COMMISSION DECISION

of 30 January 2002

requiring undertakings to be separated adopted pursuant to Article 8(4) of Council Regulation (EEC) No 4064/89

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

(notified under document number C(2002) 360)

(Only the French version is authentic)

(Text with EEA relevance)

(2004/276/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 Regulation (EC) No 1310/97 [2], and in particular Article 8(4) thereof,

Having regard to the Decision adopted by the Commission on 10 October 2001, pursuant to Article 8(3) of Regulation (EEC) No 4064/89, declaring the concentration between Schneider and Legrand to be incompatible with the common market and the functioning of the EEA Agreement,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission on 24 October 2001,

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:

BACKGROUND

(1) On 16 February 2001 the Commission received notification, pursuant to Article 4 of Regulation (EEC) No 4064/89 (hereinafter 'the Merger Regulation') of a takeover plan whereby Schneider Electric (hereinafter 'Schneider') was to acquire, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control of Legrand [5] by way of a public offer for the exchange of shares announced on 15 January 2001.

(2) Article 7(3) of the Merger Regulation allows a public exchange offer to be implemented provided that the acquirer does not exercise the voting rights attached to the shares in question. The public offer closed on 25 July 2001 and Schneider holds 98,1 % of Legrand's capital.

(3) On 10 October 2001 the Commission adopted a Decision (hereinafter 'the incompatibility decision'), pursuant to Article 8(3) of the Merger Regulation, declaring the planned merger between Schneider and Legrand to be incompatible with the common market and the functioning of the EEA Agreement.

(4) For the reasons set out in the incompatibility decision, the planned merger would have created 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 cabinets for final panelboards in Denmark, Spain, Italy and Portugal;

[1] OJ L 395, 30.12.1989, p. 1.
[2] OJ L 180, 9.7.1997, