completely harmonised European standards; there are no specific national features or quality marks.

(461) The following paragraphs conclude that the geographic dimension of those markets is national.

The prices of control and signalling units are substantially different from one Member State to another

(462) Analysis of the prices quoted by the parties shows that there are substantial variations from one Member State to another. Thus the prices of the five control and signalling units most widely sold in each of the EEA countries by Schneider vary considerably, as shown in the table below compiled from data supplied by Schneider ([157]). The five products belong to five different categories of control and signalling units; they may therefore be regarded as a representative sample of control and signalling units generally.

Table 25

Product	Country with the highest price Average price in that country in 1999 (EUR)	Country with the lowest price Average price in that country in 1999 (EUR)	Price differential (%)
[…]* (push button)	Ireland [*]*	Belgium [*]*	[*]*
[…]* (rotating button)	Ireland [*]*	United Kingdom [*]*	[*]*
[…]* (pilot light)	United Kingdom [*]*	Italy [*]*	[**]*
[…]* (button enclosure)	Ireland [***]*	Germany [**]*	[**]*
[…]* (switch)	Netherlands [**]*	Belgium [*]*	[**]*

Source: the parties.
[Non-confidential version: * = 0-50; ** = 50-100; *** = 100-150; etc.]*

(463) Generally speaking, the data supplied by Schneider ([158]) show that (i) there are substantial price disparities between EEA countries, as well as between neighbouring countries, for the same product and that (ii) although the disparities fluctuate sharply from one year to the next, they are nonetheless significant overall in the period in question. Thus the price disparity in 1999 between France and Germany ranged from [0-40]* % (for product […]*) to [20-60]* % (for product […]*). In 1997, the price disparity ranged from [0-40]* % (for product […]*) to [10-50]* % (for product […]*). Similarly, the difference between France and Spain in 1999 ranged from [0-40]* % (for product […]*) to [10-50]* % (for product […]*). In 1997, the price disparity between France and Spain ranged from [0-40]* % (for product […]*) to [20-60]* % (for product […]*).

(464) It is also interesting to note that the price disparities increased in the period in question between other neighbouring countries. Thus between Germany and Belgium the price difference in 1999 ranged from [0-30]* % (for product […]*) to [30-60]* % (for product […]*). In 1997, the price difference ranged from [0-30]* % (for product […]*) to [10-40]* % (for product […]*).

(465) An identical conclusion can be drawn from an analysis of the prices for control and signalling units sold in the

([156]) Reply by the parties to point 70 of the questionnaire of 29 June 2001.
([157]) Schneider annex to the reply to point 33 of the questionnaire of 15 March 2001.
([158]) Schneider annex to the reply to point 33 of the questionnaire of 15 March 2001.

period 1995-2000 in various EEA countries by Baco, a Legrand subsidiary.

(466) In general, the data supplied by Legrand ([159]) show that (i) there are substantial price differences between EEA countries, even between neighbouring ones, and that (ii) although the differences fluctuate sharply, they are nonetheless considerable overall in the period in question. Thus in 2000 the price differences between France and its neighbours (Germany, Belgium, Italy and Spain) ranged from [30-60]* % (with Belgium) to [50-80]* % (with Italy). In 1995, the differences ranged from [30-60]* % (with Belgium) to [60-90]* % (with Italy). It is also interesting to note that the differences between certain neighbouring countries increased over the period. Thus the price disparity between Spain and Portugal rose from [0-30]* % in 1995 to [10-40]* % in 2000. Similarly, the price disparity between Germany and Austria rose from [0-30]* % in 1995 to [0-30]* % in 2000.

(467) The prices for control and signalling units marketed by the parties thus vary substantially from one EEA country to another. The parties have not provided any information indicating the contrary as regards their competitors.

(468) In their reply to the statement of objections ([160]), the parties claimed that the above price differences between Member States for control and signalling units sold by them were not relevant because some of the prices incorporated the trade discounts they offered their customers (they were 'net' prices) while others did not (they were 'gross' prices); the prices were therefore not comparable.

(469) It should first be pointed out here that the parties were invited, by point 33 of the questionnaire of 20 March 2001, to supply the 'invoiced prices' for each of the categories of control and signalling unit they market in each of the EEA member countries. The parties also stated in their reply to that point in the questionnaire that the prices quoted to the Commission were the 'average prices charged' (Schneider) ([161]) and the 'average selling prices' (Legrand) ([162]). The selling prices for control and signalling units quoted by the parties are therefore net prices, exclusive of any discounts and volume rebates, and are comparable.

(470) The parties also argue ([163]) that differences in the volumes of their sales in each of the categories of control and signalling unit provide objective justification for differences in prices. This argument is implicitly based on the idea that the amount of discounts and volume rebates they grant on each of their sales differs from one Member State to another and that this explains, in their view, the differences observed in average selling prices. It is sufficient to note here that the parties have not supplied any evidence establishing that the average level of their sales volumes per deal differs from one Member State to another. In particular, the parties have not proven that customers exist in certain Member States who generate larger sales volumes than in other Member States and that, through the application of discounts and volume rebates, the average net selling price of the products in question is lower there. If that were the case, it would in any event constitute a further important piece of evidence in favour of defining the relevant market on a national basis.

(471) Lastly, the parties argue that no conclusion can be drawn from the differences in Baco's and Legrand's selling prices between Member States since those two companies sell only small quantities and almost exclusively in France. The differences observed in the prices charged by Schneider, the undisputed market leader in control and signalling units in the EEA, with a market share of [20-30]* % and a presence in each of the Member States, constitute particularly conclusive evidence for finding that there are significant price differentials between Member States. Furthermore, although Legrand holds a significant market share only in France, it does market the products in question in eight Member States. The fact that Legrand does not have a Europe-wide pricing strategy, as pointed out by the parties ([164]), far from providing objective justification for the above differences in selling prices, constitutes further evidence that the prices of control and signalling units are set at national level.

(472) The prices of control and signalling units are therefore substantially different from one Member State to another

([159]) Legrand annex to the reply to points 12, 3 and 40 of the questionnaire of 15 March 2001.
([160]) Point 774.
([161]) Reply by Schneider to point 33 of the questionnaire of 20 March 2001.
([162]) Page 1 of the Baco document attached to the reply by Legrand to points 12, 34 and 40 of the questionnaire of 20 March 2001.
([163]) Reply to the statement of objections, point 776.
([164]) Reply to the statement of objections, point 777.

The position of manufacturers of control and signalling units varies substantially according to the Member State

(473) Table 26 below, provided by the parties, shows the position of the major manufacturers of control and signalling units in the EEA countries in 2000.

Table 26

	Schneider	Legrand	Siemens	Moeller	K&N	Rockwell	EAO	ABB	Other
Austria	[10-20]* %	[0-10]* %	[10-20]* %	[10-20]* %	[10-20]* %	[0-10]* %	[0-10]* %	[0-10]* %	
Belgium	[20-30]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	RAFI [0-10]* %
Germany	[0-10]* %	[0-10]* %	[10-20]* %	[10-20]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	RAFI [0-10]* % Hoffman [0-10]* %
Denmark	[30-40]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	
Spain	[30-40]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	GE[0-10]* %
France	[50-60]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	Entrelec [0-10]* %
Finland	[20-30]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	
Greece	[10-20]* %	[0-10]* %	[10-20]* %	[10-20]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	
Italy	[20-30]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	GE[0-10]* %
Ireland	[10-20]* %	[0-10]* %	[10-20]* %	[10-20]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	
Netherlands	[10-20]* %	[0-10]* %	[0-10]* %	[10-20]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	
Portugal	[30-40]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	
United Kingdom	[30-40]* %	[0-10]* %	[0-10]* %	[10-20]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	
Sweden	[20-30]* %	[0-10]* %	[0-10]* %	[0-10]* %	[10-20]* %	[0-10]* %	[0-10]* %	[0-10]* %	
Norway	[20-30]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	
Total EEA	[20-30]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %		

Source: the parties.

(474) It is clear from the table above that the positions of the manufacturers vary considerably from one Member State to another. In general, it seems that each producer has a significantly larger market share in one Member State and that its position in the other Member States, even neighbouring ones, is (i) much weaker and (ii) fluctuates widely. Thus Schneider's share of the French market is [50-60]* %, whereas in the neighbouring countries its share is [20-30]* % in Spain, [20-30]* % in Belgium, [20-30]* % in Italy and only [0-10]* % in Germany. As for Legrand, its share of the market is significant only in France ([0-10]* %) and it is not present at all in the neighbouring countries, including Italy, despite its particularly strong presence on other product markets. Again, Siemens and Moeller, with [10-20]* % and [10-20]* % respectively of the German

market, have only half those shares in Belgium ([0-10]* % and [0-10]* % respectively), and a very minor share of the French market ([0-10]* % and [0-10]* % respectively). Kraus & Naimer, which leads the market in Austria with a [10-20]* % share, has a much smaller share of the German market ([0-10]* %). The same is true of Rockwell ([0-10]* % in Austria and [0-10]* % in Germany). Most of the other firms operating on the market (EAO, ABB, GE, RAFI, Hoffman, Entrelec) have a market share in excess of [0-10]* % in one country but are only marginally or not at all present in the other countries.

(475) In their reply to the statement of objections ([165]), the parties argued that the above variations in the market shares of the main competitors were the result either of historical factors or of the fact that, since control and signalling units were low-value items, the market players were active only in those geographical areas where their presence required little commercial effort. They also stressed the fact that six competitors were present in more than ten EEA member countries.

(476) In any event, the finding that the positions of the main players on the market in control and signalling units vary considerably from one Member State to another is not challenged by the parties ([166]).

Control and signalling units are distributed largely on a national basis

(477) The parties explained that the manufacturers sold their control and signalling units to the usual electrical equipment wholesalers and direct to mechanical engineering companies ([167]). They failed, however, to provide any information on the breakdown of manufacturers' sales between the two outlets.

([165]) Point 784.
([166]) Reply to the statement of objections, point 783.
([167]) Supplement to Form CO, p. 17.

(478) According to an internal Legrand document, however, whilst Baco achieves [40-50]* % of its sales of control and signalling units through wholesalers, such sales account for all of Legrand's turnover in those products ([168]). It can be seen from a Schneider document that Mafelec generates most of its turnover through direct sales whereas [60-70]* % of non-Mafelec Schneider products are sold via wholesalers ([169]). It should be pointed out here that Schneider has an EEA market share of around [20-30]* % and as such is the foremost player on that market. It can therefore be concluded that sales to wholesalers account for a large share of the market in control and signalling units, a share that can be estimated at around [50-60]* % according to the manufacturers concerned.

(479) As already stated, the commercial relationships between wholesalers of electrical equipment and manufacturers is organised on a national or even regional basis, even in the case of manufacturers and wholesalers operating at European level. This finding is also true of control and signalling units. As a result, a substantial proportion of the distribution of these products is organised on a national basis.

(480) In their reply to the statement of objections ([170]), the parties argued that, given the scale of direct sales by manufacturers to end customers, notably manufacturers of industrial machinery, the fact that distribution was organised on a national basis did not suffice to establish that the relevant product market was national in extent.

(481) The fact that half the sales of control and signalling units in the EEA are achieved through wholesalers and that the relationships between wholesalers and manufacturers are organised on a national basis nevertheless constitutes an important piece of evidence in favour of defining the relevant product market as national. This situation explains, at least partly, the above price differentials and variations in market share.

Barriers to entry

(482) In their reply to the statement of objections ([171]), the parties put forward numerous arguments aimed at demonstrating that there were no barriers to entering

([168]) Medium-term plan 2001-2005 France Baco, p. 20. Document supplied in response to point 113 of the questionnaire of 29 June 2001.
([169]) Record of the meeting of the Acquisitions Committee of 17 October 1997, page 6. Document supplied in response to point 113 of the questionnaire of 29 June 2001.
([170]) Point 786.
([171]) Points 788 and 789.

the market in control and signalling units. In the main, they stress product standardisation, the harmonisation of product standards within the EEA, the absence of national quality labels and national installation or usage habits, the fact that the main manufacturers organise production at European level, the low level of transport costs, the generalisation of the 22 mm punchout diameter, and the existence of several brands that are used worldwide.

(483) First, the existence of substantial price differentials between Member States and the unevenness of the players' market shares as noted above are two decisive factors which, from a factual standpoint, refute or at least severely limit the validity of the parties' claim that barriers to entering the market in control and signalling units are not significant.

(484) The Commission's investigation has thus revealed that there are three types of barriers to entry to the market in control and signalling units. Access to distribution channels constitutes an initial barrier to entry, since around half the sales of these products in the EEA are made via wholesalers. Wholesalers' tendency to reduce the number of brands they distribute for each category of electrical equipment, as revealed by the Commission's investigation, also tends to increase barriers to entry. Significantly, access to distribution channels is repeatedly presented in a Legrand internal document ([172]) as one of the key factors in achieving success on the market.

(485) A second major barrier to entry is formed by the need for a thorough knowledge of the other marketing channel for the products concerned, namely direct sales to manufacturers of industrial machinery, or original equipment manufacturers (OEMs). A Legrand internal document ([173]) thus states several times that a thorough knowledge of 'OEM markets' is one of the key factors for success. The OEM market is made up of a large number of SMEs, as demonstrated by the list of the parties' main customers ([174]), so that heavy investments need to be made in order to penetrate it. This fact is moreover recognised by the parties ([175]), who state that, given the low value of the products, manufacturers are active only in those geographical areas where their presence requires little commercial effort. This trend is furthermore exacerbated by the small size of many manufacturers: in Germany, for example, the eight leading players, and the only ones identified by the parties, hold an aggregate market share of [50-60]* %; in Finland, the seven leading players, and the only ones identified by the parties, hold an aggregate share of [50-60]* % of the market.

(486) A third barrier to entry derives from the fact that a large proportion of control and signalling units are not standard products but specific items made according to specifications drawn up by manufacturers of industrial machinery. The parties state that for these specific items a 'close relationship between producer and user' needs to be established for design, development and production ([176]). The parties have also added that this close relationship does not necessarily involve geographic proximity. The fact remains that the sale of specific control and signalling units also requires investments in establishing this close relationship and that such investments constitute a barrier to entry, particularly for the smallest manufacturers.

(487) The Commission therefore concludes that the relevant geographic market for the sale of control and signalling units is national.

C. *ANALYSIS OF THE TRANSACTION*

C.1 MARKETS IN ELECTRICAL SWITCHBOARDS

C.1.1 ***Principal characteristics of competition in the relevant markets***

(488) The following diagram, taken from a report by Crédit Suisse First Boston ([177]), summarises the characteristics of competition in the relevant markets. The following paragraphs expand on the main reasons behind this description of the way the market operates. The analysis applies mutatis mutandis to the other product markets

([172]) Medium-term plan 2001-2005 Baco France, pp. 34, 39, 41 and 43. Annex 4 supplied in reply to point 113 of the questionnaire of 29 June 2001.

([173]) Medium-term plan 2001-2005 Baco France, pp. 34, 39, 41 and 43. Annex 4 supplied in reply to point 113 of the questionnaire of 29 June 2001.

([174]) Annexes supplied by the parties in response to point 69 of the questionnaire of 29 June 2001.

([175]) Reply to the statement of objections, point 784.

([176]) Supplement to Form CO and reply to point 30 of the questionnaire of 20 March 2001.

([177]) Crédit Suisse First Boston report on Legrand (11 September 2000).

affected by the notified transaction, subject to specific considerations which will be pointed out in the sections on the products in question.

Customer loyalty

(489) As summed up in the Crédit Suisse First Boston report ([178]), 'electricians are extremely loyal to a brand. They generally work for several years with the same supplier and the same brand, and sometimes stay with the same supplier for their entire career. There are two reasons for this. First, there is an element of familiarity: once they are used to a product (brand, ease of installation), it is very difficult to get them to change, even if they are offered lower prices. Second, an inappropriate choice of equipment could render them liable (once they trust the safety of products they usually buy, they are not inclined to try cheaper brands).'

(490) Legrand also states that 'the familiarity and trust which electricians and project managers have in relation to Legrand products is a key factor in maintaining and improving the company's competitive position. […]* Repeated use of Legrand products by electricians and project managers strengthens Legrand's position and represents an important competitive advantage ([179]).'

(491) The investigation carried out by the Commission and the data provided by the parties confirm that installers and panel builders show a clear loyalty to their habitual brand. However, the Commission's investigation also shows that this loyalty is not absolute. It is apparent that, for installers and panel builders, the safety and immediate availability of products are imperative requirements, which take precedence over the brand in their choice of equipment. This means that, as long as a brand guarantees satisfactory quality and availability, it will continue to enjoy the strong loyalty of its habitual customers. It would therefore not be easy for competitors to win over these customers, even by offering them superior products and/or lower prices. However, if a brand ceased to meet the essential requirements of installers and panel builders, or if it no longer compared favourably with its competitors, it could rapidly lose the trust of its traditional installers and panel builders, and it would be difficult to win them back.

(492) The Commission's investigation also shows that the main manufacturers are trying to cultivate and strengthen this loyalty, often by keeping close commercial contact, for example by offering tools (computer software in particular) for designing and costing the electrical installation using the products they manufacture, by facilitating the assembly of their products, by providing training sessions for installers, etc. These commercial and customer relations investments in fact often account for a significant share of the turnover of brands, sometimes as high as [10-30]* % of national sales.

(493) In their reply to the statement of objections, the parties argue that the Commission overestimates brand loyalty, chiefly in the switchboards sector. They claim in particular that the Commission attributes to those markets features which are more characteristic of installation accessories and concludes that brand loyalty is 'almost absolute', whereas such loyalty exists, in their view, only to a small extent. The parties maintain, on the basis of the findings of the study carried out by the consultancy NERA, that brand loyalty is relatively weak.

(494) The Commission denies that it found loyalty to be 'almost absolute'. It is precisely the relative nature of loyalty and the need to maintain it that justify the considerable customer relations efforts made by the manufacturers and highlighted by the Commission in the statement of objections. In short, the Commission maintains that brand loyalty increases the cost of winning over new customers and therefore constitutes a significant barrier to entry. It also raises customers' tolerance of slightly lower performance or slightly higher prices than the average offered by the other players and therefore holds back the expansion or decline of established brands in a given market. But, given the relative nature of loyalty as stressed by the parties, it does not allow an established player to hold on to its positions beyond the point where its products' technical performance and price characteristics lag too far behind those of the other brands present on the market.

(495) The parties' view that brand loyalty is weak is contradicted by the Commission's investigation, which demonstrates that there is significant brand loyalty,

([178]) Crédit Suisse First Boston report on Legrand (11 September 2000).

([179]) Legrand, Form 20-F SEC.

including in the switchboards sector. Such loyalty furthermore corresponds to the opinion repeatedly expressed by the parties, initially in Form CO ('installers are in general loyal to a brand and purchase the complete kit from a single manufacturer, for reasons of ease of assembly of the board, the matching in appearance of the products, the functioning of the apparatus and confidence in the technical quality of a manufacturer' ([180])) and later in their replies to subsequent questionnaires ('Schneider and Legrand sell [final panelboards]* to electrical installers via wholesalers. Installers are generally loyal to the brand which they are in the habit of using' ([181])).

(496) The Commission also takes the view that, compared with the outcome of the investigation, the findings of the NERA study are insufficient to call into question the existence of significant brand loyalty: NERA relies on the existence of considerable promotional efforts in order to demonstrate that there is strong price competition between manufacturers.

(497) The Commission notes, however, that the discounts offered by manufacturers are often substantial (between [10 and 30]* %). This suggests that the cost of winning over new customers (and therefore loyalty) is likewise substantial.

(498) Neither does the study carried out by NERA enable brand loyalty to be evaluated since, although it points to strong growth in sales of the items concerned during special offers, it does not show to what extent such increased sales have been won over from other manufacturers. Growth in sales of items on special offer could thus be explained simply by a process of stockpiling on the part of wholesalers (or installers loyal to the brand purchasing the products cheaply for use at a later stage) or by the switching of purchases from other models produced by the same manufacturer (the extra sales of the item on special offer being achieved at the expense of sales of other comparable items not promoted). These two explanations are in fact largely suggested by the figures used by NERA: […]*. This would therefore indicate the existence of very strong brand loyalty.

(499) To sum up, the Commission therefore maintains that, in line with the outcome of the investigation, there is significant brand loyalty for the switchboards concerned by its objections. It stresses that, in any event, the degree of loyalty has no repercussions on the analysis of dominant positions: as mentioned earlier, the only effect of loyalty is to raise the cost of winning over new customers and to slow the decline of a less competitive brand. However, as will be explained later, the reasons why the transaction would create a dominant position have to do among other things with the fact that the merged entity would become an indispensable supplier and would be able to strengthen its existing positions and weaken its competitors by redeploying its brands and through its privileged relations with wholesalers. A lower level of loyalty would lessen the ability of competitors to withstand competition from the merged entity in the long run and would therefore be liable to speed up or exacerbate the effects of the transaction.

Importance of brands

(500) The above remarks explain two other major characteristics of the sector: the importance of brands and the search for product ranges which are as wide as possible.

(501) The main manufacturers sell their products under one or more brands, depending on the country and the type of equipment concerned. The parties thus each have a total of over a dozen brands, covering different product areas and with different geographic scope. These brands are shown in Annex 2.

(502) The outcome of the Commission's investigation shows that brands are one of the main factors in competition among manufacturers. As the parties recognise ([182]), the brand is something of a guarantee for all the rest. This may be explained by the criteria on which small and medium-sized specifiers, installers and panel builders base their choices. It is the brands which serve as a vehicle for the relationship between manufacturers and their customers, because it is the brands which assure customers that each product will provide the guarantees (of safety, ease of placing, etc.) they are accustomed to find.

(503) The relative attractiveness of brands is the result of commercial groundwork and promotional and customer relations investment and R&D work carried out by

([180]) Form CO, p. 54.

([181]) Replies to the Article 11 questionnaire of 28 February 2001, p. 11.

([182]) Reply to questionnaire of 29 June 2001 (point 106).

manufacturers vis-à-vis installers. The importance of brands can therefore also be seen in the amount of this expenditure, which can represent up to [10-30]* % of annual sales for commercial investment and up to [0-20]* % of annual sales for R&D. As the internal documents of the parties confirm, this probably explains the proliferation and the maintenance of brands held by the parties, since the removal of a trade name could destroy the relationship of trust established with installers and lose the advantage of past customer relations investment.

(504) The importance attached to brands can obviously vary from one sector to another and from one manufacturer to another. Their role is thus much more marked for equipment chosen by small and medium-sized installers and panel builders (i.e. for distribution boards, final panelboards or electrical equipment downstream of final panelboards), who are generally loyal to one brand, than for other equipment (in particular main switchboards) specified by project managers and supplied by large panel builders. In the same way, manufacturers will also invest more or less in their brands depending on the type of equipment sold and on their positioning (focusing on residential or commercial applications, or else oriented towards industrial projects).

(505) This being so, the outcome of the Commission's investigation shows that the brand is still one of the main factors in the choices made by installers. It should also be noted that the importance of brands constitutes a significant barrier to entry or to diversification, because installers usually choose only the products of the most well-known and widely distributed brands, and therefore avoid the products of manufacturers they do not know. As Legrand states ([183]), 'manufacturers who do not have sufficient reputation to supply a wide range of quality products in the long term face significant disadvantages, because of the reluctance on the part of electricians and contractors to try out new products of unknown reliability'.

(506) This lack of demand would also penalise new entrants in their relations with wholesalers, who would tend not to list new products. Some manufacturers, such as Moeller ([184]), have thus indicated that access to wholesalers would not be possible without a recognised brand. The reluctance of wholesalers to stock little-known products further exacerbates the difficulties of new entrants, as it reduces the availability of their products and therefore their appeal to installers.

(507) The Commission's investigation also shows that the extent of the range of products offered by a manufacturer constitutes another important factor for success. This is also confirmed by the parties, who say that (i) in order to be credible in distribution boards and final panelboards, it is necessary to offer the full range of parts (cabinets, fuses, circuit breakers, earth leakage protection and control devices, etc.) for the boards, and (ii) in installation accessories, manufacturers must have complete product ranges. The large manufacturers (such as Schneider, Legrand, ABB, Siemens and GE) thus each offer over 2 000 product listings for components for distribution boards and over 5 000 listings for components of final panelboards. The product catalogues of large manufacturers of equipment downstream of final panelboards and related equipment also contain several thousand listings.

(508) The replies from competitors and wholesalers suggest that manufacturers are anxious to extend their product range for several reasons. Firstly, they are responding to the demands of wholesalers, who wish to reduce the number of suppliers, or at least favour manufacturers with a very large catalogue of products in order to optimise their costs. Secondly, an extended product range makes it possible to spread more widely manufacturers' costs on logistics (guaranteeing product availability and minimising delivery times), promotional or customer relations investment (training of installers, trade fairs, etc.), uniform appearance, R&D and so on.

(509) In the field of electrical switchboards, the absolute necessity of a complete range is also explained by the fact that, in order to be able to be adapted to each specific installation, the boards must satisfy a large number of configurations. Manufacturers must therefore offer a complete range of components (in terms of performance, type, etc.). Even more in the case of main switchboards and distribution boards, components offered by a given manufacturer cannot always be adapted or assembled easily on the boards of its competitors. Given the specific characteristics of each brand (in terms of performance, assembly techniques, size, etc.), it would be costly for panel builders and

([183]) Legrand, Form 20-F SEC.
([184]) Moeller, reply to phase I questionnaire.

installers to invest (in training time, etc.) in manufacturers whose products do not allow them to meet all their requirements.

(510) In the same way as brands, this need for a wide product range also constitutes a barrier to entry and diversification for manufacturers, as they would have to supply their customers with a huge catalogue of products instantly.

Barriers to entry

(511) A new entrant to the relevant markets would have to start from scratch to create demand, gain access to wholesalers and resist the pressure of existing competitors.

(512) In addition to these obstacles, new entrants would have to face a number of specific barriers. First, it seems that a new entrant must offer a complete range of products if it is to hope to gain the trust of a few installers and panel builders, and even think of gaining access to wholesalers.

(513) In these circumstances, a new entry could only be made by a supplier who was already established in the country in question and wished to diversify in distribution boards or final panelboards, or by a foreign manufacturer with a complete range of components for distribution boards or final panelboards.

(514) The Commission's investigation also shows that the first possibility is not viable. For example, the data provided by the parties show that in order to produce miniature circuit breakers or moulded case circuit breakers competitively, an investment of the order of EUR [20-50]* million and a lead time of [one to five]* years would be necessary. The difficulties seem to be even greater in distribution boards, because of their more technical nature. Schneider says that the preparation of its latest moulded case circuit breaker cost around EUR [400 - 1 200]* million in research and industrial groundwork expenses. Even supposing that the potential entrant already had activities in neighbouring markets (for example if it were active in distribution boards and intended to branch into final panelboards), it would have to carry out investment to adapt or extend production tools and would not really be ready to enter for some years.

(515) The Commission's investigation confirms that the entry of a foreign supplier is not conceivable. In this case, the barriers to entry are not so much on the production side as on the demand side. As explained above, the difficulty for the new entrant would be to create demand in the country and to obtain sufficient access to wholesalers. In practice, according to the parties, a new entrant usually begins by selling direct to panel builders in order to create demand which enables it then to offer its products to wholesalers, who gradually take them on. This pattern means that such a way of entering the market could not work for final panelboards, as these products are basically chosen by installers loyal to their existing brand, requiring immediate availability of products (and therefore prior access to wholesalers). This shows that, even in final panelboards, a potential new entrant would not be in a position to exercise significant competitive pressure for many years.

(516) In their reply to the statement of objections, the parties quote the recent entry of Gewiss into the final panelboards market as a counterexample with a view to refuting the above analysis. The Commission considers that that example does not call into question the scale of barriers to entry: for one thing, Gewiss expanded thanks to its already well established positions in installation accessories in Italy. Starting from an existing customer base, and already having an extensive network of relations with wholesalers, it therefore did not have to overcome the bulk of the abovedescribed barriers to entry and had the best imaginable assets for entering the electrical switchboards market. It was also able to free itself from design and production constraints by sourcing certain components (notably circuit breakers) from ABB. But despite this privileged position, Gewiss has not accounted for more than [0-10]* % of sales of miniature circuit breakers for distribution boards or final panelboards in Italy. This example therefore confirms that, even for well established competitors, it is impossible to exert substantial competitive pressure until many years have passed. The scale of the difficulties awaiting an entrant in a less favourable position can be inferred from this.

Poor price sensitivity of demand

(517) As stated in the Crédit Suisse First Boston report ([185]), and as the internal documents of the parties bear out ([186]), the demand for electrical equipment depends mainly on construction or renovation projects in industry, the commercial sector and the residential sector. The decision to launch such projects is not influenced by the price of electrical equipment. For one thing, electrical installations often only account for a moderate share of the overall cost of the project (given the costs of masonry, painting, plumbing, etc.). For another thing, electrical equipment often represents only 20 % of the total costs of the installation (the remaining 80 % being mainly labour costs). An overall increase in the price of electrical equipment would therefore have little or no effect on the demand for such equipment.

(518) In their reply to the statement of objections, the parties challenge the finding that the price sensitivity of demand is poor. They base their argument on the findings of the study carried out by NERA, which show that the launch of a special offer on a given item leads to an increase in sales of that item (at least for the duration of the special offer).

(519) The Commission cannot endorse that analysis. It notes, in the first place, that the parties are confusing market elasticity (which describes the extent to which a hypothetical monopolist could profitably raise prices) with cross-elasticity between manufacturers (which describes the extent to which an individual manufacturer is subject to competitive pressure from another individual manufacturer). These two elasticities measure different types of competitive pressure: total market elasticity reflects the competitive pressure exerted on all the products in the market by products outside the market, whereas cross-elasticity measures the pressure exerted on a product in the market by another product in the same market. To take an example, the market elasticity of circuit breakers measures the share of circuit breakers that would no longer be bought if their price were to rise by 1 %. On the other hand, the cross-elasticity between manufacturers A and B measures the share of sales that would be lost by A if the price of B's circuit breakers were to fall by 1 %. In markets where products are differentiated, as is the case here, it is quite possible for total elasticity to differ widely from cross-elasticity between manufacturers. The parties' arguments concerning substantial cross-elasticity therefore in no way affect the Commission's analysis concerning the total elasticity of the market.

(520) Neither can the Commission agree with the conclusions drawn by the parties from the NERA study. As indicated earlier, the fact that special offers lead to a temporary increase in sales of the items concerned does not prove that such sales are won over from competitors. As stated in points 496 and 497 above, other explanations are possible and even likely, such as a process of stockpiling or the switching of purchases from other models produced by the same manufacturer. The data produced by NERA do not therefore enable cross-elasticity between manufacturers to be estimated.

C.1.2 ***As a result of the merger Schneider and Legrand would become a key player in the relevant markets***

Market shares indicating dominance

Method

(521) The parties maintain that the transaction would not lead to the creation or strengthening of a dominant position in the markets linked to distribution boards and final panelboards. In particular, according to the parties, the share of sales of the new entity would not be more than [15-35]* % at Community level and a maximum of [35-55]* % at national level (in France).

(522) However, the Commission considers that the method for calculating market shares put forward by the parties leads to significant underestimation of the real positions of the manufacturers in the relevant markets.

(523) In fact, the parties have calculated the manufacturers' market shares by dividing the amount of sales by manufacturers to their direct customers (basically wholesalers and panel builders) by the total volume of corresponding products purchased by electrical installers (i.e. the customers of wholesalers and panel builders). The denominator is therefore not consistent with the numerator, as it includes the added value attributable to panel builders and wholesalers, as well as the amount corresponding to miscellaneous board components which are not normally supplied by manufacturers but incorporated by panel builders. As these contributions can be significant ([10-30]* % for wholesalers,

([185]) Crédit Suisse First Boston report on Legrand (11 September 2000).

([186]) Legrand, Medium-term plans and Schneider, Three-year plans.

[10-30]* % for panel builders and [10-30]* % for miscellaneous components), they lead to a considerable underestimation of manufacturers' market share and must therefore be eliminated from the total value of the market. This method would lead to the absurd result that a hypothetical monopolist in the production of a key component (for example miniature circuit breakers) would not have a 100 % market share but would 'share' its market share with its customers.

(524) At the request of the Commission, the parties have therefore provided corrected estimates of market shares disregarding the added value and margins of the downstream players (wholesalers and panel builders), and the amount corresponding to components not supplied by the manufacturers.

(525) The parties have also suggested including sales by certain vertically integrated manufacturers (ABB and Siemens) as installers or panel builders for the purpose of calculating the overall volume of the market. The Commission does not agree with this view and considers that, on the contrary, such sales should not be included either in the calculation of the size of the overall market or in the market shares of the players in question. First of all, these figures are not consistent with the other sales and therefore reproduce the bias introduced by the parties in their initial calculations. The internal sales of the firms in question should have been used. Also, even supposing that the parties had correctly counted the internal sales of the third parties in question, such sales correspond to products which have not been placed on the market and for which there was no competition. As internal sales are not subject to real market conditions, they have no impact on the market power of manufacturers in the 'free' market. The inclusion of these sales would therefore not reflect the market power of manufacturers and would lead to an underestimation of the market power which producers can effectively exercise vis-à-vis their direct customers.

(526) The Commission has also tried to verify the volume of internal sales attributed by the parties to ABB and Siemens in their estimate of market shares. According to the parties these integrated sales stand at approximately EUR [400-1 200]* million for each of these firms. These figures should not be included in the calculation of market shares simply as they stand, as they represent, according to the parties, turnovers resulting from sales at the level of installers. Labour costs (around 80 %), the panel builder's added value (15 % of the remainder) and distributors' margin (20 % of the remainder) should therefore be deducted if a consistent value is to be included in the calculations of market shares. Thus the figures for internal sales provided by the firms in question are very much lower and would not significantly alter the market shares calculated net of internal sales and as presented below.

(527) During the hearing, a representative of Siemens stated that that firm's internal sales accounted for less than 5 % of its turnover in electrical switchboards. Confidential data on internal sales supplied by other third parties in the course of the Commission's investigation are also consistent with a figure of 5 %. Likewise, the estimate given by the parties of the turnover generated by their competitors' integrated sales, namely EUR [400-1 200]* million, corresponds to around EUR [50-100]* million in terms of internal sales (having deducted labour costs, the panel builder's added value and distributors' margins). The parties estimate the size of the markets in distribution boards and final panelboards in Europe (not including panel builders' added value and distributors' margins) at around EUR [2 000-4 000]* million. The proportion of internal sales as a share of market size estimated by the parties is thus around [0-10]* %, which is consistent with the estimate given by Siemens.

(528) The findings in terms of market shares are not affected if these internal sales are taken into account. If the very generous assumption were made that only Schneider and Legrand did not make any internal sales and the other market players generated [0-10]* % of their sales within their own group, and incorporating these internal sales in the overall volume of the market, the combined market share of the merged entity in each of the relevant markets would thus be not more than 3 points lower. This would only marginally affect the high level of those market shares and would not materially alter the relative size of the merged entity in comparison with its competitors.

(529) In the light of the above, the Commission considers that the market shares should be calculated solely on the basis of the external sales of the parties and of their competitors to their direct customers. The volume of the market (and the corresponding sales of the players in the market) must therefore not include either the internal sales of vertically integrated manufacturers or the added value or margin corresponding to the operations (integration of board, wholesalers' services) carried out downstream of the manufacturers. Market shares quoted in the rest of this Decision are calculated on this basis.

Distribution boards

(530) For distribution boards and their components (moulded case circuit breakers, miniature circuit breakers and cabinet components), the transaction would create an addition of market shares only in France, Italy and Norway, the only countries in which Legrand is active.

(531) Table 27 below gives the parties' estimates on the basis of sales of moulded case circuit breakers, miniature circuit breakers and cabinets.

Table 27

2000 figures	Moulded case circuit breakers (%)				Miniature circuit breakers (%)				Cabinets (%)			
	F	IT	N	EEA	F	IT	N	EEA	F	IT	N	EEA
Schneider	[60-70]*	[30-40]*	[20-30]*	[30-40]*	[60-70]*	[20-30]*	[0-10]*	[30-40]*	[30-40]*	[20-30]*	[20-30]*	[20-30]*
Legrand	[0-10]*	[10-20]*	[0-10]*	[0-10]*	[0-10]*	[10-20]*	[0-10]*	[0-10]*	[10-20]*	[20-30]*	[0-10]*	[0-10]*
S + L	[60-70]*	[40-50]*	[20-30]*	[30-40]*	[70-80]*	[40-50]*	[0-10]*	[30-40]*	[50-60]*	[40-50]*	[20-30]*	[20-30]*
Hager	[0-10]*	[0-10]*	[0-10]*	[0-10]*	[0-10]*	[0-10]*	[0-10]*	[0-10]*	[0-10]*	[0-10]*	[0-10]*	[0-10]*
Siemens	[0-10]*	[0-10]*	[20-30]*	[10-20]*	[0-10]*	[0-10]*	[20-30]*	[10-20]*	[0-10]*	[0-10]*	[10-20]*	[0-10]*
ABB	[0-10]*	[20-30]*	[30-40]*	[20-30]*	[10-20]*	[20-30]*	[50-60]*	[20-30]*	[0-10]*	[20-30]*	[50-60]*	[10-20]*
GE	[0-10]*	[10-20]*	[0-10]*	[0-10]*	[0-10]*	[10-20]*	[0-10]*	[10-20]*	[0-10]*	[10-20]*	[0-10]*	[0-10]*

Source: e-mail sent by the parties on 25 July 2001.

(532) These figures are consistent with, although generally lower than, the market shares of the parties estimated on the basis of a market whose size is calculated from the sales of third parties identified by the parties as active in the market and provided in response to the Commission's investigation.

(533) These market share estimates show that the notified transaction would give the combined entity a very strong position in the French and Italian markets in moulded case circuit breakers, miniature circuit breakers and distribution board cabinets, with around [70-80]* % and [40-50]* % of the markets in those countries respectively. Apart from the competitors listed in Table 27, the combined entity would face dispersed competition from panel builders. The combined entity would also have a leading position at European level with market shares for moulded case and miniature circuit breakers of slightly under [40-50]* %.

Final panelboards

(534) The transaction would create an addition of market shares in all the Member States. However, the transaction would raise competition problems only in five countries (France, Italy, Denmark, Spain and Portugal). The market shares of the parties and their competitors in these countries (and at Community level) may be summarised as follows:

Table 28

2000 figures	Miniature circuit breakers (%)						Earth leakage protection (%)						Enclosures (%)					
	P	SP	F	IT	DK	EEA	P	SP	F	IT	DK	EEA	P	SP	F	IT	DK	EEA
Schneider	[30-40]*	[40-50]*	[40-50]*	[0-10]*	[30-40]*	[20-30]*	[30-40]*	[40-50]*	[40-50]*	[10-20]*	[30-40]*	[20-30]*	[30-40]*	[40-50]*	[40-50]*	[0-10]*	[30-40]*	[10-20]*
Legrand	[0-10]*	[0-10]*	[20-30]*	[40-50]*	[0-10]*	[10-20]*	[0-10]*	[0-10]*	[20-30]*	[40-50]*	[0-10]*	[10-20]*	[0-10]*	[0-10]*	[20-30]*	[20-30]*	[0-10]*	[0-10]*
S + L	[40-50]*	[50-60]*	[70-80]*	[50-60]*	[40-50]*	[40-50]*	[40-50]*	[50-60]*	[70-80]*	[50-60]*	[40-50]*	[30-40]*	[40-50]*	[50-60]*	[70-80]*	[30-40]*	[40-50]*	[20-30]*
Hager	[20-30]*	[10-20]*	[20-30]*	[10-20]*	[20-30]*	[20-30]*	[20-30]*	[10-20]*	[20-30]*	[10-20]*	[20-30]*	[20-30]*	[20-30]*	[10-20]*	[20-30]*	[0-10]*	[20-30]*	[20-30]*
Siemens	[10-20]*	[0-10]*	[0-10]*	[0-10]*	[10-20]*	[0-10]*	[10-20]*	[0-10]*	[0-10]*	[0-10]*	[10-20]*	[0-10]*	[10-20]*	[0-10]*	[0-10]*	[0-10]*	[10-20]*	[0-10]*
ABB	[10-20]*	[0-10]*	[0-10]*	[20-30]*	[10-20]*	[10-20]*	[10-20]*	[0-10]*	[0-10]*	[20-30]*	[10-20]*	[10-20]*	[10-20]*	[0-10]*	[0-10]*	[10-20]*	[10-20]*	[10-20]*
GE	[10-20]*	[0-10]*	[0-10]*	[0-10]*	[0-10]*	[0-10]*	[10-20]*	[0-10]*	[0-10]*	[0-10]*	[0-10]*	[0-10]*	[10-20]*	[0-10]*	[0-10]*	[0-10]*	[0-10]*	[0-10]*

Source: estimates by the parties.

(535) These figures are consistent with, although generally lower than, the market shares of the parties estimated on the basis of a market whose size is calculated from the sales of third parties identified by the parties as active in the market and provided in response to the Commission's investigation.

(536) This means that the notified transaction would lead to the creation of very strong positions in the markets in miniature circuit breakers, earth leakage switches and enclosures for final panelboards in Portugal and Denmark and would strengthen the already leading positions of Schneider in Spain and France and Legrand in Italy.

Mains connection circuit breakers

(537) As stated earlier, mains connection circuit breakers are used for specific requirements (basically measurement of consumption and prevention of theft of electricity) and are required only in certain countries. In practice, the transaction would lead to an addition of market shares only in France and Portugal for this type of component. These additions are shown in Table 29 below. The shares attributed to Schlumberger are allocated to the combined entity as the products sold by Schlumberger are manufactured by Serd, a company controlled by Legrand, in which Schlumberger has a minority shareholding of [30-40]* %. Also, the products sold by Hager in France seem to be bought by Hager from Schneider ([187]).

Table 29

Mains connection circuit breakers		
	P	F
Schneider	[30-40]*	[40-50]*
Legrand	—	[30-40]*
Schlumberger	[20-30]*	[10-20]*
S + L	[60-70]*	[90-100]*
Hager	—	[0-10]*
GE	[30-40]*	—

Source: estimates by the parties.

Analysis in terms of 'solutions'

(538) As stated earlier, an analysis in terms of all the components necessary for a particular type of switchboard, i.e. in terms of 'solutions' as described by the parties, does not significantly alter the findings reached in terms of each component. In terms of solutions, the market shares of the parties and their competitors may be summarised as follows:

([187]) E-mail sent by the parties on 28 February 2001.

Table of market shares for solutions

	Distribution boards				Final panelboards					
	F	IT	N	EEA	P	SP	F	IT	DK	EEA
Schneider	[40-50]*	[20-30]*	[10-20]*	[20-30]*	[30-40]*	[40-50]*	[40-50]*	[0-10]*	[30-40]*	[20-30]*
Legrand	[10-20]*	[10-20]*	[0-10]*	[0-10]*	[0-10]*el	[0-10]*	[20-30]*	[40-50]*	[0-10]*	[10-20]*
S + L	[50-60]*	[30-40]*	[10-20]*	[20-30]*	[40-50]*	[50-60]*	[70-80]*	[40-50]*	[40-50]*	[30-40]*
Hager	[0-10]*	[0-10]*	[0-10]*	[0-10]*	[20-30]*	[10-20]*	[20-30]*	[0-10]*	[20-30]*	[20-30]*
Siemens	[0-10]*	[0-10]*	[20-30]*	[10-20]*	[10-20]*	[0-10]*	[0-10]*	[0-10]*	[10-20]*	[0-10]*
ABB	[0-10]*	[20-30]*	[40-50]*	[10-20]*	[10-20]*	[0-10]*	[0-10]*	[10-20]*	[10-20]*	[10-20]*
GE	[0-10]*	[10-20]*	[0-10]*	[0-10]*	[10-20]*	[0-10]*	[0-10]*	[0-10]*	[0-10]*	[0-10]*

Source: the parties.

(539) In the case of final panelboards, the market shares for solutions are equivalent to those for components; in the case of distribution boards, the market shares for solutions are slightly smaller than those for components. It should, however, be borne in mind that for distribution boards, the above estimates underestimate the merged entity's real market share: these figures, which were provided by the parties, are calculated on the basis of aggregates containing components which are not normally produced by manufacturers of low-voltage electrical equipment. These components represent [20-30]* % of the value (before added value) of a board. Once this distorting factor is removed, the market shares in terms of switchboards are consistent with those calculated for the above components.

An unrivalled position of strength

(540) The Schneider/Legrand combined entity would acquire an unrivalled position of strength via the notified transaction in terms of relative size on the relevant markets, the removal of an incentive to competition through the loss of the rivalry between Schneider and Legrand in certain markets and the emergence of leaderships in other markets, and also in terms of the range of products, geographic cover and the number of brands it would have.

(541) The merged entity would also inherit all the competitive advantages of its parent companies, in particular the reputation of their brands, the depth of their product ranges and the quality of their relations with national installers and wholesalers. All these factors would serve to reinforce further the loyalty of installers and panel builders, making the merged entity indispensable to them in these markets, and would constitute obstacles to the development of competing brands and to the entry of new manufacturers.

An entity of unrivalled size

(542) The data provided by the parties show that the combined entity would hold a very strong position in absolute terms and relative to the size of its most direct competitors. In the markets in circuit breakers for distribution boards, the market share of the merged entity would be seven times that of its closest rival, GE, in France. In Italy, its market share would be almost twice that of the second largest manufacturer there, ABB. In the markets for components for final panelboards, the combined entity would be around twice as large as the second largest manufacturer in Portugal and Denmark, three times as large in France and in Italy, and four times as large in Spain.

(543) The market share tables above also show that, very often, one or other of the parties already holds very significant positions prior to the transaction. Legrand is thus the undisputed market leader for final panelboards in Italy, while Schneider clearly ranks number one in Spain (both for distribution boards and final panelboards) and in France. This situation is even more marked in the case of final panelboards in France, where Schneider and Legrand are respectively number one and number two (equal with Hager) in terms of volume of sales.

(544) This means that, despite the significant overlaps between Schneider and Legrand, the transaction should not be seen as a merger between two players of medium size suddenly acquiring first place in their sector, but rather as the substantial strengthening of the existing market leader (via the acquisition of additional brands and businesses) and the removal of an immediate competitor.

Loss of rivalry between Schneider and Legrand and emergence of an indisputable leader in the relevant markets

(545) Prior to the transaction, one or other of the parties is already the competition reference in the relevant markets. This is especially the case for Schneider in Denmark, Spain, Portugal and France (for distribution boards, final panelboards and their components) and for Legrand in Italy. It also seems that the weaker party also holds significant positions in these markets, that it enjoys a good reputation and has privileged access to the main international wholesalers. This is, for example, the case for Legrand in France, where it holds very significant positions in markets for other low-voltage products. This Decision thus finds that Legrand already has dominant positions on the markets in sockets and switches, weatherproof wiring accessories, fixing and connecting equipment and self-contained emergency lighting units. The support given to Legrand's electrical switchboard business by its positions on these markets has enabled it to gain access to distributors and brand recognition more easily. Conversely, Legrand notes in its Medium-term plan for France that […]*

(546) The transaction would further reinforce these positions. It is thus clear that by combining the activities of the two parties, the transaction would enable the merged entity further to intensify its hold on the market and increase its lead over its closest competitors. The merger of Schneider and Legrand would also remove the rivalry between the two firms, which seems to be a central element of competition in the countries concerned.

(547) For example, in France, the competition between Schneider and Legrand seems to be particularly keen in distribution boards and final panelboards, since, according to internal Legrand documents ([188]), Schneider (traditionally oriented towards the commercial sector and industry) is aiming to capture the residential segment and to oust Legrand from its premier position. Schneider and Legrand being the two main suppliers of distribution boards and final panelboards in France, the intensity of the competition between the two rivals to a large extent dictates the intensity of competition in all of these markets, all the more so because Legrand enjoys brand recognition and privileged access to distributors in France thanks to its positions on the wiring accessories markets. For example, Legrand describes the fact that it has a 'high profile among installers via other products' as an 'anchor point' ([189]). The Commission's investigation shows similar effects in Portugal: Legrand documents show […]*.

(548) At the same time, the transaction would enable the merged entity to gain a position as indisputable leader in the markets in final panelboard components in Portugal and Denmark, where the parties face considerable competition (in terms of market shares) from other firms.

(549) Finally, the notified transaction would strengthen the already leading position of one or other of the firms in the markets in distribution board components in France and Italy and in the markets in final panelboard components in Spain, France and Italy.

The combined entity would have an unrivalled range of products and geographical cover

(550) Even prior to the proposed transaction, the parties each have a very wide range of products in the low-voltage electrical equipment sector. In most cases they hold very appreciable positions for some of these products and in certain geographical areas. Thus the notified transaction would enable the parties to combine the strong positions of Schneider in the Nordic countries as regards electrical equipment downstream of final panelboards with those of Legrand in southern Europe. In the same way, Schneider would bring its strong position in all categories of electrical switchboards and add it to the strong position of Legrand in all downstream products.

([188]) Legrand, Medium-term plans.

([189]) Legrand, Three-year plans.

(551) Following the notified transaction, there would be only two EEA countries (Germany and Finland) in which the combined entity would not occupy leading positions. More generally, it should also be pointed out that Schneider claims to rank second in the world for low-voltage electrical equipment, while Legrand presents itself as the world leader in electrical accessories. The following table illustrates the strength of the combined entity in all the markets in low-voltage electrical equipment.

Table 30

	Main switchbds (HDCB)	Distrib. boards (MCCB)	Final panelbds	Cable trays	Busbar trunking	Accessories	Fix. & connect.	Trunking
Austria	*****	***	*	-	*****	**	-	***
Belgium	*****	*****	***	*	*****	**	-	***
Germany	*	-	-	-	***	-	-	-
Denmark	***	****	****	**	*****	*****	*****	*
Spain	****	*****	*****	-	****	***	*	**
France	*****	*****	*****	-	*****	*****	*****	****
Finland	*	***	**	-	**	***	**	**
Greece	*	**	**	-	*****	*****	-	*
Italy	***	****	****	**	**	*****	**	*
Ireland	***	***	**	-	*****	*	-	-
Netherlands	****	***	**	***	****	-	-	*
Portugal	***	***	****	-	*****	****	-	*****
United Kingdom	*****	****	***	****	*	*	-	**
Sweden	**	***	***	*****	*****	****	***	*****
Norway	**	**	**	****	**	****	*****	*****

Key: one star (*) represents a share of sales between 10 and 20 % and so on up to five stars (*****), which represent sales shares of over 50 %.
Sources: market shares provided by the parties for 1999 in Form CO and subsequently.

(552) The parties would acquire a very strong position on all French markets, with shares of sales in excess of [40-60]* % on all markets except cable trays and trunking (where their share would nevertheless exceed [40-60]* %). None of Schneider/Legrand's competitors would have such a range of products and such a geographic spread with strong positions on the relevant markets. Only ABB would be capable of presenting a comparable product range and geographic cover.

(553) Of the other manufacturers, only Siemens and Hager are present on more than one product and geographic market in the EEA. All the other competitors are either local players or niche players, usually in the markets in electrical equipment downstream of final panelboards.

The combined entity would have an unrivalled array of brands

(554) The strength of either or both of the parties in each market is usually explained by the power of its brands. As the parties state ([190]), 'we have a range of superb and diverse brands. Furthermore, our two groups have shown real skill in managing several brands, always with a view to staying close to the market, and are therefore used to capitalising strongly on those brands.'

(555) There is no doubt as to the quality of the brand image of Schneider and Legrand. In Italy, where the Legrand and particularly Bticino brands are used, Legrand ([191]) refers to 'the image of the Bticino brand', 'the synergetic use of the Legrand and Bticino brands' and 'the image of the brand and [the] trust in the company and in the product' as three of its main strengths. In Spain, Schneider ([192]) says that its Eunea Merlin Gerin brand is already 'a major player' in the market, and that it could be further consolidated via 'the brand image, backed by Schneider'. In France, Legrand says that one of its main strengths is its 'reputation'. The parties' reputation and brand image are clearly further enhanced by their presence in most of the low-voltage electrical equipment sector as shown by Table 30 above.

(556) The parties' internal documents ([193]) show that the reputation of a brand alone can constitute a significant competitive advantage. This appears to be particularly true in Italy, where 'the market is concentrated on the three leading brands (Bticino, ABB and Merlin Gerin)', and in France, where 'customers have to be reassured by the brand'.

(557) The Commission's investigation also shows, however, that the strength of the Schneider and Legrand brands rests also on their ability to satisfy the needs of installers and panel builders. The Commission asked wholesalers to rate manufacturers according to their ability to meet each of the following nine criteria, for each country: product quality, brand, price, speed of delivery, design and appearance, ease of installation, advanced technology, complete range of products and, lastly, technical support. The outcome of this survey was that, with rare exceptions, Schneider was generally among the three best suppliers for each criterion; and that in France and Italy, Schneider and Legrand usually enjoyed the two best reputations for all the criteria.

(558) As explained above, the relevant markets are distinguished by strong loyalty on the part of installers and panel builders. The strong competitive positions of the parties, together with their ability to meet their customers' needs efficiently, therefore constitute particularly solid foundations.

(559) It is also clear, however, that the parties make significant investments each year in promoting products and in encouraging customer loyalty. The parties say that their sales force maintains contact with customers to help them choose products and that they maintain agency networks and a sales force in each country. The parties also offer a whole range of products and services tying them closer to installers. In the case of products, this includes design and costing software for electrical installations or technical guides; and, in the case of services, training sessions (Legrand), telephone assistance services, answers to technical questions, etc. As indicated above, such investment may amount to [10-30]* % of turnover.

(560) Furthermore, certain of the parties' internal documents suggest that they make considerably more effort in this direction than their competitors. Thus Legrand ([194]) says that in Italy, 'Bticino is the company with the largest number of sales staff on the market.' Likewise Schneider ([195]) states its ambition to 'build an approach to each customer without parallel on the French market.' In Spain, Schneider ([196]) refers to 'coverage of the territory by the sales force' as one of its main competitive strengths, […]*.

(561) The loyalty of installers and panel builders is reinforced by the extent of the range of products offered by the parties (in final distribution, installation accessories,

([190]) Information meeting Schneider Electric/Legrand, 15 January 2001.
([191]) Legrand, Medium-term plans.
([192]) Schneider, Three-year plan (2001-2002-2003).
([193]) Legrand, Medium-term plans.
([194]) Legrand, Medium-term plans.
([195]) Schneider, Three-year plan.
([196]) Schneider, Three-year plan.

etc.), and by their often important competitive positions in other products supplied by installers, as shown in Table 30 above. This further increases the frequency of use and the reputation of the parties' products, the familiarity of installers with these brands, and therefore the use of the electrical switchboards concerned. As Legrand states ([197]), […]*.

(562) The proposed transaction would also allow the combined entity to exercise its market power even further by reinforcing and focusing its brands. This would increase the parties' indispensable nature in their relations with wholesalers. Also, by focusing brands on reference positions in each of the three applications segments of the relevant markets (industry, commercial and residential), the parties would be better able to isolate the effects of their actions on their competitors.

(563) First of all, the transaction would enable the combined entity to extend its negotiating power vis-à-vis wholesalers to all of its brands. Following the merger, the merged entity could thus decide to extend to Legrand the terms of the […]* granted to […]*. This would particularly strengthen Legrand in […]*, which refers ([198]) to the limited distribution of its products, and their limited numbers with large wholesalers as among its main weaknesses in that country. Likewise, Legrand could gain better access to wholesalers in […]*, where it seems that that was an obstacle to its development. Finally, Schneider could see its access to distribution in Italy strengthened thanks to the positions gained by Legrand in that country.

(564) The transaction would also enhance the reputation and image of the brands of both parties as they would each benefit from the promotional and customer relations efforts made by the other in these countries.

(565) The Commission's investigation also shows that, while Schneider and Legrand have traditionally engaged in keen competition on the relevant markets, they traditionally have distinct and complementary areas of excellence. Schneider thus seems to excel especially in commercial and industrial applications, while Legrand appears to be particularly established in the residential sector. Following the transaction, the merged entity would therefore have a reference brand in each of the three main applications for electrical switchboards. Along the lines of what Legrand achieved following the acquisition of Bticino, the merged entity could therefore decide to heighten the specialisation of each of its brands and to concentrate the efforts of each brand on its traditional area of excellence, in order to offer total cover of the spectrum of demand and at the same time provide optimal response to the needs of each customer category. By implementing this strategy, the merged entity could therefore at the same time strengthen the position of each brand and fill any gaps that each of the parties may have. The merged entity would thus be even more powerful than the two parties put together; it would increase its hold on the relevant markets and further restrict the ability of existing and potential competitors to compete with it.

C.1.3 ***Lack of significant demand-side constraint***

(566) The parties often sell a large proportion of their products in the relevant markets through wholesalers, some of which are large international groups (Rexel, Sonepar and Hagemeyer). It is therefore necessary to assess whether wholesalers are able to exercise sufficient buyer power over the merged entity in order to constrain its competitive behaviour to any appreciable extent. For the reasons set out below, the Commission considers that they are not.

The merged entity would be an indispensable partner for wholesalers

(567) First, it notes that the merged entity would be an indispensable partner for most wholesalers. It is clear that (i) the merged entity would capture a very appreciable proportion of wholesalers' overall turnover (in some cases over [40-50]* % of national sales); (ii) the merged entity would offer an unrivalled array of electrical equipment, combining the ranges of the world's second-ranking manufacturer of low-voltage products and those of the world leader in electrical accessories; (iii) the merged entity would hold important competitive positions in almost every country (see Table 30 above). The indispensable nature of the merged entity would be particularly acute in France and, to a lesser extent, in Spain, Italy and Portugal.

([197]) Legrand, Medium-term plans.
([198]) Legrand, Medium-term plans.

(568) This is very clear, for example, from the […]* that Schneider has already been able to arrange with its main wholesalers in […]*, and the privileged relations that Legrand claims to have secured with the […]* wholesalers in France and Italy.

(569) In its internal documents ([199]), Legrand states that […]*. Legrand thus claims ([200]) to have 'very good relations with distributors' in […]*, and that it 'maintains close relations with French distributors, some of which agree to keep certain priority Legrand products in stock at all times.'

(570) This situation is even more marked for Schneider, […]* ([201]).

(571) The situation is identical in […]*, where Schneider draws up annual target letters with […]*. The same is true in […]*.

(572) There are several explanations for this pattern. First, as has already been pointed out, the parties are often indispensable players in certain markets, given the strong preference of installers and panel builders for their products.

(573) More generally, the Commission's investigation has established that the parties each account for a very significant proportion of the turnover of the main wholesalers. Table 31 below shows the percentage bracket of sales (all products) of the wholesaler Rexel accounted for by each of the large manufacturers. It is clear that, following the merger, the combined entity would account for nearly half of Rexel sales in France, reflecting the very strong complementary positions of each of the parties prior to the merger, and for a large proportion of Rexel sales in Italy and Portugal and also that in each of these countries the sales of its products would be proportionally far greater than those of its competitors. Schneider/Legrand in Spain would also be relatively larger than its competitors. The other large groups of wholesalers have provided the Commission with similar data.

Table 31

	Schneider/ Legrand	Siemens	Moeller	Gewiss	ABB	GE	Hager	Others
Austria	0-10	0-10	0-10	0-10	10-20	—	0-10	> 70
Belgium	10-20	0-10	0-10	—	0-10	0-10	0-10	> 70
Germany	0-10	0-10	0-10	—	10-20	0-10	10-20	> 50
Spain	10-20	0-10	0-10	—	0-10	—	0-10	> 70
France	40-50	0-10	0-10	0-10	0-10	0-10	0-10	> 40
Italy	30-40	0-10	—	0-10	0-10	0-10	0-10	> 50
Netherlands	0-10	0-10	0-10	—	0-10	0-10	0-10	> 80
Portugal	30-40	0-10	0-10	—	0-10	0-10	0-10	> 50
United Kingdom	0-10	0-10	0-10	0-10	0-10	0-10	0-10	> 80
Sweden	10-20	0-10	0-10	—	0-10	0-10	0-10	> 80

Source: Rexel, reply to phase II questionnaire.

([199]) Legrand, Medium-term plans.
([200]) Legrand, Medium-term plans and Form 20-F SEC.
([201]) Schneider, Convergence guidelines.

(574) This is explained by the fact that the parties each offer a very wide range of low-voltage electrical equipment distributed by these wholesalers, and that they usually hold very appreciable positions for each of these products (see Table 30 above). Table 31 above illustrates the strength of the combined entity in all the low-voltage electrical equipment markets.

(575) The parties also enjoy other advantages vis-à-vis wholesalers. As indicated above, the Commission's investigation has shown that wholesalers now tend to favour manufacturers capable of supplying them with extensive product ranges. The parties therefore have a significant advantage in this respect. Wholesalers who chose to do so would even be able to offer their customers several different brands, in different price brackets, for many of those products. Also, wholesalers depend on the demand created by manufacturers and brands known to installers and end users. They are therefore obliged to keep in stock frequently requested products, which in practice are those marketed under well-known brands.

(576) It is also clear that these privileged relations are likewise the result of real effort on the part of Schneider and Legrand in relation to wholesalers. Legrand ([202]) says that it offers express delivery services to wholesalers in France, that it keeps its own emergency stocks of products with a low turnover and that it invests in new storage sites in order to improve its logistical performance vis-à-vis wholesalers. In its agreements with wholesalers, Schneider ([203]) […]*. According to Schneider ([204]), these services enable wholesalers to meet a growing demand on the part of installers for other services (advice, technical support, etc.) in addition to a simple logistical service.

(577) The proposed merger would allow the creation or development of privileged relations maintained by the parties with their principal wholesalers, and it would also encourage the proliferation of partnership agreements similar to […]*. […]*, they would further reinforce the positions of the merged entity in all the markets affected by the transaction (and particularly the markets relating to distribution boards in France and in Italy and to final panelboards in Denmark, Spain, France, Italy and Portugal); conversely, they would further weaken the other manufacturers.

(578) In their reply to the statement of objections, the parties stress that, in the countries concerned, wholesalers currently distribute a large number of brands. Far from mitigating the impact of the transaction, this situation is liable on the contrary to reinforce the effects of the above process. The more the wholesalers with which the merged entity has secured privileged relations distribute competing brands, the more those competitors are liable to be weakened by less favourable treatment on the part of the wholesalers concerned.

Structure of competition at wholesaler level

(579) Secondly, the degree of concentration (see Table 6 above) among wholesalers, and therefore the buyer power of each individual wholesaler, varies significantly from one Member State to another. Concentration is particularly strong in France, and seems to be much weaker in Spain. It is therefore highly unlikely that Spanish wholesalers would each have sufficient buyer power to constrain the competitive behaviour of the merged entity to any appreciable extent.

(580) In their reply to the statement of objections, the parties challenge the finding that small wholesalers have no buyer power. They stress among other things that, in certain countries where the wholesale trade is fragmented (e.g. Spain and Portugal), there is strong price competition between wholesalers, resulting in pressure on prices offered by manufacturers.

(581) The Commission does not deny this fact, which it has itself repeatedly mentioned. That said, on the one hand, the parties also stress the increasing concentration of distributors in certain countries, in particular Portugal (where Rexel and Sonepar now account for 40 % of sales of switchboard components). This will probably dampen price competition between wholesalers, as has happened in countries where distribution is already more concentrated. On the other hand, and in any event, the existence of competition between wholesalers does not mean that each wholesaler has buyer power. On the contrary, the Commission maintains that, in countries where distribution is fragmented, each individual wholesaler is unable to withstand pressure from an indispensable supplier who occupies leading

([202]) Legrand, Form 20-F SEC.
([203]) Schneider, documents provided in reply to question 311.
([204]) Reply by Schneider to Hagemeyer questionnaire.

positions in a large number of products distributed. Buyer power is weakened still further by price competition between wholesalers, since such competition threatens the viability of those wholesalers and makes it even more vital for them to list the brands in greatest demand. The existence, despite the keen competition between wholesalers in Spain and Portugal, of partnership agreements between Schneider and those distributors already bears witness to this. Following the transaction, the merged entity would therefore be able to use its market power in order to impose the contractual conditions of its choice on any reluctant wholesalers by threatening to favour their competitors.

(582) Lastly, even a high level of concentration among wholesalers does not, however, mean any great downward pressure on prices. In fact, internal Legrand documents ([205]) show that, in some countries (such as […]*), one of the reasons why wholesalers appreciate Legrand products is that, because of their relatively high price, they allow wholesalers a good profit margin. […]*, simply the price level of Legrand products allows wholesalers to make a larger profit on each sale than they could from cheaper products. Internal Legrand documents ([206]) also show that, despite concentrated distribution in France, the prices paid by wholesalers are on average substantially higher than the European average (see also price indications in Tables 7 to 10 above); and that any downward pressure on prices does not stem from wholesalers but rather from the competition between Schneider and Legrand.

(583) This apparent indifference on the part of wholesalers as to price levels seems to be explained mainly by the lack of price elasticity in the demand for electrical equipment. As indicated above, the demand for electrical equipment depends mainly on factors external to the electrical equipment industry.

Contractual relations between Schneider/Legrand and wholesalers would help to maintain the position of the combined entity

(584) Commercial relations between manufacturers and wholesalers of the relevant products feature complex commercial discount schemes. Documents provided by the parties ([207]) show that there are three main categories of discount: (i) 'partnership' discounts, (ii) 'target' or 'growth' discounts and (iii) 'volume' discounts.

(585) Partnership discounts are granted by the manufacturers to wholesalers who distribute their products in exchange for various commercial and marketing services. Usually this means specific measures to promote sales of their products or marketing feedback on the position of their products. The parties' documents show that such 'partnership' discounts can account for up to [0-30]* % of the pre-tax turnover made with wholesalers.

(586) 'Growth' discounts are linked to targets for growth in the turnover made by manufacturers with wholesalers. The turnover used for these purposes may either be the overall turnover generated by the sale of all the products in the manufacturer's catalogue, or the turnover generated by the sale of certain specific product lines. A manufacturer will very often grant this type of discount on new products. For Schneider and Legrand it seems that these 'target' discounts can account for up to [0-30]* % of the pre-tax turnover generated by the wholesaler.

(587) The final category of discount, known as 'volume' discount, is calculated on the basis of the overall amount purchased by wholesalers from manufacturers. The base is therefore the turnover achieved by a manufacturer with a wholesaler not only through the sale of switchboard components but also other low-voltage electrical products, such as equipment downstream of the final panelboard. The amount of the discount, or reduction coefficient, is determined by the annual level of turnover. Usually, the contract between the wholesaler and the manufacturer sets turnover thresholds corresponding to a percentage discount. The higher the turnover, the higher the percentage discount, which boosts the final amount of the discount. These 'volume' discounts represent up to [0-30]* % of the pre-tax turnover achieved by the manufacturer with a wholesaler.

(588) In addition to these discounts, manufacturers also grant wholesalers rebates on the resale price of their products. These rebates are particularly important as they can be

([205]) Legrand, Medium-term plans.
([206]) Legrand, Medium-term plans.
([207]) Reply by the parties to point 148 of the questionnaire of 6 April 2001.

up to [30-70]* % of the product resale price. While all wholesalers are given rebates, the amount varies according to the volume of turnover they achieve with each manufacturer.

(589) By their very nature, these different schemes favour manufacturers which have extensive product ranges and generate a large proportion of wholesalers' turnover. In fact, such manufacturers account for a large part of the purchases of wholesalers, who enjoy substantial discounts from manufacturers. The discounts, which can be up to [0-30]* % of the total amount of their purchases, represent a substantial proportion of their profit margin. Wholesalers are therefore naturally encouraged to concentrate their sales, and therefore their purchases, on the products of a few suppliers who account for a large part of their purchases.

(590) The proposed transaction would alter the relative balance that exists between manufacturers. It would lead to the creation of a group which, in many low-voltage electrical equipment markets, would be the main supplier to wholesalers, some way ahead of the second largest supplier. As explained above, this would be the case inter alia in France. This means that most wholesalers would be largely dependent on the new group as regards the overall amount of discounts and rebates they obtain from manufacturers, which determine a large proportion of their profit margin. Any fall in the turnover achieved with Schneider/Legrand products would thus lead to a fall in the level of discounts and rebates granted by the group, which would not be offset by an increase in the turnover achieved with other suppliers, since the percentage of the discount increases according to the level of turnover achieved.

(591) Wholesalers would therefore have an extra incentive to ensure that the level of their purchases from Schneider/Legrand remained at least the same. Furthermore, the complex schemes of discounts and rebates coupled with the significant weight of the new group in wholesalers' purchases would give Schneider/Legrand an important means of exerting pressure on wholesalers. In particular, Schneider/Legrand would be able to force wholesalers to distribute its new products or product ranges which they did not distribute previously. […]* ([208]).

Conclusion

(592) As explained above, there are very large numbers of installers and panel builders in the countries concerned. Given its fragmented nature and its loyalty to brands, this section of demand does not appear to be in a position to exercise significant buyer power on the merged entity.

(593) Only wholesalers, and the largest of these, might possibly try to oppose any attempt on the part of Schneider/Legrand to increase prices. However, they would have little incentive to resist, principally for the following reasons:

(i) an increase in the selling prices of the new group would not lead to a drop in their profit margins. On the contrary, a price increase would lead to an increase in the turnover wholesalers would achieve with Schneider/Legrand, which in turn would lead to an increase in their volume discounts;

(ii) wholesalers would be largely dependent on the new group, which could to a great extent determine the amount of their profit margins via the discount and rebate schemes. Consequently, wholesalers would be taking a risk if they attempted to oppose a Schneider/Legrand price increase by shifting part of the demand towards other manufacturers;

(iii) any attempt by wholesalers to shift a proportion of the demand towards the products of other manufacturers would mean, at least in the short to medium term, an increase in their storage and transport costs. Installers attach great importance not only to the brand but also to the immediate or near-immediate availability of products. Wholesalers wishing to develop the sales of one of Schneider/Legrand's competitors would therefore have to begin by increasing stocks of the competitor's products, before being in a position to market them.

(594) In conclusion, it can be seen from the above that neither the parties' direct customers (wholesalers) nor

([208]) Medium-term plan Spain Bticino, page marked PMT2C'4. Document supplied in response to point 315 of the questionnaire of 6 April 2001.

their indirect customers (installers and panel builders) would be able to oppose any price increase imposed by the merged entity. For one thing, installers and panel builders are too fragmented to exercise significant buyer power over the merged entity. The same goes for Spanish, Danish and Portuguese wholesalers. For another, a price increase would not necessarily go against the interests of wholesalers, as high prices assure them a higher income at constant volume (and therefore constant cost). The merged entity would achieve such a level of power in the countries concerned (both because of its very strong competitive positions and because of the extent of its range of activity) that it would further reinforce its role as indispensable partner, which wholesalers would prefer to ally themselves with than to oppose.

C.1.4 ***Lack of significant competition-side constraint***

(595) The outcome of the Commission's investigation shows that it would be difficult for existing competitors to exert any significant constraint on the behaviour of the merged entity.

(596) In the first place, the parties' internal documents show that even prior to the transaction, it would be difficult for existing competitors to challenge the pre-eminence of the brand leader in the relevant markets. Legrand ([209]) thus explains that, in distribution boards and final panelboards in France, […]*.

(597) In distribution boards and final panelboards in Italy, Legrand ([210]) also explains that […]*.

(598) Lastly, for final panelboards in Spain, Legrand also anticipated that […]*.

(599) The constraints on competitors would increase with the notified concentration. They could first appear at the level of wholesalers. As just explained above, the transaction would allow the merged entity to reinforce its position as an indispensable and privileged partner of wholesalers in the countries in question. This situation would allow the merged entity to create or develop its alliances with wholesalers ([…]*). Since such alliances would […]*, they would further enhance the perception of product availability and quality of service and, conversely, further check the development of other brands. This process would be particularly extensive because, as the parties point out, the wholesalers concerned currently distribute a large number of other brands.

(600) This pattern would further accentuate the existing imbalance between the merged entity and its principal competitors, and would compromise these manufacturer's attempts to expand. As wholesalers wish to reduce the number of brands they sell and favour manufacturers with extensive product ranges, this situation could even lead to the marginalisation of manufacturers in weak positions and/or with limited ranges (such as […]* in Italy or […]* in France and Spain).

(601) The second difficulty would arise at the level of installers and panel builders. For one thing, the Commission's investigations show that, in the countries concerned, what competitors have to offer (in terms of quality, brand, price, speed of delivery, etc.) is often already less well perceived than what the parties offer. Also, as explained above, this difference in reputation could increase after the merger as a result of the probable strengthening of each of the brands held by the merged entity and the growing difficulties of competitors with regard to distribution.

(602) This means that competitors would have increasing difficulty in prising customers away from Schneider and Legrand and could be content with the status of also-rans on the relevant markets. Conversely, the strengthening of the parties and the weakening of their competitors could help the merged entity to win over new customers. This could be the case if other manufacturers' products were no longer immediately available through the principal wholesalers (which would rule them out with installers, who do not keep stocks). Such a trend would be even more marked if, as the parties now maintain, customer loyalty were weaker than shown by the outcome of the investigation.

(603) The transaction could also lead to a reduction in the promotion and public relations measures carried out by manufacturers with installers and panel builders. The outcome of the investigation shows that such investment can represent an appreciable proportion (up to [10-20]* %) of the turnover of manufacturers in a given country for the products concerned. Also, these

([209]) Legrand, Medium-term plans.
([210]) Legrand, Medium-term plans.

sums correspond to a large extent to ongoing activities or services (training of installers, technical assistance, etc.). The reports by various investment banks ([211]) indicate that, in the low-voltage electrical equipment sector, the profit margin of brands increases with their market share. The strengthening of Schneider and Legrand brands and conversely the probable weakening of their main competitors could therefore affect competitors' ability to keep up their marketing efforts effectively in the countries concerned, and so to preserve the quality of their links with installers and panel builders.

(604) It should be noted that each competitor usually relies only on one or two applications segments (residential, commercial and industrial) while, following the transaction, the merged entity would have full cover of these segments and a reference brand in each. If, as explained above, the merged entity decided to concentrate the efforts of each of its brands on specific areas of excellence, it would be able to take action specifically targeted against each of its competitors. The internal documents of the parties show that this strategy has already been used in the past. According to Legrand ([212]), Schneider, which holds very strong positions in miniature circuit breakers in Portugal, especially for industrial and commercial applications, […]*.

(605) Furthermore, the fact that the combined entity would have a very wide range of products in each of the territories concerned (see Table 30 above) would give it the means to take targeted retaliation measures against its competitors, for example by using the policy of offering wholesalers appropriate rebates in order to weaken a competitor's product line.

(606) In the light of the above, it is clear that the transaction would, on the one hand, lead to the establishment of a group combining the strengths of each of the companies, freed from the competition between Schneider and Legrand; but, on the other hand, it would also lead to the strengthening of each of the parties in their traditional areas of excellence and allow the establishment of a group holding reference brands in each of the three applications categories (residential, commercial and industrial) for the relevant markets.

([211]) Crédit Suisse First Boston report on Legrand (11 September 2000), Dresdner Kleinwort Wasserstein report on Schneider (18 January 2001).

([212]) Legrand, Medium-term plans.

(607) It should also be noted that the integrated activities of the competitors of Schneider and Legrand would not be able to exert effective competitive pressure on the merged entity. As noted earlier, the integrated activities of those competitors are marginal in the countries concerned. Furthermore, in the absence of a substantial presence among wholesalers, they could not rely on their integrated sales alone in order to bring effective competition to bear.

(608) It follows from the above that the parties' existing competitors would not be able to exert enough pressure to constrain the behaviour of the merged entity. As has just been explained, this conclusion applies to the parties' principal competitors in the relevant markets, i.e. groups (such as ABB, Siemens or GE) with a complete range of products on the relevant markets. It also applies a fortiori to manufacturers with a more limited product range (such as Hager, J Müller or Geyer). These producers, often already marginalised, could even lose their access to wholesalers following implementation of the notified transaction.

(609) Lastly, as stated earlier, entry to the relevant markets seems to be all the more unlikely since any potential entrant would have first to tackle the formidable competitive strength of the parties. If, as indicated earlier, the parties' existing competitors were to end up weaker as a result of the transaction, there is no doubt that a new entrant would have considerable difficulty in gaining any toehold in the relevant markets. This conclusion is borne out by the history of the parties. As Schneider explains ([213]), […]*. If a company as diversified and powerful as Schneider was unable, despite several attempts, to gain a significant position in a market which is less concentrated than the markets which concern us here, what would be the chances of a new entrant?

(610) In conclusion, as one manufacturer has said ([214]), 'it is almost impossible to imagine developing a range comparable to the new entity in all the countries concerned. It would mean an investment for each country of the order of EUR 5 to 10 million and more than ten years of R&D work. The only partially credible response would be to acquire existing ranges already in the catalogues of accessible companies.'

([213]) Schneider, reply to question 84.

([214]) Hager, reply to phase I questionnaire.

C.1.5 ***Conclusion regarding electrical switchboards***

(611) It follows from the above that the notified merger would have a tangible impact on conditions of competition on the French and Italian markets for moulded-case circuit breakers, miniature circuit breakers and distribution board cabinets, on the French and Portuguese markets for mains connection circuit breakers and on the markets for miniature circuit breakers, earth leakage protection and enclosure components for final panelboards in Denmark, Spain, France, Italy and Portugal. It would also alter competitive conditions on the markets for distribution boards in France and Italy and the markets for final panelboards in Denmark, Spain, France, Italy and Portugal. It also follows from the above, and in particular its large market shares, the reputation of its brands and its privileged relations with wholesalers, that prior to the merger Schneider enjoyed a dominant position on all the French markets concerned, with the exception of the market in mains connection circuit breakers.

(612) The merger could have a particularly significant impact on prices for the equipment in question. As stated above, demand for this equipment is characterised by low elasticity. The creation of an indispensable supplier on the relevant markets, the weakening or marginalisation of the other competitors and the elimination of the rivalry between Schneider and Legrand (which was one of the main driving forces behind, if not the primary source of, competition on certain relevant markets, particularly in France) would therefore be reflected in very significant price increases for this equipment, both at the level of installers and panel builders and at final customer level. This conclusion is reinforced by the existence of significant price disparities between Member States and the high level of prices in the most concentrated markets.

(613) The Commission therefore concludes that the notified merger would lead to the creation of a dominant position on the Italian market for moulded-case circuit breakers, miniature circuit breakers and cabinets for distribution boards, on the French and Portuguese markets for mains connection circuit breakers and on the markets for miniature circuit breakers, earth leakage protection and enclosures for final panelboards in Denmark, Spain, Italy and Portugal. The transaction would also strengthen the dominant position held by Schneider on the French markets for moulded-case circuit breakers, miniature circuit breakers and cabinets for distribution boards and miniature circuit breakers, earth leakage protection and enclosures for final panelboards. The conclusions are identical as regards the markets for distribution boards in France and Italy and the markets for final panelboards in Denmark, Spain, France, Italy and Portugal.

C.2 CABLE TRAY MARKET

(614) The merged Schneider/Legrand entity would be the main player on the European cable tray market, with a market share of [10-20]* % (Schneider [0-10]* %, Legrand [10-20]* %). Its main competitor would be Hager, with an EEA-wide market share of [0-10]* %. Schneider/Legrand would be active in nine EEA countries, while Hager would be active in eleven. The proposed transaction would lead to an addition of market shares in only one national market, the United Kingdom.

C.2.1 ***The merged entity would have much larger market shares than its competitors on the United Kingdom market***

(615) Table 32 below, which is based on data provided by the parties ([215]), shows the market shares of the main competitors on the United Kingdom cable tray market in 2000.

Table 32

Competitors	Market shares (%)
Legrand	[30-40]*
Schneider	[0-10]*
RM Cable Tray	[0-10]*
Unitrust	[0-10]*
Unitrunk	[0-10]*
Ackermann	[0-10]*
Others	[30-40]*

Source: the parties.

(616) In their reply to the statement of objections ([216]), the parties claimed that the initial estimate of market shares they had supplied to the Commission was incorrect.

([215]) Reply by the parties dated 22 June 2001 to a request for information made by the Commission on 19 June 2001.

([216]) Points 500 and 533.

They stated that their initial estimate included equipment for conveying electric power downstream of final panelboards which therefore belonged to a separate product market (trunking). Once that error had been corrected, the market shares of the main manufacturers present on the United Kingdom market were, according to the parties, as follows:

Table of United Kingdom cable tray market shares (according to the parties)

Legrand (Wiremold brand)	[20-30]* %
Schneider (Mita and Thorsman brands)	[0-10]* %
Schneider + Legrand	[30-40]* %
Unitrust/Tyco	[20-30]* %
RM Cable Tray	[10-20]* %
Vantrunk	[0-10]* %
Metsec	[0-10]* %

Source: the parties.

(617) The second estimate provided by the parties differs from the first one chiefly as regards Unitrust/Tyco, whose market share is [20-30]* % in the former as against only [0-10]* % in the latter.

(618) The checks carried out by the Commission have nevertheless clearly shown that the second estimate provided by the parties greatly overestimates the position of Unitrust/Tyco, which stands at [5-15]* %, very close to the parties' initial estimate.

(619) Neither does the parties' second estimate take account of the market share held by Schneider through the Wibe brand. It is clear from information supplied by the parties ([217]) that Wibe has a [0-10]* % share of the market.

(620) Accordingly, in the light of the checks carried out by the Commission, the market shares of the main competitors are approximately as follows:

Table of United Kingdom cable tray market shares

Legrand	[20-30]* %
Schneider (Wibe, Thorsman and Mita brands)	[10-20]* %
Schneider + Legrand	[40-50]* %
Unitrust/Tyco	[10-20]* %
RM Cable Tray	[10-20]* %

Source: Commission investigation.

(621) Following the proposed merger, Schneider/Legrand would have a market share of around [30-40]* %, four times greater than that of its nearest competitors, RM Cable Tray and Unitrust/Tyco. The relevant market would thus be characterised, in terms of market shares, by the presence of a clearly dominant leader and a number of also-rans.

(622) In addition, Schneider/Legrand would have even larger market shares in several segments of the United Kingdom cable tray market, as shown in the following table, which is based on data provided by the parties ([218]).

Table 33

	Steel cable trays	Steel cable ladders	Steel wire cable trays	Plastic cable trays	Glass fibre-reinforced plastic cable trays and ladders
Schneider/Legrand	[50-60]* %	[60-70]* %	[50-60]* %	[60-70]* %	[80-90]* %
RM Cable Tray	[20-30]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %
Unitrust	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %
Unitrunk	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %
Others	[0-10]* % (Perfast/Cablok)	[10-20]* % (Vantrunk)	[20-30]* % (Obo Bettermann)	[10-20]* % (Marshall Tufflex)	[10-20]* % (various)

([217]) E-mail sent by the parties on 30 July 2001 in reply to a request for information made by the Commission on 20 July 2001.

([218]) Reply by the parties dated 19 July 2001 to a request for information made by the Commission on 12 July 2001.

(623) Following the merger, then, Schneider/Legrand would not just be by far the leading group on the United Kingdom cable tray market in general, but in addition it would have particularly strong positions on virtually all segments of the relevant market. The only segment where its position would be weaker is the steel strut-channel support system, where it would have a market share of [0-10]* %, behind Unitrust ([40-50]* % market share) and Metsec ([10-20]* %).

(624) Thus the notified merger would have the effect of reinforcing Schneider through the addition (i) of Legrand's market shares in the steel cable tray market segments in which it is already dominant and (ii) of Legrand's positions in the plastic and glass fibre-reinforced plastic cable tray market segments from which it is absent.

(625) In their reply to the statement of objections, the parties stated that [a large proportion]* of cable trays sold by Mita were in fact welded wire mesh cable trays produced by a third party (Métal Déployé). They also stated that Mita was about to lose that contract with Métal Déployé, which related both to the distribution by Mita of Métal Déployé products and to the use of the Cablofil brand owned by Métal Déployé. […]*. According to the parties, the welded wire mesh cable trays supplied by Métal Déployé to Mita and sold under the Cablofil brand accounted for a [0-10]* % share of the United Kingdom market, which reduced Schneider's share to [0-10]* %, including Thorsmann. They also argued that Métal Déployé would shortly become a serious competitor on the relevant market: the subsidiary it intended to create on the United Kingdom market would, under the agreement terminating the supply contract, take over the sales force built up by Mita for welded wire mesh cable trays and benefit from the reputation of the Cablofil brand on that market.

(626) It should first be noted that the supply contract between Mita and Métal Déployé has not yet been actually terminated, […]*. And if the contract was in fact terminated, Mita could easily source the products concerned from Wiremold, the Legrand subsidiary which markets the same products. The parties also stated that Wiremold has a supply contract with PEMSA. Furthermore, as the parties themselves acknowledge, steel sheet cable trays, steel wire cable trays and steel cable ladders are fully substitutable. Lastly, Mita's loss of the Cablofil brand would be offset by the fact that it was coupled with the Mita brand (as can be seen from Mita's product catalogues). For these reasons, Mita would not be significantly weakened by possible termination of the supply and brand licensing contract linking it hitherto to Métal Déployé.

(627) As to the second argument put forward by the parties, namely that Métal Déployé was shortly to enter the United Kingdom market, it should first of all be noted that such market entry is for the time being not certain but merely an intention on the part of the firm concerned. In any event, even if Métal Déployé were to enter that market, it would not automatically take over the market shares which Mita held by reselling its products. This is because, first, as already explained above, the Cablofil brand was hitherto used in conjunction with (and under the umbrella of) the Mita brand: the Cablofil brand on its own would not therefore benefit from all the strength and reputation enjoyed by Mita Cablofil. Second, Métal Déployé would have to overcome the abovedescribed barriers to entering the cable tray market. Those barriers to entry would even be reinforced, as regards the United Kingdom market in particular, by the strength of the merged entity (as analysed below).

C.2.2 *The merged entity would have a broader product range than its competitors*

(628) Overall, Schneider/Legrand would be present in all segments of the United Kingdom cable tray market. None of its competitors has a product range covering all segments of that market. In particular, none of its main competitors has a range comprising plastic cable ladders and glass fibre-reinforced plastic cable trays.

(629) Prior to the merger, only Legrand is present in the plastic and glass fibre-reinforced plastic cable tray segments, with products marketed under the Legrand brand name. These segments, which are worth much less than the other market segments, can be regarded as niche markets that have been abandoned by the major operators. Thus, Schneider, operating under the brand names Mita, Wibe and Thorsman, and Wiremold, a group purchased by Legrand in 2000, are present only on the various segments of the steel cable tray market. Accordingly, the notified merger would result in the emergence of an operator with a unique position on the relevant market.

(630) Details of the product range of the main operators on the relevant market in 2000 are given in the following table.

Table 34

	Steel strut-channel systems	Steel cable trays	Steel cable ladders	Steel wire cable trays	Plastic cable trays	Glass fibre-reinforced plastic cable trays
Schneider/Legrand	Present	Present	Present	Present	Present	Present
RM Cable Tray	Present	Present	Present	Present	Absent	Absent
Unitrust	Present	Present	Present	Present	Absent	Absent
Unitrunk	Absent	Present	Absent	Present	Absent	Absent
Vantrunk	Present	Present	Present	Present	Absent	Absent
Obo Bettermann	Absent	Present	Absent	Present	Absent	Absent
Metsec	Present	Present	Absent	Absent	Absent	Absent
Perfast/Cablok	Absent	Present	Present	Absent	Absent	Absent

(631) As explained above, glass fibre-reinforced plastic cable trays have technical characteristics which make them particularly suitable for use in corrosive atmospheres. As such, from a demand perspective, these products cannot be replaced by other types of cable tray produced using other materials. The Schneider/Legrand merged entity would therefore face two types of competitor on the relevant market: (i) relatively major groups which are present on the main segments of the relevant market, i.e. the various types of steel cable tray and (ii) more specialist groups which operate only in the plastic and glass fibre-reinforced plastic cable trays segment (such as Marshall Tufflex) or in certain segments of the steel cable tray market.

(632) This would enable Schneider/Legrand to resist any attempts by those competitors to strengthen their positions to its detriment, because it would be able to use its positions on market segments in which they are not present, where the merged entity could apply higher prices, to counter their offensive on other market segments by engaging in price-cutting. Indeed, its unique market position, coupled with its other advantages, would allow Schneider/Legrand successfully to attack the positions of both categories of competitor.

C.2.3 *The merged entity would have an unrivalled array of brands*

(633) Schneider/Legrand would have five brand names on the United Kingdom cable tray market. The Thorsman, Mita and Wibe brands owned by the Schneider group since its takeover of Lexel would be complemented by Legrand's brand names Legrand and Wiremold. Wiremold enjoys a high profile on the United Kingdom cable tray market as one of the brands generating the highest volume of sales ([219]). To the Commission's knowledge, no competitor can offer an array of brands comparable in quantity or quality.

(634) As such, the new group would be able to implement a multi-brand sales policy and thus fine-tune its response to each demand segment. In particular, Schneider/Legrand would be able to focus some of its brands on specific product types, such as glass fibre-reinforced plastic cable trays, and use its other brands for top-selling goods such as steel cable ladders.

([219]) Reply by the parties dated 19 July 2001 to a request for information made by the Commission on 12 July 2001.

(635) Schneider/Legrand's broad product range, coupled with its array of brands, means that it would be able to operate on both general and specialist markets more successfully than any of its competitors, at least in the short term. This would enable it to compete directly with its competitors on their core market while using its other brands, at higher prices, on other market segments where it is less affected by competition.

C.2.4 ***The merged entity would have privileged access to the distribution network***

(636) The parties have stated that, on average, electrical wholesalers account for between 75 % and 95 % of cable tray manufacturers' turnover on cable trays ([220]).

(637) Schneider/Legrand would thus benefit from its strong position on other electrical distribution products markets in the United Kingdom and, correlatively, from the volume of wholesalers' sales of its products. The new group would thus account for between 10 % and 20 % of the sales of one of the largest United Kingdom wholesalers. By way of comparison, that wholesaler's second-largest supplier accounts for less than [0-10]* % of its sales.

(638) In view of the importance of Schneider/Legrand to their sales and the effects of discount and rebate schemes operated by manufacturers, there would be a significant incentive — to put it mildly — for wholesalers to maintain the turnover achieved with all the products of the merged entity.

(639) Schneider/Legrand would also benefit from the tendency of wholesalers to reduce the number of their suppliers of low-voltage electrical equipment in each category. Logically, this trend can be expected to be particularly marked for products which have a low unit value and take up a lot of space. As the market leader, with a market share significantly higher than that of all its competitors, all segments taken together, the merged entity would be the privileged supplier of wholesalers accounting for the bulk of manufacturers' sales.

([220]) Form CO, p. 90.

C.2.5 ***The merged entity would be the only player on the market offering both cable trays and busbar trunking***

(640) Schneider/Legrand would be the only player on the United Kingdom market offering both cable trays and busbar trunking. None of its competitors is present on both of those product markets. Although demand-side substitutability between cable trays and busbar trunking is limited, the new group would benefit from this unique position. It would be well placed to compete with other operators on the cable tray market, both from within the market, with its range of cable trays, and from outside the market, with its busbar trunking for power transport and distribution applications where there is a certain degree of substitutability between the two product categories.

C.2.6 ***Conclusion: the merged entity would be able to raise the price of its products to its own benefit***

(641) Schneider/Legrand would have several significant advantages over its competitors on the United Kingdom cable tray market. In addition to a market share substantially larger than that of its competitors, the merged entity would have particularly strong positions on several market segments, an unparalleled array of brands, privileged access to wholesalers and a product range combining cable trays and busbar trunking. It would therefore be able to raise the price of the products in question without suffering losses in market share which would make such increases unprofitable. In particular, Schneider/Legrand would be able to raise the price of products marketed under some of its brands only so that at least part of the demand which normally would switch to different brands would shift to other Schneider/Legrand brands for which prices stayed the same. For the reasons set out above, neither competitors nor wholesalers would be able to counter such a price increase initiated by the new group. The Commission therefore concludes that the notified merger would create a dominant position for Schneider/Legrand on the cable tray market in the United Kingdom.

C.3 ANALYSIS OF THE MERGER'S IMPACT ON MARKETS IN ELECTRICAL EQUIPMENT DOWNSTREAM OF FINAL PANELBOARDS

C.3.1 ***Introduction***

(642) By combining two of the three main competitors at European level, the notified merger would strengthen or create a dominant position in several product markets and national markets in electrical equipment downstream of final panelboards.

(643) The electrical equipment in question covers a wide variety of goods with very different functions, technological content and prices. However, these products share the characteristic of being installed in an electrical network downstream of the final panelboard and are therefore also referred to as 'wiring accessories'. This means that they are powered by low-current electricity, usually below 40 amps, or are not in contact with electricity at all. The products in question do not therefore use the same technologies as the other types of low-voltage electrical equipment described above. Furthermore, some of these products, unlike other electrical equipment, are installed in the inhabited parts of residential and commercial buildings, where they are visible. On account of these two characteristics, the way in which the markets for products downstream of the final panelboard operate differs partly from that of the product markets evaluated previously.

Role of the different players on the markets in electrical equipment downstream of final panelboards, and relations between them

Manufacturers

(644) In the markets for electrical equipment downstream of final panelboards, the main European manufacturers are currently Legrand, ABB and Schneider. Only those three manufacturers are present on most or all of the relevant product markets and national markets.

(645) Of the other manufacturers, only Siemens and Hager are present on more than one product market and national market in the EEA. All the other competitors are either local operators with a strong presence in only one country, such as Niko in Belgium (sockets and switches), or firms specialising in just one or more product groups, such as Cooper (emergency lighting systems).

(646) The following table shows the presence of the main manufacturers in the different segments defined by the parties (i.e. segments which are sometimes broader than the product markets defined for the purposes of this Decision) and in the various Member States (*** = market share in excess of 50 %; ** = market share of 20-50 %; * = market share of 5-20 %):

Table 35

	Legrand	ABB	Schneider	Siemens	Hager
Sockets and switches	*** F, EL, I ** A, P * B, E, IRL, UK	** A, D, E, FIN, I, NL * IRL, S	*** DK ** FIN, S, N * B, D, F, GR	* A, D, GR	* UK
Control systems			* DK	* D, FIN	
Security systems	** F * E, I, P		* FIN, S, N	** D, FIN * S	
Components for communication networks	* F, I		** DK, N * FIN, NL, S		
Fixing and connecting equipment	*** F * E, IRL, NL, P	** FIN	*** DK, N ** F, FIN, S * I	* D	
Trunking equipment	*** P ** A, B, E, F * GR, IRL		*** S, N ** FIN, UK * DK, NL	* D	*** DK ** D * B, F, FIN, NL, P, S, N

(647) Manufacturers of products downstream of final panelboards rely on the reputation of their brands and the trust that installers and end users place in them. They attempt to gain privileged access to wholesalers mainly by offering substantial discounts and rebates but also through promotion campaigns in their shops. Lastly, manufacturers maintain direct relations with installers, this being essential to stimulate demand for their products. To that end, manufacturers provide installers with training sessions, supply software to help them design electrical installations and choose products from their range, implement promotion campaigns on the ground and provide technical assistance. Thus Legrand's total commercial and marketing expenditure represents roughly [0-10]* % of its turnover in France, i.e. an amount of almost FRF [100-800]* million ([221]).

Wholesalers

(648) Wholesalers play a particularly important role in markets for products downstream of the final panelboard, because most of those products are sold via them. The Commission's investigations have shown that, as a rule, the parties and their competitors sell 90 % or more of their wiring accessories to wholesalers. The few exceptions to the rule concern specific product types (such as telephone sockets or control systems) and/or certain countries. Wholesalers depend on the demand created by manufacturers and brands known to installers and final customers. They are therefore obliged to keep in stock frequently requested products, which in practice are those marketed under well-known brands.

(649) In addition, wholesalers are cutting the number of their suppliers with a view to rationalisation. The Commission's investigations showed that, as a rule, wholesalers attempt to restrict the number of their suppliers to three or four for each product category. This focusing of wholesalers' purchases on a limited number of suppliers is also the result of various discounts and rebates granted to them by the major manufacturers, which may represent more than [30-60]* % of the products' selling price. This encourages them to concentrate mainly on selling products of manufacturers and brands which are already well established and have a substantial market share. Conversely, there is little incentive for wholesalers to make major efforts to help a small brand or a new entrant to grow or develop its market position. This factor, which applies to all low-voltage electrical equipment, is of particular importance for products downstream of the final panelboard, because they are produced by numerous small, independent manufacturers specialising in one type of equipment and operating in a small number of Member States. These small manufacturers have the most to lose from the process of rationalisation and focusing of wholesalers' purchases.

(650) Lastly, the Commission's investigations demonstrated unambiguously that business relations between wholesalers and manufacturers of equipment downstream of the final panelboard are organised on a national or local basis. This is true for all commercial aspects, including choice of suppliers, selection of ranges purchased and sold, price and discount setting and implementation of specific promotion campaigns. Lastly, wholesalers are relatively indifferent to the prices of the products they purchase and are more concerned with the trade discounts and rebates granted to them by manufacturers, which generate a significant percentage of their profit margin.

Installers

(651) Installers are responsible for installing low-voltage electrical equipment for final customers. As already explained above, they are generally conservative and extremely attached to the brands which they are familiar with and trust. For products downstream of the final panelboard, installers are often brand specifiers. Project managers (architects, engineering consultants, etc.) are very rarely involved in such decisions, except as regards control and security systems and components for communication networks which are usually installed only in large commercial buildings. The installers' influence in terms of brand choice is, however, limited by any wishes expressed by their customers, prompted essentially by aesthetic considerations. This applies mainly to sockets and switches, rarely to other products.

(652) The factors determining an installer's decision to choose a particular brand are safety, which from the installer's perspective is guaranteed by a well-known brand which he trusts, ease of assembly and product availability in the shop of his local wholesaler. Price is a more

([221]) Medium-term plan 2001-2005 Legrand SNC France. Document annexed to Legrand's reply to point 315 of the questionnaire of 6 April 2001.

marginal consideration, because any savings made by buying products cheaply are generally less important to the installer than the time he takes to familiarise himself with a new product. In addition, since the installer is not the final consumer, he passes on the cost of the products he installs to his customers.

Final customers

(653) Final customers are mainly interested in the overall result, i.e. the complete electrical installation. The only price quoted to them is for the complete final installation, the bulk of which consists of payment for the installation work. In practice, final customers are not informed of the price of each product installed and they are not normally interested in obtaining such information. But in general they tend to be more interested in the choice of equipment downstream of the final panelboard than in equipment located upstream. Products downstream of the final panelboard, in particular sockets and switches, are visible in residential or commercial buildings, and therefore personal aesthetic preferences may come into play at that point.

The Schneider/Legrand merged entity would be a major player on most European markets for electrical equipment downstream of the final panelboard

The merged entity would have a significantly broader product range and geographic cover than any of its competitors

(654) The merged entity would have a complete product range covering all markets for electrical equipment downstream of the final panelboard. It would also have comprehensive cover of the whole of the EEA. The assessment of the role that Schneider/Legrand would play at European level, far from invalidating the definition of the relevant geographic markets as national, forms an integral part of the analysis of the effects of the merger on each of the product and national markets affected.

(655) As regards product ranges, it should be noted that Schneider and Legrand are already two of the main non-specialist groups on the relevant product and geographic markets. Their range is not limited to sockets and switches, but also comprises, for each group, fixing and connecting equipment and trunking equipment directly linked to those products, as well as control systems, security and safety systems and connectors for data networks. Although each of the parties already has a broad product range, it can be compared with that of other non-specialist groups such as ABB and Siemens and, to a lesser extent, Hager and GE.

(656) If Legrand were merged with Schneider, a product range of unparalleled breadth would be created. For example, Legrand would bring into the new group its range of self-contained emergency lighting units and its access control systems. For its part, Schneider would complement Legrand's range with its selection of heating and lighting control systems. Lastly, the merger of the two groups' range of data sockets and components for communication networks would result in the creation of a comprehensive range of VDI products.

(657) Schneider/Legrand would have a broader product range than the other non-specialist groups. For example, ABB is virtually absent from the fixing and connecting equipment market and the security and protection systems market ([222]). Siemens is not active on the market for VDI products and trunking systems ([223]). GE is absent from the market for security systems and VDI products ([224]). Hager does not operate on the markets for security systems, VDI products, and fixing and connecting equipment ([225]).

(658) In terms of its geographic position, Schneider/Legrand would also have unmatched coverage of European territory.

(659) Legrand has an especially strong presence in the southern states of the EEA. It has very significant positions on the sockets and switches market in France ([80-90]* %), Italy ([60-70]* %), Portugal ([50-60]* %) and Greece ([40-50]* %). Conversely, Schneider is particularly well established in the northern states of the EEA, especially in Scandinavia, since its takeover of Lexel. It is very well positioned on the sockets and switches market in Denmark ([70-80]* %), Finland

([222]) Reply from ABB dated 7 March 2001.
([223]) Reply from Siemens dated 28 February 2001.
([224]) Reply from GE dated 26 February 2001.
([225]) Reply from Hager dated 6 March 2001.

([30-40]* %), Sweden ([40-50]* %) and Norway ([50-60]* %). The proposed merger would result in the significant market shares held by Schneider in northern Europe being combined with those of Legrand in southern Europe.

(660) The merger would also significantly reinforce the presence of both parties on the various national markets in which Schneider and Legrand did not previously have a dominant position. On the Spanish sockets and switches market, for instance, the merger would combine Schneider's [10-20]* % market share in 2000 with Legrand's [10-20]* %. The merged entity would therefore be significantly strengthened and in a better position to face competition from the leader, Simon, which holds a market share of [40-50]* %.

(661) The only countries where the merged entity would not have large market shares on any of the markets for equipment downstream of the final panelboard would be Germany and, to a lesser extent, Ireland and the Netherlands.

(662) Lastly, the merger would result in the creation of a particularly powerful group on all French wiring and electrical accessories markets. In particular, the new entity would have a near-monopoly on the sockets and switches market and would control [80-90]* % of the market for fixing and connecting equipment, [50-60]* % of the emergency lighting market and [90-100]* % of the weatherproof wiring accessories market.

(663) The merged entity would thus have geographic cover extending across the whole of the EEA and a product range considerably broader than that of its direct competitors with a European presence, i.e. ABB, Siemens, GE and Hager. In particular, Schneider/Legrand would enjoy strong positions on several national markets and on the sockets and switches market. These strong positions would be a lever whereby the new group could reinforce its positions on other product markets or other national markets. It would also be able to use its substantial presence on most geographic and product markets to undermine any attempt by its competitors to strengthen their own presence on markets in which it has a leading position.

(664) In their reply to the statement of objections ([226]), the parties challenge this analysis, basing their line of argument on a calculation of the positions of the main competitors on a hypothetical EEA-wide market in all electrical equipment downstream of the final panelboard. If the market were defined in this way, the merged entity would have a [10-20]* % share, as against [10-20]* % for Siemens. It is clear, however, from the table supplied by the parties in their reply, as well as from Table 35 above, that Siemens' share of this hypothetical market derives mainly from its relatively strong position in only two segments: control systems and security and safety systems. Siemens' business in those two segments is furthermore concentrated chiefly in one Member State, Germany.

(665) The parties also argued ([227]) that certain specialists, such as Lucent, Pouyet, 3M, AMP, Quante, Alcatel and BICC, had wider ranges of certain products than the non-specialists. The names of the firms mentioned by the parties in support of their arguments suggest that this applies only to components for communication networks. In any event, even if those specialists' product ranges were wider than those of the parties and other non-specialists, they are confined to a small number of product categories. Such a situation cannot therefore call into question the finding that the merged entity would have a wider range of wiring accessories than those of all its competitors, whether specialist or non-specialist.

(666) Schneider/Legrand would therefore have a significantly broader product range and geographic cover than any of its competitors.

The merged entity would have an array of brands unmatched by its competitors

(667) As the following table shows, Schneider/Legrand would have an unprecedented array of brands, in terms of both their number and reputation, in the market for equipment downstream of the final panelboard.

([226]) Point 569.
([227]) Reply to the statement of objections, point 573.

Table 36

Manufacturers	Brands	Categories of wiring accessory for which the brand is used	Countries in which the brand is used
Schneider	Alombard	Sockets and switches, fixing and connecting equipment	France
	Dalcotech	Security systems	Denmark
	Eljo	Sockets and switches, fixing and connecting equipment	Sweden
	Elko	Sockets and switches, control systems, fixing and connecting equipment, VD products	Sweden, Finland, Greece
	Elso	Sockets and switches, control systems, fixing and connecting equipment	Germany, Greece
	Esmi	Security systems	Finland, Sweden, Denmark, Germany
	Eunea-Merlin Gérin	Sockets and switches, fixing and connecting equipment	Spain, Portugal
	Jojo	Control systems	Denmark, United Kingdom, France, Sweden, Finland
	Lexel	Control systems, VDI products	Sweden, Denmark, Finland
	LK	Sockets and switches, control systems, VDI products, fixing and connecting equipment	Denmark
	Merlin Gérin	Control systems, security systems	France
	Mita	Trunking systems	United Kingdom, Belgium, Ireland
	Multisignal	Security systems	Sweden
	Sarel	Sockets and switches, fixing and connecting equipment	France, Italy, Austria, Belgium
	Schyller	Sockets and switches	Italy
	Strömfors	Sockets and switches, fixing and connecting equipment	Denmark, Sweden, Finland, Germany
	Telesafe	Components for data networks	Sweden, Germany, Netherlands

Manufacturers	Brands	Categories of wiring accessory for which the brand is used	Countries in which the brand is used
	Thorsman	Fixing and connecting equipment, trunking systems	Denmark, Finland, Sweden, United Kingdom, Belgium, Ireland, Netherlands, Germany
Legrand	Legrand	Sockets and switches, control systems, security systems, VDI products, fixing and connecting equipment, trunking systems	France, Italy, Spain, Portugal, Greece, United Kingdom, Sweden, Belgium, Netherlands, Austria, Germany, Luxembourg, Denmark, Finland, Norway
	Arnould	Arnould	France
	Bticino	Sockets and switches, control systems, VDI products, fixing and connecting equipment	Italy, Spain, Portugal, Germany, Belgium, Austria, France, Netherlands
	Quintela	Trunking systems	Spain, Portugal, Germany, Belgium
	Tegui	Security systems	Spain, Portugal
	Tenby	Sockets and switches, VDI products, fixing and connecting equipment	United Kingdom, Ireland
	Ortronics	VDI products	France, Italy, United Kingdom
	Planet-Watthom	Trunking systems	France, Netherlands, Austria, Denmark, Sweden, Finland, Germany
	Ura/Lumatic	Security systems	France, Spain, Belgium, Sweden
ABB	ABB	Sockets and switches, control systems, VDI products	Germany, Austria, Netherlands, Belgium, Luxembourg, France, Italy, Spain, Netherlands, United Kingdom, Ireland, Sweden, Norway, Denmark, Finland, Greece
	Busch-Jäger/BJE	Sockets and switches, control systems	Germany, Austria, Netherlands, Greece
	Niessen	Sockets and switches	Spain
	Vimar	Sockets and switches, security and control systems, security systems, VDI products, fixing and connecting equipment	Italy
GE	GE	Control systems	Germany, Netherlands, Belgium, France, Italy, Spain, Netherlands, United Kingdom
	AEG	Sockets and switches	Germany, Norway, Denmark, Sweden, Italy
	Lemag	Sockets and switches	Spain, Portugal
	Graesslin	Sockets and switches	Germany
Siemens	Siemens/Cerberus	Control and security systems	Germany, Austria, Belgium, Luxembourg, France, Italy, Spain, Netherlands, United Kingdom, Ireland, Sweden, Norway, Denmark, Finland, Greece, Portugal, Luxembourg, Norway

Source: the parties and third parties.

(668) Each of the parties already has a very wide range of brands which are particularly well established on several national markets. The proposed merger would bring together in a single group the brands of Schneider, which are especially well established in the north of the EEA (e.g. Elso, Elko, Thorsmann) and of Legrand, which are especially well positioned in the south of the EEA (e.g. Bticino and Legrand). Schneider/Legrand would own the Legrand brand which, together with ABB, is the only truly European brand covering a broad range of equipment downstream of the final panelboard.

(669) In their reply to the statement of objections ([228]), the parties argue that in each Member State the number of main competing brands would be greater than the number of brands held by the new entity. However, the parties are here comparing the number of brands held by the merged entity with all the brands held by all their competitors in each country, including the brands of specialist manufacturers which produce only very narrow product ranges, and not all the brands held by each of their competitors.

(670) The number and quality of Schneider/Legrand's brands would give the new group a significant competitive edge given their role and importance to the functioning of the relevant product markets. Brands are a crucial factor in the choice of equipment downstream of the final panelboard, particularly for small installers, who are the largest group of purchasers of those products. Small installers are used to working with a limited number of different brands so that they have an in-depth knowledge of the technical characteristics of products. This enables them to be fully conversant with the installation process and thus save time. Manufacturers themselves encourage this by organising training for small installers and distributing electrical installation design software. Many European manufacturers and wholesalers have confirmed that, in most national markets, brands play a more important role than price as far as that customer group is concerned ([229]).

(671) In addition, the fact that several high-profile brands used to market the same types of product would be brought together within one group would enable Schneider/Legrand to conduct differentiated, complementary commercial policies for each brand. Thanks to such policies, the new group would be able to fine-tune its response to demand and competition in each of the market segments. In particular, Schneider/Legrand would be able to position brands to appeal specifically to the upper, middle and lower end of the market. Almost all the other operators on the market for equipment downstream of the final panelboard have only one brand per product group and/or national market. It would be impossible, at least in the short and medium term, for them to counter Schneider/Legrand by developing a comparable multi-brand commercial strategy. As such, Schneider/Legrand would be able to compete directly with their products in the segment which forms their core market by using a specific brand, while using other brands in other market segments.

(672) Legrand has already established a commercial strategy along the lines described above in countries where it has several brands, and is already reaping the benefits. As is explained in a Legrand internal document on Italy ([230]), 'synergetic' use of the Legrand and Bticino brands is one of Legrand's strengths in that country. The Bticino brand is positioned at the top of the range, whereas the products sold under the Legrand brand are in a lower price bracket. The rewards of a multi-brand strategy are set out in an internal Legrand document on Portugal ([231]), a country in which Legrand has three brands: Legrand, Bticino and Quintela. This document examines the 'position, role and ambitions assigned to each brand'. For example, it states that […]*.

(673) Indeed, one of Legrand's priorities is to develop a coherent multi-brand strategy wherever possible. Thus an internal Legrand document on France ([232]) states that 'reinforcing an alternative position to the Legrand range of wiring accessories' is a strategic priority objective for the (Legrand Group) Arnould brand and company on the wiring accessories market (sockets and switches) in that country.

([228]) Point 577.
([229]) See *inter alia* the reply from Rexel dated 25 June 2001.
([230]) Medium-term plan Italy Bticino, page marked Annex 4.
([231]) Medium-term plan Legrand Portugal, page marked PMT 8.
([232]) On the page marked (PMT 7).

(674) The existence of a coherent Legrand multi-brand strategy, and its purpose, are also highlighted by Schneider. A Schneider internal document on Spain ([233]) states that the Legrand and Bticino brands are 'complementary' and 'differentiated' in that country. In particular, it explains that the Bticino brand is positioned in the 'upmarket' segment, whereas the Legrand brand is targeted more specifically on the 'large projects' market.

(675) It is clear from the foregoing that the competitive advantages deriving from the array of brands held by Schneider/Legrand would far outweigh the additional costs, mentioned by the parties in their reply to the statement of objections ([234]), that they would incur through the need to maintain a corresponding variety of models, catalogues or packagings. Significantly, both Schneider and Legrand have kept the brands of companies active on the wiring accessories markets which they have acquired in recent years, as shown by Table 36 above.

The merged entity would have privileged access to the distribution network

(676) As explained above, thanks to the breadth of its product range and the high profile of its brands, Schneider/Legrand would account for a significant proportion of wholesalers' turnover and, as a result, would have a substantial share of their total purchases in most EEA countries (see Table 31). As such, the new group would be an indispensable partner for wholesalers. In particular, it would be possible for wholesalers to obtain a comprehensive range of equipment downstream of the final panelboard exclusively from Schneider/Legrand. Wholesalers who chose to do so would even be able to offer their customers several different brands, in different price brackets, for many of those products.

(677) Business relations between the manufacturers of the products in question and wholesalers have been described above ([235]) as part of the analysis of the impact of the notified merger on competition in switchboard component markets. The same incentive schemes for wholesalers as those described above exist for the products in question.

([233]) Eunea's 1996 Three-year strategic plan, p. 3.
([234]) Point 580.
([235]) See points 495 to 502.

(678) Wholesalers would be strongly encouraged to ensure that the level of their purchases from Schneider/Legrand at least remained constant. In addition, these complex discount and rebate schemes, coupled with the new group's predominant share of wholesaler purchases, would give Schneider/Legrand a major lever vis-à-vis those wholesalers. In particular, Schneider/Legrand would be able to force wholesalers to distribute its new products or product ranges which they did not distribute previously. To an extent, this is already the case in countries where either one of the two groups is already powerful. For example, […]* ([236]).

The Schneider/Legrand merger would eliminate a major factor of competition on several markets

(679) To date, the rivalry between Schneider and Legrand has been a major factor of competition on several wiring accessories markets. This assessment applies mainly to national markets in which one of the groups is dominant and the other is an actual or potential challenger.

(680) As already explained, Schneider is dominant in many wiring accessories markets in northern Europe, whereas Legrand has a similar position in many national markets in southern Europe.

(681) In the product markets in Scandinavia in which Schneider is the market leader, Legrand is a potential competitor on the brink of entering the market in most cases. Geographically speaking, Legrand is present in the region (in […]*) but on other product markets. In addition to switchboard components, it markets self-contained emergency lighting units. By its own estimates, Legrand controls [10-20]* % of the market for such units ([237]). It also states in the same document ([238]) that Legrand's

([236]) Medium-term plan […]* Bticino, page marked PMT2C'4. Document supplied in response to point 315 of the questionnaire of 6 April 2001.
([237]) Medium-term plan Legrand, 2001-2005 […]*, pages marked LRP 3 (next). Document supplied in response to point 315 of the questionnaire of 6 April 2001.
([238]) Page marked LRP 7.

priority objective is […]* ([239]). It therefore seems that Legrand […]* and that it anticipated a significant response from Schneider. The proposed merger would eliminate this competition factor, at least on the […]* market.

(682) As regards national markets where Legrand is market leader in one or more wiring accessory product markets, namely France, but also to a lesser extent Spain, Italy, Portugal and Greece, Schneider is a direct and dangerous competitor.

(683) Thus a Legrand internal document on France ([240]), where the group's share of the sockets and switches market is greater than [80-90]* %, explains that the main risk facing the group is 'the creation by Schneider Electric of an alternative competing with the Legrand brand in wiring accessories on the basis of Alombard-Sarel-Infra +'. It is stated on the same page of that document that […]*. The product ranges offered by Alombard, Sarel and Infra + cover a very large share of wiring accessories product markets. Alombard and Sarel sell sockets, switches, fixing and connecting equipment and trunking systems. Infra +, for its part, specialises in data sockets. It should also be noted that the Schneider range in France is complemented by the Lexel product range. The proposed merger would therefore prevent the creation of a credible competitor to Legrand in the country in which it has a dominant position.

(684) Similarly, a Legrand internal document on Greece ([241]), where Legrand controls almost [40-50]* % of the sockets and switches market, states that […]*.

(685) In Italy, Spain and Portugal, Schneider is absent or marginally present on markets for equipment downstream of final panelboards. However, it does have a significant presence on switchboard component markets. It should be relatively easy for it to launch its ranges of wiring accessories given that they are distributed by the same wholesalers as electrical switchboard components […]* ([242]).

The merged entity would be in a position to force its competitors into a race to renew product ranges

(686) Regular renewal of product ranges downstream of final panelboards is a way for well positioned manufacturers to attack smaller manufacturers while also maintaining or improving the image of their brands. A Legrand internal document on Italy ([243]) states that the renewal rate of the range is one of the group's strengths in that country. The purpose of renewing equipment downstream of final panelboards is to adapt visual aspects of the products to meet consumer demand and also to enhance those products with new functions, including electronic functions such as detection and remote control.

(687) The purpose — and effect — of this constant renewal of product ranges is to reduce the lifetime of products and to exhaust the resources of smaller competitors with a view to ejecting them from the market if possible. A Schneider internal document ([244]) on Alombard states that a shorter life cycle of sockets and switches […]*.

Conclusion

(688) The Schneider/Legrand merger would radically alter the structure of competition on wiring accessories markets in a large part of the EEA. It would result in the creation of a group with several major advantages over its competitors, in particular the breadth of its product range, the extent of its geographic cover, its array of brands and its relations with wholesalers. If the fragmentation of demand from installers and their loyalty to high-profile brands are also taken into account, the new group would be able to impose price increases without suffering corresponding market losses. The assessment of incentives for wholesalers suggests that they would tend to fall in line with Schneider/Legrand's policy ([245]).

([239]) Page marked Annex 3.
([240]) Medium-term plan Arnould, page marked Annex 3.
([241]) Medium-term plan Legrand, page marked PMT2C'4.
([242]) Medium-term plan Spain Bticino, page marked PMT2C'4. Document supplied in response to point 315 of the questionnaire of 6 April 2001.
([243]) Medium-term plan 2001-2005 Legrand Italy, page marked Annex 4.
([244]) Alombard product/market strategy. Document supplied in response to point 113 of the questionnaire of 29 June 2001.
([245]) See points 495 to 502.

C.3.2 ***Sockets and switches***

(689) In the sockets and switches market, the market shares of the parties and their main competitors are as follows ([246]):

Table 37

Segment : 5A1 Wiring accessories (market shares in 2000)

	Schneider	Legrand	Hager	Siemens	ABB
Austria	[0-10]* %	[20-30]* %		[10-20]* %	[20-30]* %
Belgium	[0-10]* %	[20-30]* %			
Germany	[0-10]* %	[0-10]* %		[10-20]* %	[30-40]* %
Denmark	[70-80]* %				
Spain	[10-20]* %	[10-20]* %			[10-20]* %
France	[0-10]* %	[80-90]* %			
Finland	[30-40]* %				[30-40]* %
Greece	[0-10]* %	[40-50]* %		[10-20]* %	
Italy	[0-10]* %	[60-70]* %			[20-30]* %
Ireland		[10-20]* %			[0-10]* %
Luxembourg					
Netherlands		[0-10]* %			[30-40]* %
Portugal	[0-10]* %	[50-60]* %			
United Kingdom	[0-10]* %	[10-20]* %	[0-10]* %		
Sweden	[40-50]* %				[10-20]* %
EC	[10-20]* %	[30-40]* %	[0-10]* %	[0-10]* %	[10-20]* %
Norway	[50-60]* %				[10-20]* %
EEA	[10-20]* %	[20-30]* %	[0-10]* %	[0-10]* %	[10-20]* %

Source: estimates supplied by the parties.

([246]) The data provided by the parties refer to 'segment 5.A.1' and therefore include telephone and television sockets, weatherproof wiring accessories and VDI sockets sold as part of the range of sockets and switches. However, the parties have stated that market shares do not vary significantly if telephone, television and VDI sockets and weatherproof wiring accessories are excluded.

(690) The above data show that, in France, Legrand already enjoys a near-monopoly, with a market share of [80-90]* %. In the light of that dominant position, and given the virtual absence of ABB and Siemens from the French market, Schneider, with a market share of [0-10]* %, is the only competitor which could currently pose a credible threat to Legrand and restrict its freedom of action.

(691) This is because Schneider has two widely known brands, Alombard and Sarel. Alombard is especially well entrenched at the upper end of the market. As the third player on the European market, with strong positions in northern Europe and, at the same time, a major player in the other low-voltage electrical distribution markets in France, with privileged access to the large wholesaler groups, Schneider has the potential to stabilise and even improve its position on the sockets and switches market in France. Indeed, this is acknowledged in Legrand internal documents, which refer on several occasions to the competitive threat posed by Schneider ([247]). The notified merger would eliminate that threat. Only one other operator has the potential to develop on the French sockets and switches market, having mastered the Franco-Belgian technology: Niko ([0-10]* % market share in 1999) ([248]). However, […]*, which reduces the likelihood of strong competitive pressure between the two brands. By putting an end to competition from Schneider and providing the merged entity with a [90-100]* % market share, the planned merger would consolidate and significantly strengthen Legrand's existing dominant position in France.

(692) In the statement of objections, the Commission pointed out that the notified merger would also create or strengthen dominant positions in Italy, Portugal and Greece.

(693) In their reply, the parties dispute this analysis and argue that, despite Legrand's strong positions on those three markets, the transaction would not have an anticompetitive effect given Schneider's relatively small market shares and the presence of other larger competitors.

([247]) See above quotations, footnote 210.

([248]) The market shares of all competitors in the sockets and switches market not featured in Table 37 reflect data for 1999 provided by the parties in Form CO.

(694) The parties' reasoning can be accepted for the Italian and Portuguese markets; in the case of Greece, however, the finding set out in the statement of objections must be maintained.

(695) In the first place, as explained earlier, Schneider is the only competitor able to exert competitive pressure on Legrand in the sockets and switches market at European level. Schneider's occasionally weak existing position on certain national markets does not therefore necessarily reflect its competitive potential. It is only if Schneider's starting position is genuinely marginal in comparison with that of the other competitors that negative effects of the transaction concerned on competition cannot be proven.

(696) In Italy, Legrand currently has a dominant position, with a market share of [60-70]* % and two solidly positioned brands, Bticino and Legrand. Schneider, on the other hand, currently has only a [0-10]* % share of the market, whereas other players such as ABB (via its subsidiary Vimar), with [20-30]* %, and Gewiss, with [10-20]* %, are much better placed. Even taking into account the elimination of potential competition from Schneider, the overlap between market shares is not significant enough for it to be established with sufficient certainty that the notified transaction would alter competitive conditions on the Italian sockets and switches market to the extent that Legrand's existing dominant position would be strengthened.

(697) The same is true in Portugal, where Legrand currently has a very strong position, with a market share of [50-60]* % and four well established brands, Legrand, Bticino, Quintela and Terraneo, while Schneider has only a 1 % market share. Legrand's main competitors are General Electric (GE), Elapel and JSL, with market shares of [20-30]* %, [10-20]* % and [0-10]* % respectively. In these circumstances, it cannot be established with sufficient certainty that the elimination of actual and potential competition from Schneider would lead to the creation or strengthening of a dominant position.

(698) The situation is different in Greece, however. With [40-50]* % of the Greek market, Legrand also has a large market share which gives it a considerable advance on its main competitors, Siemens ([10-20]* %), Berker ([10-20]* %) and Jung ([10-20]* %), but does not place it in a dominant position comparable to the one it enjoys in Italy or Portugal, for example. Schneider, through its brand, is only fourth in terms of market share

([0-10]* %), but Legrand regards it as one of its main competitors ([249]). The planned merger would eliminate this competitor and create a market leader with a share of [40-50]* %, three times the market share held by Siemens and three and a half times that of the next two players. Alongside the merged entity, Siemens would be the only competitor with a significant presence on other product and geographic markets; Berker and Jung, on the other hand, are German SMEs specialised in equipment downstream of the final panelboard.

(699) To sum up, in view of (i) Legrand's existing strong but not yet clearly dominant position, (ii) the contribution that Schneider's not insignificant share would make to that position and (iii) the position of the remaining competitors, who would be much weaker in comparison, it is clear that the planned merger would alter competitive conditions considerably on the sockets and switches market in Greece and lead to the creation of a dominant position for the merged entity.

(700) Accordingly, the Commission concludes that the notified merger would strengthen a dominant position on the sockets and switches market in France and would create a dominant position on that market in Greece.

C.3.3 ***Weatherproof wiring accessories***

(701) On the weatherproof wiring accessories market, there is overlap between the parties' market shares in Germany, Spain, France and Greece. Although this overlap is not likely to give rise to competition problems in Germany (where, according to the parties, Legrand has a market share of [0-10]* % and Schneider [0-10]* %) or Greece (according to the parties, Legrand has a market share of [20-30]* % and Schneider [0-10]* %), the parties' market shares are significantly higher in France and Spain.

(702) In France, the parties have indicated that, for 2000, Legrand's market share is [80-90]* % and Schneider's [0-10]* %. This information broadly tallies with the estimates contained in Legrand's Medium-term plan 2001-05 France, according to which Legrand (including Arnould) has a market share of [90-100]* %, while Schneider has [0-10]* %. Both sets of estimates see Legrand as dominant on the French market for weatherproof wiring accessories. The planned merger would eliminate any remaining competition on the market and reinforce Legrand's dominant position.

(703) In Spain, the parties have estimated Legrand's market share for 2000 at [30-40]* % and Schneider's at [0-10]* %, on the basis of an estimated market volume of EUR [10-30]* million. However, the Medium-term plan 2001-2005 Bticino Spain estimates the size of the market at ESP [1 000-3 000]* million, or EUR [0-10]* million; according to the same document, Legrand (including Bticino) has a market share of [60-70]* %, while Schneider, Simon and Gewiss have [0-10]* % each.

(704) Legrand has explained that the data featured in the Medium-term plans are estimates by the sales forces working in the respective countries based mainly on data from wholesalers and therefore tend to underestimate the overall size of the market. However, Legrand has accepted that the bulk of weatherproof wiring accessories is distributed through wholesalers and that, as a result, the overall assessment of the market should be roughly correct ([250]). Legrand has not indicated that it sells weatherproof wiring accessories via channels other than wholesalers ([251]).

(705) According to Schneider, Legrand's market share is [40-50]* %, Schneider's is [0-10]* % and the overall market is worth ESP [1 000-3 000]* million, i.e. EUR [0-10]* million.

(706) A third party has provided market share estimates of between [50 and 80]* % for Legrand and below [0-10]* % for Schneider; according to that third party, the overall market volume is EUR [0-10]* million ([252]).

(707) Having compared these different estimates of the volume and structure of the Spanish weatherproof wiring accessories market, the Commission has concluded that the estimates provided by the parties as part of the present proceedings are bound to overestimate the overall market volume and, as a result, underestimate Legrand's market share. However, the estimates featured in the Medium-term plan Legrand Spain are very close to the estimates provided by the aforementioned third party and also to the estimates supplied by Schneider, at least as regards market volume.

([249]) Medium-term plan Legrand Greece, referred to in footnote 211.

([250]) Reply dated 10 July 2001, question 21, referring to the replies to questions 20 and 4.

([251]) Reply dated 10 July 2001, question 19.

([252]) Reply from Simon to the phase II questionnaire for competitors (segment 5).

(708) Accordingly, the Commission concludes that the volume of the weatherproof wiring accessories market in Spain is not significantly larger than EUR [0-20]* million. If a [10-20]* % safety margin is added in favour of the parties, the market can thus be estimated at EUR [0-20]* million. On that assumption, and on the basis of turnover data provided by the parties themselves (Legrand: EUR [0-10]* million, Schneider: EUR [0-10]* million), Legrand's market share should represent at least [40-50]* % and Schneider's at least [0-10]* %.

(709) On the basis of those data, Legrand is clearly already the market leader, with a considerable gap between its market share and that of its main competitors (Simon, Gewiss), each of which is estimated at [0-10]* % by the Medium-term plan Legrand ([253]). This already strong position would be reinforced by Schneider's share if the notified merger were to proceed. Although Schneider's current share of the Spanish weatherproof wiring accessories market is small, it does not reflect the company's full competitive potential on that market, given that it did not enter it until 1999. Indeed, the fact that Schneider has been able to conquer a market share of at least [0-10]* % in just two years, and that in a market from which it had previously been absent, suggests that it is well placed to bring significant competitive pressure to bear on Legrand. In eliminating this competition between Schneider and Legrand, the planned transaction would probably result in a dominant position for the merged entity.

(710) In their reply to the statement of objections, the parties used two arguments to challenge the Commission's analysis:

(711) First, the addition of Schneider's market share would only marginally strengthen Legrand's position and would not therefore have any anticompetitive effect.

(712) Second, Schneider's relatively rapid success on the Spanish weatherproof wiring accessories market demonstrates that that market is wide open and can be easily penetrated by any new competitor.

(713) However, the [0-10]* % market share currently held by Schneider is far from negligible. As explained earlier, it reflects considerable growth potential given Schneider's relatively recent entry into the market. Furthermore, Schneider's market share already represents a significant position in comparison with the main competitors, Simon [0-10]* %) and ABB/Niessen ([0-10]* %) ([254]), particularly bearing in mind that Simon leads the market in ordinary sockets and switches in Spain with a [40-50]* % share.

(714) In reply to the second argument, it has to be recognised that Schneider's rapid success on the Spanish weatherproof wiring accessories market, compared with the relative weakness of competitors such as Simon and ABB/Niessen (despite their strength on the ordinary sockets and switches market), is much more a reflection of Schneider's competitive strength than of an alleged absence of barriers to entry. It should be stressed here that Schneider is far from being a new entrant in the low-voltage electrical equipment markets in Spain: it has a well established position in the markets for electrical switchboard components in that country. It also has a range of weatherproof wiring accessories already successfully marketed in France, from where the weatherproof accessories sold in Spain under the Eunea brand are in fact imported. There is no other competitor who is both strongly established on other product markets in Spain and has a recognised brand and a full range of weatherproof wiring accessories.

(715) Accordingly, the Commission concludes that the notified merger would strengthen a dominant position on the weatherproof wiring accessories market in France and would create a dominant position on that market in Spain.

C.3.4 *Emergency lighting/self-contained emergency lighting units*

(716) On the market for emergency lighting systems, there is a significant degree of overlap between the parties' activities in France, where Legrand (including its subsidiaries URA and Lumatic) has a market share of [50-60]* %, while Schneider has [0-10]* %. If self-contained emergency lighting units alone are taken into account, the market shares are [60-70]* % for Legrand and [0-10]* % for Schneider. While Legrand makes these products itself, Schneider buys them (mainly from Kaufel for the French market). The parties' main competitors are Cooper (Luminox: [10-20]* %) and Chubb ([0-10]* %); all the other competitors have market shares of less than [0-10]* %. Legrand is therefore already the undisputed leader on the market with a market share almost four times larger than its nearest competitor. In the light of this, it can be argued that Legrand has a dominant position on the market. In

([253]) The parties have not provided estimates of the market shares of those competitors for the purpose of the present proceedings.

([254]) Market shares according to the parties' reply to the statement of objections, point 659.

comparison, Schneider entered the French emergency lighting market only recently and had a market share of only [0-10]* % in 1997, when Legrand still controlled [70-80]* % of the market. This shows that, in the space of just a few years, Schneider has become a serious competitor for Legrand. It has succeeded in capturing a significant market share from the market leader, and is now able to constrain Legrand's behaviour to an appreciable extent. This is confirmed by an internal document of URA, a Legrand subsidiary, which refers to the 'difficulty of maintaining prices in the face of wider product availability and Schneider's two-pronged attack: pressure on prices in general […]* and pressure on the "mix", given that Schneider's attack focuses on "basic" products' ([255]).

(717) The Schneider/Legrand merger would put an end to this competitive pressure and give the merged entity a market share of almost [50-60]* % in emergency lighting as a whole and of more than [60-70]* % in the market for self-contained emergency lighting units. As a result, the merged entity's dominant position would be strengthened to such an extent that the other competitors, specialist firms lacking Schneider's resources and access to wholesalers, or potential market entrants, would be even less able to check its market behaviour. As a third party has observed ([256]), Schneider's discount calculation system would not allow competitors to be competitive.

(718) In their reply to the statement of objections, the parties did not dispute this analysis as such, but simply argued that the transaction would not have any adverse effect on competition, taking a broader product market in security and safety systems for protecting life (covering both emergency lighting and fire detection). As demonstrated earlier, this argument does not stand up.

(719) The Commission therefore concludes that the notified merger would strengthen a dominant position in the emergency lighting market or in a potentially narrower market for self-contained emergency lighting units in France.

([255]) SAFT URA — Medium-term plan 2001-2005.
([256]) Kaufel, e-mail of 3 July 2001.

C.3.5 ***Analysis of the impact of the merger on competition on the markets in fixing and connecting equipment***

(720) The Schneider/Legrand combined entity would be the main player on the market in fixing and connecting equipment at European level. It would have an aggregate EEA market share of [20-30]* % and would be present in 11 Member States. The parties state that their main competitor at European level would be Hager, with a market share of [10-20]* % but a presence in only one Member State, Germany. Hager nevertheless stated that it is not active in this product market ([257]).

(721) The planned merger would lead to an addition of very substantial market shares on the French market in fixing and connecting equipment.

The merged entity would have a particularly large share of the French market

(722) Schneider/Legrand would have a share of [70-80]* % of the French market in fixing and connecting equipment. Legrand has a [50-60]* % share of this market, to which would be added the [20-30]* % market share held by Schneider (2000 figures). The parties were unable to identify other players on this market.

(723) What is more, Schneider/Legrand would have even larger market shares for certain categories of fixing and connecting equipment. Schneider thus has a [20-30]* % share and Legrand a [40-50]* % share (2000 figures) of the French market in flush-mounting boxes and junction boxes ([258]). The parties were unable to identify their competitors for flush-mounting boxes and junction boxes. Legrand explains that this product category accounts for around 40 % of the total relevant market ([259]).

(724) The proposed transaction would therefore have the effect of combining the market shares of the two main players on the relevant market.

([257]) Reply by Hager dated 6 March 2001.
([258]) Reply by the parties to point 239 of the questionnaire of 6 April 2001.
([259]) Annex supplied by Legrand in reply to point 239 of the questionnaire of 6 April 2001.

The merged entity would have an unrivalled array of brands

(725) Schneider/Legrand would operate on the French fixing and connecting equipment market with four brands, all enjoying considerable goodwill. The Alombard and Sarel brands owned by Schneider would thus be pooled with the Legrand brands Legrand and Arnould. These brands are well known by installers since they account for the bulk of sales of sockets and switches in France.

(726) This would enable the new group to develop a multi-brand commercial strategy in order to fine-tune its response to each demand segment. Sarel already caters more specifically for demand from industry, while Alombard has an upmarket brand image; Legrand and Arnould, for their part, enjoy an excellent reputation in the residential sector. The Schneider/Legrand entity would therefore be in a position to counter moves by its competitors by focusing one of its brands on its core market while using its other brands to serve the other market segments.

The merged entity would have strong positions on all the French markets in products downstream of the final panelboard

(727) Schneider/Legrand would be particularly strong in France on all the markets in products downstream of the final panelboard. In particular, the new group would have more than an [80-90]* % share of the sockets and switches market. It would also have a [40-50]* % share of the trunking market (based on 1999 figures).

(728) Fixing and connecting equipment is marketed via the same distribution channels as other electrical equipment downstream of the final panelboard, and demand for these products is chiefly from installers. The parties explain that manufacturers generate [90-100]* % of their turnover in products downstream of the final panelboard through sales to wholesalers and that installers account for [90-100]* % of orders from wholesalers ([260]).

(729) The new group could therefore use its strength on all the French markets in electrical equipment downstream of the final panelboard in order to defend or strengthen its position on the fixing and connecting equipment market since all these products are highly complementary. In particular, junction boxes and flush-mounting boxes are designed to receive or to be used in conjunction with other wiring accessories. In a Legrand catalogue, for example, sockets and switches, trunking, and fixing and connecting products are presented in combination ([261]). Likewise, an Arnould catalogue explains which lines of sockets and switches can be installed on the Igloo line of flush-mounting boxes ([262]).

The merged entity would have privileged access to wholesalers

(730) The parties explain that, on average, [90-100]* % of fixing and connecting equipment is marketed via wholesalers ([263]). Schneider/Legrand would have privileged access to distribution channels for its fixing and connecting products: the new group would be an essential supplier at least for the main wholesalers operating in France.

(731) Rexel, the leading distributor of electrical equipment in France, with an estimated share of [40-50]* % of the French market, thus states that Schneider/Legrand would account for between [40-50]* % of its sales ([264]) (see Table 31 above).

(732) The new group would therefore enjoy a unique position as regards the distribution of its products. Given what has been explained above concerning the systems of discounts and rebates, wholesalers would be inclined at least to maintain their sales of the new group's fixing and connecting equipment.

The merged entity would have a full range of fixing and connecting equipment (barrier to entry)

(733) The fixing and connecting equipment market covers a large number of product types. These exist in an even

([260]) Form CO, p. 102.

([261]) Legrand catalogue for 2001, p. 206 et seq.

([262]) Arnould general catalogue for 2001.

([263]) Form CO, p. 102. See also the Annex supplied by Legrand in reply to point 132 of the questionnaire of 6 April 2001.

([264]) Reply by Rexel to the Commission's phase II questionnaire.

larger number of versions. Being able to offer a full range of products constitutes a major competitive advantage on two counts.

(734) First, it is simpler and quicker for an installer to buy all or at least the bulk of the fixing and connecting equipment he needs from one and the same supplier. An installer opting to source from different suppliers would have to either consult several different manufacturer's catalogues or visit wholesalers' shelves displaying each manufacturer's products, both time-consuming tasks that would not be justified by the low cost of the products in question.

(735) Second, a manufacturer with a full range of products benefits from their high level of complementarity. For example, a Sarel catalogue explains that the junction boxes of the Murabox range 'can be easily fitted with the Sarel terminal strip' and with 'the Sarel terminal block' ([265]).

(736) Lastly, a manufacturer that is able to offer a full range of products makes users accustomed to using its products.

Conclusion

(737) The proposed transaction would have the effect of eliminating the essential basis for competition on the French market in fixing and connecting equipment. It would bring together the undisputed top two players on that market. The merged entity would have all the necessary levers for controlling the French fixing and connecting equipment market. It would in particular be able to impose its prices on the market. Given its weight in the distribution system, wholesalers would not be able to oppose any such price increases (see above). The notified transaction would therefore lead to the creation of a dominant position on the French market in the sale of fixing and connecting equipment. In their reply to the statement of objections, the parties did not contest this conclusion.

C.3.6 *Analysis of the impact of the merger on competition on the markets in transformation equipment*

(738) The parties' activities on these markets overlap chiefly in France, through sales by Legrand of its own-manufactured products and sales by Schneider of products sourced from a German manufacturer, Murrelektronic.

(739) In their reply to the statement of objections, the parties supplied the following table showing their own and their main competitors' market shares on the transformer and power supplies markets in France:

Table of transformer and power supplies market shares

FRANCE	Transformers and power supplies	Transformers	Power supplies
LEGRAND	[20-30]* %	[30-40]* %	[10-20]* %
SCHNEIDER	[0-10]* %	[0-10]* %	[0-10]* %
SCHNEIDER+LEGRAND	[20-30]* %	[40-50]* %	[10-20]* %
SIEMENS	[0-10]* %	[0-10]* %	[10-20]* %
CECLA	[0-10]*	[0-10]* %	[0-10]* %
ELC	[0-10]* %		[10-20]* %
LAMBDA	[0-10]* %		[10-20]* %
LUTZE	[0-10]* %		[10-20]* %

([265]) Sarel general catalogue for 2001, pp. 448-449.

FRANCE	Transformers and power supplies	Transformers	Power supplies
MURRELEKTRONIC	[0-10]* %		[10-20]* %
OMRON	[0-10]* %		[0-10]* %
MENG	[0-10]* %	[0-10]* %	[0-10]* %
MARY	[0-10]* %	[0-10]* %	
RAE	[0-10]* %	[0-10]* %	
PALMIERI ROBIN	[0-10]* %	[0-10]* %	
AEM	[0-10]* %	[0-10]* %	
OTHERS (approx. 50)	[20-30]* %		

(740) It can be seen from the above data that Legrand is currently the undisputed leader on the French transformer market, with a market share five times as large as its nearest rival, Siemens, and six or seven times as large as the third and fourth ranking players, Schneider and Cecla. The remainder of the market, accounting for [40-50]* % of the total, is fragmented, with no other competitor holding a market share in excess of [0-10]* %. The notified transaction would therefore eliminate one of Legrand's three sole competitors whose market share is not insignificant; it would also increase the merged entity's lead on its nearest competitors, giving it a market share six times as large as Siemens and eight times as large as Cecla.

(741) To the new entity's market share would be added its privileged access to the distribution network. This factor is less crucial to the analysis of the relevant market given the fact that the end users are industrial customers who are able to obtain supplies other than through wholesalers: a substantial proportion ([30-70]* %) of the products concerned are indeed sold direct by manufacturers to end customers. Nevertheless, the replies given by competitors during the investigation show that access to wholesalers does have an impact on competition in the transformer market. According to one competitor, Schneider is increasingly gaining control over the wholesale distribution network, making it impossible for other brands to find distribution channels ([266]). According to another third party, the merger would enable the merged entity to eject its competitors first from the market in sales to wholesalers and then from the market in general.

([266]) Polylux, reply dated 9 July 2001.

(742) In their reply to the statement of objections, the parties argue that, despite this market structure, the transaction would not create or strengthen a dominant position.

(743) First, they stress that Schneider is present on the transformer market only through the resale of products manufactured by a competitor. But that does not change the market analysis, since Schneider's market share reflects its own competitive strength and not that of another manufacturer.

(744) Likewise, the parties' argument that the transformer market as such is contracting as a result of the gradual substitution of power supplies for transformers does not rule out the possibility of the creation or strengthening of a dominant position on that market or the need, from the standpoint of merger control, for a sufficient degree of competition to be maintained as long as the market exists.

(745) The parties also maintain that, even after the planned merger, the existence of a large number of competitors of various sizes, ranging from large groups such as Siemens, Moeller, Omron or Phoenix, offering a full range of products, to small competitors at local level, would exert sufficient competitive pressure on the merged entity. The same would apply to at least potential competition from manufacturers of power supplies.

(746) However, with the exception of Siemens, the large groups mentioned are absent from or only marginally present on the French transformer market. By

eliminating one of the competitors of significant size, the notified transaction would furthermore considerably reduce the ability of the remaining competitors, and particularly of the many small local manufacturers, to restrict the merged entity's freedom of action. As for substitute competition from the neighbouring power supplies market it has to be recognised that, of the main power supplies manufacturers active on the French market, three (ELC, Lambda and Lutze), each of which has a [0-10]* % share of the power supplies market, are completely absent from the transformer market. Schneider/Legrand would moreover as a result of the notified transaction also become the market leader in power supplies, with a market share of [10-20]* %.

(747) The Commission therefore comes to the conclusion that the transaction in question would create a dominant position on the French transformer market.

C.4 ANALYSIS OF THE IMPACT OF THE MERGER ON COMPETITION ON THE MARKETS IN CONTROL AND SIGNALLING UNITS

(748) Schneider/Legrand would be the main player on the European market in control and signalling units, with a market share of [20-30]* % (Schneider [20-30]* % and Legrand [0-10]* %). Its main competitors would be Moeller and Siemens, with EEA market shares of [0-10]* % and [0-10]* % respectively. Like its two main competitors, Schneider/Legrand would be present in all the EEA countries.

(749) The planned merger would lead to additions of very substantial market shares on the French market in control and signalling units.

C.4.1 ***The merged entity would have a particularly large market share***

(750) As can be seen from the following table, Schneider/Legrand would have significantly larger market shares than its competitors on the French market in control and signalling units.

Table 38

Schneider	Legrand	Siemens	Moeller	K&N	Entrelec
[50-60]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %	[0-10]* %

Source: the parties.

(751) The proposed transaction would therefore bring together the two market leaders in terms of shares of the French market; it would lead to the creation of a player with a market share of [60-70]* %, far ahead of its two main competitors, K&N and Moeller, with respective market shares of [0-10]* %.

C.4.2 ***The merged entity would have an unrivalled array of brands***

(752) Schneider/Legrand would do business on the French market in control and signalling units under four brands. Schneider owns the Télémécanique and Mafelec brands, while Legrand markets the products in question under the Baco and Legrand brands.

(753) This array of brands would enable the new group to cover each market segment in a particularly exhaustive manner. The advantage of segmenting demand in this way is underlined in a Schneider internal document, which explains that in the case of 'conventional product lines, segmentation makes it possible to combine growth and profitability' ([267]). The document shows in particular that owning several brands enables differentiated product mix and pricing policies to be pursued for each of the brands. It also explains that having several brands makes it possible to 'exploit a two-pronged multispecialist/specialist approach'. Baco presents itself as the leader on the cam switches market with a market share of over [10-20]* % ([268]).

(754) The merged entity could thus reproduce what Schneider achieved through the acquisition of Mafelec. It should, however, be stressed that the beneficial effects for the new group of adding the Legrand and Baco brands to

([267]) Record of the meeting of the Acquisitions Committee of 17 October 1997. Document supplied in response to point 113 of the questionnaire of 29 June 2001.

([268]) Medium-term plan 2001-2005 France Baco, p. 9. Document supplied in response to point 113 of the questionnaire of 29 June 2001.

the Télémécanique and Mafelec brands would be significantly larger than the benefits which Schneider derived from the acquisition of Mafelec, for two main reasons. First, Schneider/Legrand would have four brands, enabling it to pursue an even more sophisticated multi-brand strategy; second, the competitors remaining on the market would have a significantly smaller presence.

(755) In their reply to the statement of objections ([269]), the parties argued that the effect of adding Baco to Schneider, and in particular to its subsidiary Télémécanique, would be negligible. The commercial strength of the Télémécanique brand, which is present on several continents, would not, they claim, be in any way enhanced by the Baco brand, whose reputation and field of activity are basically limited to France. The products marketed by Baco are, so they argue, furthermore conventional, standardised and harmonised and would therefore add nothing to Schneider's product range.

(756) It should first be noted that the parties do not challenge the finding that the merged entity would enjoy a competitive advantage through having a wide array of brands, unrivalled among its competitors. It is significant in this connection that Schneider held on to the Mafelec brand after acquiring control of the company in 1997 ([270]). It is true that the Télémécanique brand enjoys a reputation and a geographic coverage far outstripping those of the Baco and Legrand brands as far as control and signalling units are concerned; but Baco and Legrand have a good reputation in France which would directly benefit the merged entity and strengthen its array of brands.

(757) Secondly, it is common ground that the different categories of control and signalling unit marketed by the Legrand group are also marketed by Schneider. The fact remains that the planned merger would lead to a significant strengthening of Schneider's positions in at least one product category: cam switches, in which Baco has a market share in excess of [20-30]* %.

(758) In conclusion, the addition of the Baco and Legrand brands to the Télémécanique and Mafelec brands already held by Schneider would confer a substantial competitive advantage on the merged entity.

C.4.3 *The proposed transaction would eliminate the essential basis for competition on the French market*

(759) The proposed transaction would have the effect of eliminating competition between the undisputed top two players on the French market in control and signalling units. Rivalry between the Schneider and Legrand groups provided the essential basis for the competitive structure of that market. This finding is borne out by internal documents of both parties.

(760) It is, for example, clear from an internal document drawn up by Baco ([271]), a Legrand subsidiary which is the vehicle for most of the group's control and signalling units business, that Schneider is its main competitor on that market. The document states that 'in control and signalling units, the traditionally difficult competitive position with regard to Schneider will remain so in the short/medium term as a result of their introduction of a new product line' ([272]). It explains that Baco will retain a 'defensive stance until our new product line is rolled out in 2003, to compete with Schneider's Harmony line' ([273]). The document lastly points out that Schneider is 'extremely aggressive in all the industrial product customer segments (distribution — panel builders — original equipment manufacturers)'; ([274]) this includes control and signalling units.

(761) It is also indicated in a Schneider internal document ([275]) that Schneider's acquisition of Mafelec was motivated by its desire to counter Baco on the market in question. The document thus states that the aim pursued by Schneider through that acquisition was 'to capture the repetitive machines segment' and 'to prevent competitors from the repetitive machines segment penetrating the markets in industrial machines and special machines'. Baco is presented, alongside

([269]) Point 798 et seq.

([270]) Schneider internal document supplied in response to point 113 of the questionnaire of 10 July 2001. Record of the meeting of Schneider's Acquisitions Committee of 17 October 2001, p. 5.

([271]) Medium-term plan 2001-2005 France Baco. Document supplied in response to point 113 of the questionnaire of 29 June 2001.

([272]) Page 11.

([273]) Page 9.

([274]) Page 5.

([275]) Record of the meeting of the Acquisitions Committee of 17 October 1997. Document supplied in response to point 113 of the questionnaire of 29 June 2001.

Omron, as a specialist on the repetitive machines market. It is also significant to note that Baco's name is highlighted in bold type, unlike Omron. Schneider's acquisition of Mafelec was therefore intended to strengthen its position on the repetitive machines market with a view to competing with Baco on its core market and thereby preventing the latter challenging its positions on the related markets in industrial machines and special machines.

(762) In their reply to the statement of objections ([276]), the parties disputed the finding that the proposed transaction would eliminate the essential basis for competition on the French market for control and signalling units.

(763) They began by arguing that Legrand's market share ([0-10]* %) was both relatively small and similar to those held by K&N ([0-10]* %) and Moeller ([0-10]* %). Furthermore, given its size ([50-60]* %), Schneider's share of the relevant market would be only marginally strengthened by the proposed transaction. The parties then went on to claim that the reference in a Baco internal document to Schneider as its 'main competitor' meant nothing in so far as Schneider was the European leader on the relevant market and any player therefore had to refer to Schneider in its analyses of competition on the market. Thirdly, the parties argued that Schneider's acquisition of Mafelec was not intended to counter Baco on the French market for control and signalling units but to enter a niche market from which it was absent, the market in membrane keypads.

(764) The parties' line of argument does not stand up to scrutiny. It should first be noted that Legrand is the second player, after Schneider, on the French market for control and signalling units, even if its market share only slightly exceeds that of K&N and Moeller. The proposed transaction would therefore bring together the two top players on the relevant market.

(765) In addition, Baco differs from K&N and Moeller on three main counts.

(766) In the first place, Baco, unlike K&N and Moeller, generates most of its turnover from the products concerned in France ([277]). In contrast with K&N and Moeller, maintaining its market share in France is therefore a matter of fundamental, if not vital, importance for Baco, and this places it in a special position of direct competition with Schneider. K&N and Moeller have strong positions outside France, where they make only a small share of their sales of the products in question ([278]). They therefore do not have the same competitive incentives as Baco in relation to Schneider on the French market.

(767) Secondly, Baco can rely on the strength of the Legrand group as regards access to distribution channels in France, a competitive advantage available to neither Moeller nor K&N, which account, all product categories taken together, for only a tiny share of the turnover of wholesalers established in France. A Legrand internal document ([279]) thus states several times that access to distribution channels is one of Baco's 'anchor points'.

(768) Thirdly, Baco has a brand with a high profile in France and a leading position (more than [10-20]* % market share) in the cam switches segment. A Legrand internal document ([280]) thus repeatedly states that Baco has 'a sound reputation based on its long-standing presence, know-how and experience in the field'. Baco can therefore use this strong position in cam switches as a lever to develop its sales of other products in its range: a Legrand internal document ([281]) states repeatedly that synergies between different categories of control and signalling units is one of Baco's strong points.

(769) For all these reasons, Baco can therefore be seen as Schneider's most active and most dangerous rival on the French market in control and signalling units.

(770) Analysis of Schneider's internal documents leads to the same conclusion. For example, a confidential Schneider document ([282]) states that the group's second priority for the period 2000-2003 is […]*. Baco fits that twin description perfectly, since it generates the bulk of its

([276]) Point 801 et seq.

([277]) See Table 26 above and reply to the statement of objections, point 799.

([278]) See Table 26 above.

([279]) Medium-term plan 2001-2005 Baco France, pp. 39 and 41. Document supplied in response to point 113 of the questionnaire of 10 July 2001.

([280]) Medium-term plan 2001-2005 Baco France, pp. 39, 41 and 43. Document supplied in response to point 113 of the questionnaire of 10 July 2001.

([281]) Medium-term plan 2001-2005 France Baco, pp. 39, 41 and 43. Document supplied in response to point 113 of the questionnaire of 29 June 2001.

([282]) Products/services supply plan 2000 Electromechanical dialogue. Annex 8 supplied in reply to point 40 of the questionnaire of 20 March 2001.

turnover in France and is particularly well placed in one market segment: cam switches. And, in another confidential Schneider document ([283]), Baco is presented as a specialist. From this standpoint, irrespective of the reasons behind Schneider's acquisition of Mafelec, Schneider's strategy on the French market for the years ahead was indeed to attack Baco as a matter of priority.

(771) For all the above reasons, the rivalry between Schneider and Legrand is the essential basis for competition on the French market in control and signalling units.

C.4.4 ***The organisation of the market would not allow buyer power to emerge that could counterbalance the strength of the merged entity***

(772) Manufacturers of control and signalling units market their products through two main channels: wholesalers and direct sales.

(773) According to an internal Legrand document, whilst Baco achieves [40-50]* % of its sales of control and signalling units through wholesalers, such sales account for [90-100]* % of Legrand's turnover in those products ([284]). It can be seen from a Schneider document that Mafelec generates [50-60]* % of its turnover through direct sales whereas [50-60]* % of Schneider products are sold via wholesalers ([285]).

(774) The parties explain that control and signalling units are distributed by the same wholesalers as the other electrical equipment concerned by the transaction ([286]). The strength of the new group on the other French electrical equipment markets (see above, in particular Table 30) would therefore place it in a privileged position with regard to sales through wholesalers.

([283]) Record of the meeting of the Acquisitions Committee of 17 October 1997, p. 2. Document supplied in response to point 113 of the questionnaire of 29 June 2001.

([284]) Medium-term plan 2001-2005 France Baco, p. 20. Document supplied in response to point 113 of the questionnaire of 29 June 2001.

([285]) Record of the meeting of the Acquisitions Committee of 17 October 1997, p. 6. Document supplied in response to point 113 of the questionnaire of 29 June 2001.

([286]) Reply by the parties to point 13 of the questionnaire of 15 March 2001.

(775) Direct sales are made chiefly to original equipment manufacturers (OEMs) and to a lesser extent to panel builders and installers ([287]). These consumers would not be able to counterbalance the strength of Schneider/Legrand on the French market, for two sets of reasons.

(776) First, the parties have not given any indication to the effect that one or more of those consumers would represent a large enough fraction of the market to be regarded as wielding genuine buyer power. Even if the parties' direct customers include a few large industrial groups, most of them are large SMEs specialised in the manufacture of industrial machinery.

(777) Second, it could be argued that those consumers could fairly easily change suppliers and therefore stimulate keener competition between them. Assuming that it is easy in practice to change to a different supplier of control and signalling units, the fact remains that the main European producers of control and signalling units (Moeller and Siemens) are already present on the French market and that their shares of that market are particularly small. All the signs are that the strategy adopted by those manufacturers is to benefit from the high prices applied in France by the parties (see above) rather than trying to win market shares from the two dominant players. There are no indications that those competitors will in future reshape their strategy and pricing policy in order to become genuinely active competitors on the market.

(778) In their reply to the statement of objections ([288]), the parties argue that there is no reason to believe that the parties' direct customers would remain loyal to the merged entity if it were to decide to raise its selling prices. They claim that Schneider and Legrand are currently subject to actual and potential competition from rivals whose products are present in France and neighbouring Member States, and the new entity would in future be exposed to such competition. They also argue that there is no evidence to suggest that in future those rivals would not try to gain market shares, even if they are content at present to take their cue from Schneider. Thus, according to the parties, Moeller mounted a significant attack on a specific market

([287]) Reply by the parties dated 20 July 2001 to a request for information made by the Commission on 10 July 2001.

([288]) Point 806 et seq.

segment, control and signalling units for agricultural machinery, by reducing prices and tailoring the products more closely to customers' needs.

(779) The above line of argument developed by the parties is implicitly based on the idea that barriers to entering the relevant market are not significant and that the parties' rivals would in future be able to exert sufficient actual or potential competitive pressure to prevent the parties initiating profitable price increases. But, as has already been explained earlier, there are significant barriers to entering the market in control and signalling units, in particular access to distribution channels and the need to maintain a close relationship with end customers. The existence of these barriers to entry, as far as the French market is concerned, is reflected in the small market shares held by Siemens and Moeller and the high level of prices for the products concerned, which is not disputed by the parties ([289]). There are therefore structural factors limiting the intensity of competition on the market for control and signalling units, independently of the behaviour of end customers.

(780) All the above considerations are in line with the statement made in a Legrand internal document ([290]) that this market is […]*.

C.4.5 ***Conclusion***

(781) Schneider/Legrand would enjoy substantial advantages over its competitors that would enable it to control competition on the French market in control and signalling units. The new group would consequently be in a position to increase the prices of its products without this leading to losses of market share that would make such price increases unprofitable: faced with such a situation, competitors would be likely to follow the price increase initiated by the market leader rather than trying to gain market shares. It would also be possible for the new group to increase the prices of products sold under only some of its brands so that the fraction of demand that was shifted would switch to its other brands. Lastly, no buyer power would be likely to counterbalance the strength of Schneider/Legrand on the relevant market. The notified transaction would therefore lead to the creation of a dominant position on the French market in the sale of control and signalling units.

([289]) Reply to the statement of objections, point 807.

([290]) Medium-term plan 2001-2005 France Baco, p. 34. Document supplied in response to point 113 of the questionnaire of 29 June 2001.

D. *OVERALL CONCLUSION*

(782) For the reasons set out above, the Commission has come to the conclusion that the notified transaction would create a dominant position with the effect of significantly restricting effective competition on the following markets:

— the markets in moulded case circuit breakers, miniature circuit breakers and cabinets for distribution boards in Italy;

— the markets in miniature circuit breakers, earth leakage protection and enclosures for final panelboards in Denmark, Spain, Italy and Portugal;

— the markets in mains connection circuit breakers in France and Portugal;

— the market in cable trays in the United Kingdom;

— the market in sockets and switches in Greece;

— the market in weatherproof wiring accessories in Spain;

— the market in fixing and connecting equipment in France;

— the market in transformation equipment in France;

— the market in control and signalling units in France.

(783) For the reasons set out above, the Commission has also come to the conclusion that the notified transaction would strengthen a dominant position with the effect of significantly restricting effective competition on the following markets:

— the markets in moulded case circuit breakers, miniature circuit breakers and cabinets for distribution boards in France;

— the markets in miniature circuit breakers, earth leakage protection and enclosures for final panelboards in France;

— the market in sockets and switches in France;

— the market in weatherproof wiring accessories in France;

— the market in emergency lighting systems or self-contained emergency lighting units in France.

VI. **REMEDIES**

A. *PROCEDURE*

(784) On 14 September 2001 the notifying party offered the Commission commitments (hereinafter the 'initially proposed commitments'). These relate to each of the markets referred to in points 782 and 783 above. The Commission carried out a survey among the parties and third parties with a view to assessing those proposed commitments.

(785) The Commission's assessment revealed that the commitments offered by the parties on 14 September were insufficient. The Commission accordingly informed the parties, which in reply submitted alternative commitments on 24 September. This new text is entitled 'Schneider Electric Phase II commitments dated 14 September 2001, clarified with alternative solutions on 24 September 2001' (hereinafter the 'proposed alternative commitments').

(786) These proposed alternative commitments are to be examined in the light of point 43 of the notice on remedies ([291]), which lays down stringent conditions for the acceptance of such commitments, in terms of both substance (the Commission must be able to clearly determine, without the need for any other market test, that the modified commitments will resolve the competition problems identified) and form (the modified commitments must be submitted in sufficient time to allow Member States to be consulted).

(787) As explained below, the Commission finds that the proposed alternative commitments do not fulfil the conditions set out in point 43 of the notice on remedies.

B. *ANALYSIS*

The markets in distribution boards and final panelboards and components thereof in Denmark, Spain, France, Italy and Portugal

The initially proposed commitments were insufficient

(788) The initially proposed commitments concerned the following business units: 'Legrand Puissance' (distribution boards in France, Legrand group), 'Bticino Puissance' (distribution boards in Italy, Legrand group), 'Legrand Lexic' (final panelboards in France, Spain, Portugal and Denmark, Legrand group), 'Multi 9' (final panelboards in Italy, Schneider group) and the Baco company (earth leakage protection, Legrand group). The parties proposed (i) to transfer brand names in Europe and the Sarel and Saip brands in Italy; (ii) to offer an option for the temporary use (for three years) of the Legrand Puissance, Bticino Puissance, Legrand Lexic and Merlin Gerin Modulaire brands; (iii) to transfer the plant manufacturing the key products for distribution boards (moulded case circuit breakers), a plant producing distribution board cabinets for the Italian market, a plant producing miniature circuit breakers located in […]* and a plant to be set up in the region of […]* to produce enclosures and other components for final panelboards (the latter not being intended for the Italian market in final panelboards); (iv) to share the use of intellectual and industrial property rights; and (v) to offer sales forces and sales contracts with wholesalers, such marketing rights being exclusive in the territories in respect of which objections were raised and non-exclusive for the rest of Europe as far as the Legrand Puissance, Bticino Puissance and Legrand Lexic proposals were concerned.

(789) The Commission's assessment showed that this proposal raised serious doubts as to the autonomy and ability to compete of the entities which the parties had proposed

([291]) Commission notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98 (OJ C 68, 2.3.2001, p. 3).

to divest: those doubts were largely due to the fact that most of the entities proposed for divestiture did not previously operate on a stand-alone basis.

(790) In the first place, Schneider/Legrand would have at least partly retained ownership of and access to all the technologies used by the proposed entities. This was no doubt justified in its view by the fact that it was to retain both the same businesses based on the same technologies outside Europe and the Bticino brand final panelboard and final panelboard components business in Europe, as well as the Merlin Gerin business outside Italy. The parties undertook not to compete with the divested entity on the relevant markets concerned by offering the same products. However, in the absence of any definition of what constituted the 'same products', all Schneider/Legrand would have needed to do was to develop Legrand's initial technology in order to be able to offer products in competition with those divested. The divested entity would furthermore have immediately had to face competition from identical Schneider/Legrand products on the European markets in respect of which no objections were raised by the Commission. The brand image and competitiveness of the divested businesses would consequently have been weakened by the supply of 'clones', and this would have threatened the viability of some of the divested businesses.

(791) In addition, the fact that Schneider/Legrand was to keep businesses based on identical products to those divested would have given rise to major problems, with special reference to the economic competitiveness of the production plants which the parties proposed to divest.

(792) On the one hand, the parties proposed to retain plants manufacturing identical products to those divested. Since production had been optimised at European level by Legrand, that would have meant reorganising production between the divested plants and those that were to remain within Schneider/Legrand. According to the parties, such a reorganisation would have cost […]* and taken over […]*. Plants […]* manufacturing other items as well as the products in question would also have had to be reorganised; according to the parties, such a reorganisation […]*.

(793) On the other hand, the divested production plants would have had to continue supplying substantial quantities to Schneider/Legrand to enable it to continue selling the products concerned on the markets on which it kept marketing rights (both within Europe and elsewhere). Between [20 and 60]* % of the output of those plants would thus have been sold to Schneider/Legrand and their viability would therefore have depended largely on sales to Schneider/Legrand. Conversely, the purchaser of the proposed entity would have had to continue sourcing supplies from plants kept by Schneider/Legrand (in particular a plant in Naples) until production lines had been relocated among those different plants.

(794) Lastly, the parties proposed to hive off separately the company Baco, which has a production plant that would have had to supply (with earth leakage switches) the purchaser of the Legrand Puissance, Bticino Puissance and Legrand Lexic businesses and provide it with components so that one of the divested plants could continue to produce earth leakage circuit breakers. Here, fulfilment of the commitments would therefore have depended on the good will of a third party.

(795) As regards the proposal concerning final panelboards in Italy, the majority of the third parties surveyed voiced serious doubts as to the intrinsic merits of the offer. In the first place, apart from the Sarel and Saip brands, this commitment clearly fell far short of the (insufficient) proposal concerning the other switchboard markets described above. The proposal therefore gave rise to the same doubts as those set out above, with additional handicaps.

(796) It should be stressed that Schneider/Legrand would have remained present on the distribution board market in Italy, via the Merlin Gerin brand. In addition to the confusion of brand image and the need to coordinate marketing strategies on very closely neighbouring markets, distribution boards account for 78 % of sales of products in the Multi 9 range. Since sales of these products (miniature circuit breakers) are driven commercially by sales of moulded case circuit breakers (remaining in the hands of Merlin Gérin), the bulk of the purchaser's sales would therefore have been entirely dependent on Schneider/Legrand.

(797) The additional handicaps also have to do with the fact that no production capacity or intellectual and industrial property rights would have been transferred: Schneider

would have continued to sell identical products outside Italy using the Merlin Gerin brand and the Multi 9 range name and would have been entirely free to develop those products as it wished, without taking account of the purchaser's specific needs. In addition, the scope of the non-competition clause did not clearly rule out possible further development of the products hived off, which could have allowed earlier market re-entry. The result would have been that the purchaser would have in a way been a reseller of Schneider products over which it had no production or technological control. If the purchaser wished to establish a long-term independent position on the market, it would therefore have had to produce its own switchboards. Since the barriers to entry are too high, the purchaser could therefore only have been a player already present on the market. Such a player would consequently have had in a short space of time to (i) change brands; (ii) adjust production capacities earmarked for the Italian market; and (iii) persuade the market that the change of brand and technology did not jeopardise the reliability and quality of its products.

(798) The proposals concerning Sarel and Saip raised specific problems too. The Sarel brand, which in fact markets the Multi 9 product range, would have been shared between the purchaser of this business, the purchaser of the sockets and switches business in France and Schneider/Legrand as regards the all-purpose cabinets business (see below). That would have created uncertainty concerning the value of the brand. The Saip brand exists, as far as final panelboards are concerned, only for enclosures; it is apparently also used on other low-voltage product markets in Italy. The parties proposed transferring production equipment without transferring a plant: that would have created further uncertainties regarding the need to set up a new production plant.

(799) In terms of market access, the parties' initial proposal raised numerous uncertainties.

(800) First of all, whereas strong brand loyalty is a feature of all the relevant markets, the proposed remedy did not involve the transfer of any brand but rather the transfer of names of product ranges together with the possibility of displaying the Legrand brand on the products sold for a limited period of time. The purchaser of these businesses would therefore have had not only to cope with the technical uncertainty (with the associated time and cost) of modifying the production facilities transferred, but also to bear the substantial costs of changing the brand of its products while endeavouring to reassure the market that all these simultaneous changes would not affect the quality and reliability of its product range. The Commission's assessment confirmed that it was a disadvantage not to have one's own brand from the outset and revealed that a purchaser would need a lengthy period of time (around seven years) in order successfully to implement the proposed brand changeover. The Commission's assessment also demonstrated that a purchaser would have had to be protected by clauses preventing re-entry into the relevant markets under the initial brand for a period of more than 10 years.

(801) Secondly, the parties' proposal suffered from the centralisation of certain functions (such as sales, marketing and logistics) within the Legrand group. The initially proposed commitments did not cover marketing and logistics functions and included a very small number of sales forces […]*. No specific proposal was made with regard to Legrand Lexic's sales forces outside France. The numbers involved included 'dedicated' sales staff and employees partly in charge of such sales, and the selection criteria were not spelled out. Since the proposal did not concern all sales staff, Legrand and Schneider would have retained a link with customers. That link would have been particularly strong on markets where Legrand also sells wiring accessories (sockets, etc.) and holds strong positions. This would therefore have enabled the merged entity to redirect its customers towards switchboard products remaining within the perimeter of Schneider/Legrand. As far as the central functions (and related information systems) are concerned, the Commission's assessment showed that a transfer without such functions was feasible but involved significant risks.

(802) Thirdly, the parties offered to transfer sales contracts with wholesalers. The Commission's assessment called into question the ability of purchasers to take advantage of sufficient access to wholesalers (i.e. access on equivalent terms to those previously enjoyed by the hived-off entities). For example, the parties offer discounts […]*. According to the parties, these discounts amount to around [0-10]* %. It is by no means certain that a purchaser would have been able to match those discounts given that in relative terms it would have been much smaller than Schneider/Legrand. If it was unable to offer similar terms, wholesalers would then have been able to choose to continue to benefit from the preferential conditions they already obtained from Schneider and Legrand. This would not

necessarily have ruled out any purchasers but rather called into question their ability to restore competitive conditions equivalent to those enjoyed by the divested entity when it belonged to Schneider or Legrand.

(803) This problem was particularly acute in France, where Schneider is already dominant on the switchboard markets (with shares of around [40-70]* % of the distribution board market and around [40-70]* % of the final panelboard market) and Legrand is already dominant on most of the other low-voltage equipment markets (with, for example, a [70-100]* % share of the sockets and switches market). As explained in the statement of objections (a finding which the parties did not dispute), the combination of the two companies would place them in a preponderant position with regard to wholesalers since they would account for between [30 and 60]* % of the latter's total purchases in France. The proposed commitments would admittedly have weakened that combined position with regard to wholesalers but the new entity would have remained dominant on most of the relevant markets and would have retained its preponderant position. Being an indispensable partner for wholesalers, Schneider/Legrand would then have been in a position to control the access to wholesalers of the purchaser of the Legrand Puissance, Bticino Puissance and Legrand Lexic businesses, for example by ensuring that such access did not enable the purchaser to exert active competitive pressure equivalent to that previously exerted by Legrand.

(804) To sum up as regards the proposed commitments relating to the markets for distribution boards and components thereof in France and Italy and the markets for final panelboards and components thereof in Denmark, Spain, France, Italy and Portugal, the remedy proposed by the parties could be regarded as a mixture of businesses resulting from uncertain divestitures from their original group, whose ability to operate on a stand-alone basis and as a competitive force capable of restoring the initial competitive conditions raised serious doubts.

The proposed alternative commitments submitted on 24 September 2001

(805) In response to the serious doubts raised by the Commission concerning the effect of the initially proposed commitments, the notifying party offered to divest […]*. The proposal also involved temporary transfer of the […]* brand throughout Europe, the sale of an additional production plant […]* and additional relocations of production plants […]*. In other words, the parties offered to divest […]*.

(806) This proposal offered the advantage of clearly eliminating […]* overlaps between businesses on all the markets where the notified transaction would lead to the creation or strengthening of dominant positions; however, it did not resolve a number of doubts and risks to do with the fact that the proposed entity would not have been fully functional and able to operate on a stand-alone basis.

(807) First, this alternative proposal raised the same issues of exhaustivity and separation of […]* as the initial proposals. As explained above, certain central functions (marketing, sales support, relations with distributors, logistics, etc.) would not have been transferred in their entirety. Also, like the initial proposal, the alternative proposal did not cover all the sales forces concerned, and the problems to do with sharing of the brand remained.

(808) Second, the alternative proposal involved relocating production activities between plants. For example, […]*. Likewise, the […]* production lines were to be transferred to the production plant at […]*. And, as before, […]* were to be grouped together […]* in one or two units. These relocations raised doubts as to the continuity of the operations concerned, both because of the industrial uncertainties inherent in such transfers and on account of the losses of know-how […]*. Furthermore, the Commission was not in a position to assess whether the receiving plants were able to host the new activities concerned in a competitive manner (space available, production costs, availability of supplies, etc.).

(809) Third, the alternative proposal was confined to Europe, although the industrial sites concerned generated a […]* share of their turnover from exports from Europe. Under the proposed remedies those sales outside Europe would remain in the hands of Schneider/Legrand. The parties thus drew the Commission's attention to the fact that, out of total sales of EUR [300-500]* million, the proposed entity currently generated turnover amounting to EUR [50-250]* million outside Europe. This meant that all the production plants proposed for divestiture

would continue to supply Schneider/Legrand with quantities corresponding on average to around a quarter of their current output. Such dependence would, for example, be particularly marked in the case of the […]* plant, more than [40-70]* % of whose output is thought to be sold outside Europe. To overcome this problem, the parties proposed […]*. In either case, the effect would be either immediately or in the long run to restrict the output of the plants concerned and consequently to increase their unit costs; such an increase in unit costs would harm their competitiveness in terms of profit margins. The effects of a loss of competitiveness among the production plants of the divested entity would vary from one country to another: on the French markets where Schneider is already dominant the impact would be serious, while on the Italian market for final panelboards the size of the market shares divested would be such that the loss of competitiveness could be made up.

(810) In addition to the problems discussed above, the alternative proposal did not solve the market access difficulties that had been identified, particularly in France. The market access conditions which Legrand enjoyed before the transaction reflected not only its standing in the switchboard stakes (relatively modest in comparison with Schneider, particularly in the case of distribution boards), but also its considerable strength on the markets in wiring accessories (sockets, switches, etc.). The Commission's assessment established that no other operator on the market is able to offer wholesalers conditions comparable to those granted by Legrand (dominant in equipment downstream of the final panelboard) and Schneider (dominant in switchboards). It follows that the purchaser of the business would not have been able to benefit from the terms granted by the wholesalers […]* for the products concerned, a fact which (according to the Commission's assessment) could have significantly affected the purchaser's competitiveness. This risk would have been particularly acute in view of the fact that once the merger had gone ahead the purchaser would have had to face an entity combining the strengths of Schneider and Legrand.

(811) In France, the Commission has concluded that the transaction would lead to the strengthening of Schneider's dominant position on the markets for distribution boards and final panelboards. As set out above in the sections dealing with the competitive analysis of the proposed merger, such strengthening would be the result of two factors in particular: the addition of Legrand's market shares to Schneider's (an addition that would have been eliminated under the alternative proposal) and the strengthening of Schneider's position with respect to electrical equipment distributors as a result of the addition of Legrand's sales and leading position in equipment downstream of the final panelboard. As explained above, the purchaser of the proposed business would be far from being able to reproduce the competitive pressure which Legrand exerted on Schneider (all the more so with regard to a new combined Schneider/Legrand entity). In these circumstances, the proposed commitments would not eliminate the anticompetitive effects of the transaction on the markets concerned.

(812) To sum up, the notifying party's alternative proposal would not eliminate all the risks created by the initial proposal (some of which could on their own jeopardise the effectiveness of the remedy) and would not overcome the objections raised with regard to the markets in switchboards and switchboard components in France. In any event, the proposal did not allow the Commission to assess the acceptability of the commitments offered without a further market test (ruled out at that stage in the procedure).

The markets in mains connection circuit breakers in France and Portugal

(813) The initially proposed commitment was to divest the company Baco in its entirety, including all its tangible and intangible assets, employees and sales contracts. Baco is also active in the earth leakage switches and control units sectors; its products are marketed under the Baco and Legrand brands and they are manufactured in a plant in Strasbourg.

(814) The proposed commitment would eliminate the competitive overlap with the Schneider group on the mains connection circuit breaker markets. Baco is furthermore a fully functional undertaking which operates on a stand-alone basis. However, as stated earlier, part of Baco's production is interdependent with Legrand's other switchboard business. In particular, a quarter of Baco's turnover is generated through subcontracting for the rest of the Legrand group. The Commission's assessment therefore demonstrated that Baco should be sold along with Legrand's switchboard

business. It also revealed that, subject to that condition, the parties' proposal enabled the competition difficulties on the French and Portuguese mains connection circuit breaker markets to be overcome.

(815) The parties' alternative proposal was to cut off Baco's supplies to the remainder of Legrand under […]* and left open the possibility of divesting it together with […]*. The fact remains that any sale of Baco should go hand-in-hand with the sale of the rest of the switchboard business, and the proposal was consequently unacceptable as it stood.

The market in control and signalling units in France

(816) The proposed commitment was to divest Baco. The proposed commitment would eliminate the competitive overlap with the Schneider group on the French control and signalling units market. The above comments on Baco apply here too.

The market in sockets and switches in France

The initially proposed commitments were insufficient

(817) The initial proposal was to divest the Alombard and Scanelec companies, both of which are Schneider subsidiaries. Alombard is specialised in the manufacture of sockets and switches, but is also present on the fixing and connecting equipment market; it has its own production and R&D facilities in Orléans. The proposed commitment related to all of Alombard's tangible and intangible assets. Scanelec's business is the sale of equipment downstream of the final panelboard to hypermarkets. The proposed commitment related to all of Scanelec's tangible and intangible assets.

(818) The Commission's assessment revealed that this proposal would not have been likely to restore effective competition on the relevant markets.

(819) In the first place, of the product ranges sold by Alombard, its own ranges are regarded as obsolete by the market; the other ranges were developed by other entities belonging to the Schneider group (which would not be transferred).

(820) These divestiture proposals furthermore raised serious doubts as to the autonomy of the two entities concerned given their current integration into the Schneider group. Alombard sources most of its components from other companies in the Schneider group. Unless it was to remain dependent on Schneider/Legrand, a purchaser would therefore have had to launch new product lines in order to integrate Alombard into its structure, which would have taken between one and two years and required substantial investments. Alombard's sales forces and a number of its central functions were furthermore to be […]*. A purchaser would therefore also have had to re-establish the sales forces and replace its central functions.

(821) Scanelec sources exclusively from the Schneider group, sells products under the Schneider brands and […]* of its workforce is under contract with Schneider. It is difficult to imagine the company surviving without the backing of the Schneider group for a substantial period of time; however, Scanelec and Alombard would have to be sold together because they each account for [10-30]* % of the other's business. The Commission's assessment confirmed this analysis.

(822) Lastly, Alombard and Scanelec account for only a small share of the French sockets and switches market (around [0-10]* %), as against around [80-100]* % for the merged entity. In the light of Schneider/Legrand's leading position with regard to French wholesalers on all the markets in low-voltage electrical equipment, it was highly unlikely that the divested entity would have been able to exert competitive pressure comparable to that brought to bear by the Schneider group (which could use its strength in the switchboards sector in order to encourage wholesalers to sell its sockets and switches).

(823) In conclusion, the proposed commitment involving the divestiture of Scanelec and Alombard would not have enabled the initial competitive conditions to be restored.

The proposed alternative commitments submitted on 24 September 2001

(824) The alternative commitments involved […]*. According to the information supplied to the Commission […]*.

(825) The effect of the alternative proposal would therefore have been to eliminate more than the competitive overlap between Schneider and Legrand; however, it raised two important issues.

(826) The first issue relates to the competitiveness […]*. In particular, […]* generates a significant proportion (20-30 %) of its turnover from supplies of components to other branches […]*. The parties proposed hiving off this supply business before divesting […]*, but doubts remained as to the impact of such a separation on […]*'s profitability and on the competitiveness of its range. A precise analysis of these questions would have required a new market test.

(827) Furthermore, before the transaction, Legrand was dominant on the French sockets and switches market (with a total market share of [80-90]* % […]*). Its main competitor was Alombard (0-10]* %), which had the backing of the Schneider group (both in terms of products, via Lexel, and in terms of access to wholesalers). After the merger and the fulfilment of the commitment, the situation would be […]*. The new entity would be unlikely to be able to hold on to those market shares. First, Schneider states in its internal documents that it was aiming for a market share of around [10-20]* % for […]*; the effect of the merger would be to remove that impetus. Second, Schneider/Legrand would be able to achieve the same brand differentiation effect […]* as it previously exerted on the market and confine […]*. Consequently, in view of the size of Legrand's dominant position prior to the merger, the fact that the merged entity would continue to hold two main brands (Legrand and […]*) and the fact that the new entity would be an indispensable partner for wholesalers, the question is whether divesting […]* would make it possible to restore a situation comparable to that obtaining prior to the transaction.

(828) The Commission considers that, […]*, that would not be the case. For one thing, as stated in connection with final panelboards, it is not certain that the purchaser could obtain access to distributors on conditions comparable to those enjoyed by […]*. This problem would be particularly acute because once the merger went ahead, Legrand's strengths would be added to Schneider's, and this could significantly affect the competitive strength that could be wielded by […]* after the merger. For another thing, […]* would be confronted by the merged entity, which would have a range of wiring accessories at least comparable to its own and would benefit from the combination of the two brands (Legrand and […]*). This could enable the merged entity to undertake specific measures against […]*.

(829) In conclusion, the Commission has serious doubts as to the ability of the alternative proposal to reproduce the competitive pressure existing prior to the merger and eliminate its anticompetitive effects on this market. In any event, the Commission cannot accept the new proposal without a further market test (ruled out at this stage in the procedure).

The market in sockets and switches in Greece

The initially proposed commitments were insufficient

(830) The initial proposal was to transfer to Alombard (see above) the exclusive distribution contract concluded by Elko, a Schneider subsidiary, with the Greek company […]* for importing sockets and switches into Greece.

(831) The Commission's assessment shows that the actual feasibility of such a transfer is uncertain both legally and from a technical and commercial standpoint. The socket and switch standard used in Greece (Schuko) differs from the one used in France (the Franco-Belgian standard), where Alombard makes nearly all its sales; the Alombard brand is currently unknown in Greece, and the third parties surveyed expressed serious doubts as to its ability to restore the competitive pressure previously exerted by Elko; and, lastly, there is no evidence to suggest that the Greek importer would agree to such a transfer.

The proposed alternative commitments submitted on 24 September 2001

(832) The alternative proposal was to […]* and to allow […]* the possibility of using the […]* brand in Greece. This proposal raises the same uncertainties as the initial offer, however. In particular, […]*. It is by no means certain that the purchaser […]* would wish to invest in a production line for manufacturing Schuko sockets for which it could be offered only a modest outlet (Greece).

(833) The Commission therefore takes the view that these commitments do not resolve the competition difficulties identified on the Greek sockets and switches market. In any event, the Commission cannot accept the new proposal without a further market test (ruled out at this stage in the procedure).

The market in weatherproof wiring accessories in France

(834) The proposed commitment was to divest Sarel's 'installation products' business. Sarel has a division producing enclosures for industrial automation equipment and a division producing 'installation products' (weatherproof sockets and switches and fixing and connecting equipment). […]*.

(835) The proposed commitment involved divesting all of Sarel's tangible and intangible assets linked to its 'installation products' business and transferring the Sarel brand for that product category. The merged entity would retain Sarel's enclosures business and ownership of the 'Sarel enclosures' brand.

(836) Sarel's 'installation products' business accounts for […]* of Schneider's turnover on the French weatherproof wiring accessories market. The proposed commitment would therefore eliminate all the competitive overlap on that market.

(837) The results of the Commission's assessment were mixed as to the sharing of the Sarel brand and the hiving-off of this business (splitting off the production plants and more generally the all-purpose enclosures business, which would remain within Schneider, from the wiring accessories business, which would be transferred). In any event, this proposal raises the same difficulties as those concerning switchboards in France or the sockets and switches markets with regard to the purchaser's ability to restore the competitive conditions obtaining prior to the merger.

The market in weatherproof wiring accessories in Spain

(838) The proposed commitment (which was not modified) was to transfer to Sarel's 'installation products' manufacturing business (which was also to be divested — see above) the Estanca 55 brand used in Spain by the Schneider subsidiary Eunea Merlin Gerin for marketing weatherproof wiring accessories. Eunéa Merlin Gerin accounts for the whole of Schneider's business on the relevant market.

(839) The proposed commitment relates only to the manufacture of the products and the specific brand name (Estanca 55) under which they are sold in Spain. On the other hand, it does not comprise the transfer of goodwill (sales forces not specified and which do not appear […]*) or of the umbrella brand (Eunea Merlin Gerin), which could therefore be re-used by the merged entity in order to market a new range of products of Legrand origin. The assessment showed clearly that, without the backing of a group of comparable weight to Schneider in Spain, this product range would not be able to secure access to distribution channels on competitive terms.

The market in fixing and connecting equipment in France

(840) The proposed commitment was to divest separately […]* and Sarel's 'installation products' business. These divestitures would completely eliminate the competitive overlap on the French fixing and connecting equipment market, on which Legrand had a dominant position. This proposed commitment does not call for any comments other than those set out above in connection with the French sockets and switches market.

The market in emergency lighting systems in France

(841) The proposed commitment was to transfer Schneider's emergency lighting business to the entity purchasing Sarel's 'installation products' business (which was the subject of another proposed commitment — see above).

Schneider does not have any plant manufacturing products of this type, which it sources from a third party. The supply contract would also be transferred to the purchaser. Emergency lighting systems are marketed by Schneider under the Merlin Gerin brand. The Sarel brand is not currently used to market products of this type.

(842) The parties also offered to transfer Lumatic's goodwill, including the Lumatic brand, to the purchaser of Sarel's 'installation products' business. Lumatic was an independent company marketing its products under that brand and now belongs to a Legrand subsidiary, URA/Lumatic, specialised in emergency lighting systems. The withdrawal of the Lumatic brand in the course of 2001 and its replacement by the URA brand was, however, decided by the Legrand group back in 2000.

(843) The assessment of the initial proposal showed that replacement of the Merlin Gerin brand by the Sarel brand (non-existent on this market) and/or the Lumatic brand (being phased out) would not enable the initial competitive conditions to be restored on this market (on which Legrand enjoys a dominant position with a market share of over [40-60]* %).

(844) In the proposed alternative commitments, the notifying party offered to transfer to […]* the marketing of the self-contained emergency lighting units currently sold by Merlin Gerin. […]*, the Commission has serious doubts as to this proposal: the questions concerning access to distribution channels and the ability to restore conditions of effective competition are identical to those set out above for the other switchboard and accessories markets in France. Neither would such a remedy provide any guarantee as to the incentives for the purchaser […]* to develop competition on the relevant market. In any event, the Commission cannot accept this proposal without a further market test (ruled out at this stage in the procedure).

The market in low-voltage transformers in France

(845) The proposal contained two alternatives. The parties first offered to transfer the goodwill of Schneider's low-voltage transformer business to its existing supplier, Murelektronic. Schneider markets these products under the Télémécanique brand. The proposed commitment therefore involved maintaining the Murelektronic products already present in Télémécanique's sales catalogue but marketing them under the Murelektronic brandname.

(846) Alternatively, the notifying party offered to transfer the supply contract between Schneider and Murelektronic to Baco (which was the subject of another proposed commitment — see above).

(847) The increase in market share would not be eliminated by the first alternative. As regards the second alternative, while transferring the distribution contract to Baco would have the advantage of eliminating the increase in market share, it would nevertheless require a new brand to be launched, which raises uncertainties as to the viability and ability to restore competitive conditions of the proposed commitments. It is likewise doubtful whether Murelektronic could act independently of Schneider, which markets most of its production, given that, by the parties' own admission, Murelektronic would disappear if Schneider stopped distributing its products. Neither would such a remedy provide any guarantee as to the incentives for Baco's purchaser to develop competition on the relevant market.

The market in cable trays in the United Kingdom

(848) The proposed commitment involved, as part of the termination of the sales contract whereby Métal Déployé supplied Cablofil products to Mita, transferring to Métal Déployé the goodwill and sales forces which Mita, a Schneider subsidiary, assigned to the sale of those products. The notifying party would also undertake not to begin marketing this category of products again for a period of five years. The sale of Cablofil products accounts for around [50-70]* % of Schneider's turnover on the relevant market.

(849) Given the generally moderate positions held by Schneider and Legrand in the United Kingdom, it is likely that the significant reduction in market share together with a non-competition clause could resolve the competition problem identified on this market.

C. *CONCLUSION*

(850) The assessment clearly demonstrated that the initial proposal was insufficient, both with regard to the question whether the proposed entities would be fully functional and able to operate on a stand-alone basis and in terms of the risks threatening the divested entities' access to the market. The parties' proposed alternative commitments go only a small way towards eliminating the risks raised by the initial proposal; they cannot therefore be accepted as they stand. The proposed alternative commitments (i) are still signally insufficient on certain markets, such as the market in sockets and switches in Greece, the market in weatherproof wiring accessories in Spain, the market in low-voltage transformers in France and the market in emergency lighting (or self-contained emergency lighting units) in France; (ii) raise a significant number of serious doubts as to the viability of the divested entities; and (iii) do not allay serious doubts as to those entities' ability to maintain their current position and restore conditions of effective competition on the relevant markets. The last two points apply to all the relevant markets, with the exception of the United Kingdom cable tray market. In addition, the new commitments offered in the proposed alternative commitments (in particular those relating to switchboards and ordinary sockets and switches) cannot in any event be accepted by the Commission without a further market test, something which is ruled out by point 43 of the Commission notice on remedies.

VII. **OVERALL CONCLUSION**

(851) For the reasons set out above, the notified merger would lead to the creation or strengthening of dominant positions with the effect of significantly restricting effective competition. The proposed commitments do not allow the Commission to find that they would make the merger compatible with the common market and the functioning of the EEA Agreement. The Commission accordingly finds that the notified merger is incompatible with the common market and the functioning of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The concentration notified to the Commission by Schneider on 16 February 2001, which would enable it to acquire sole control of Legrand, is hereby declared incompatible with the common market and the functioning of the EEA Agreement.

Article 2

This Decision is addressed to:

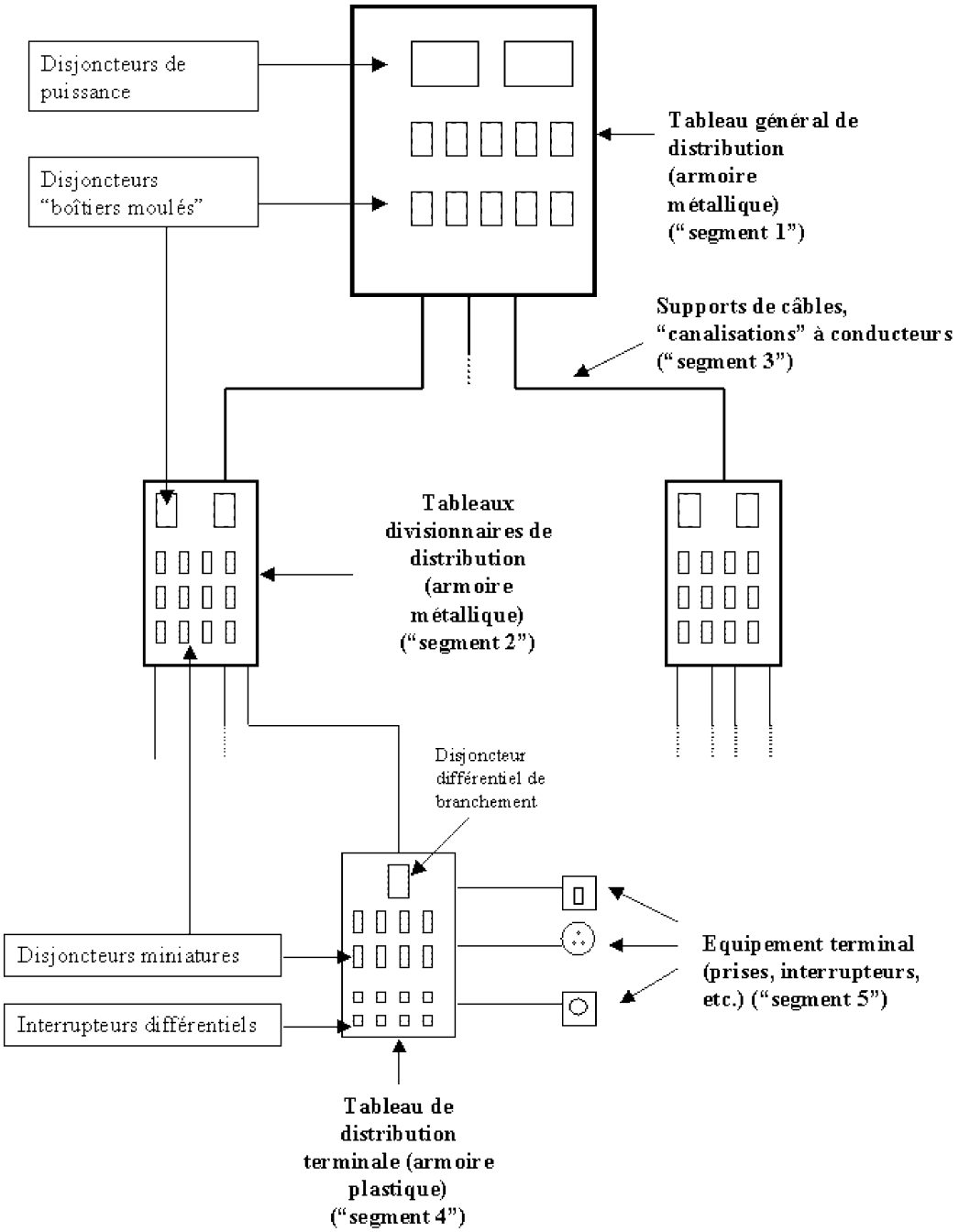
SCHNEIDER ELECTRIC S.A.
43-45, boulevard Franklin Roosevelt
F 92500 Rueil-Malmaison
France

Done at Brussels, 10 October 2001.

For the Commission
Mario MONTI
Member of the Commission

ANNEX 1

GENERAL LAYOUT OF ELECTRICITY DISTRIBUTION EQUIPMENT



ANNEX 2

BRANDS OWNED BY THE PARTIES

SCHNEIDER		LEGRAND	
Make	Territories	Make	Territories
Alombard	F	Arnould	F
Boige&Vignal	F	Bticino	F-E-P-D-B-A-F-NL
Dalcotech	DK	Legrand	All countries
Eljo	S	Ortronics	I-UK-F
Elko	S-FIN-GR	Planet-Watthom	F-NL-A-DK-S-FIN-D
Elso	D-GR	Quintela	E-P-D-B
ESMI	FIN-S-DK-D	Tenby	
Eunea	E-P	Tegui	UK-IR
Gardy	F-B	Terraneo	I-E-P-D-B-A-F-NL
JoJo (in large DIY outlets)	DK-UK-S-FIN-F (under the Jo brand)	URA	F-E-B-S
Lexel	S-FIN-EL	Wiremold	UK
LK	DK		
May&Steffen	D		
Merlin-Gerin	All countries		
Mita	UK-B-IRL		
Multisignal	S		
Normabarre	F-I		
Sarel	F-I-A-B		
Schyller	All countries except Luxembourg		
Square D	UK		
Stago	NL-B		
Strömfors	FIN-D-S-DK		
Télémécanique	All countries		
Telesafe	S-D-NL		
Thorsman	S-FIN-DK-UK-IRL-D-NL-B		
Wibe	S-FIN-DK-UK-B-A-P		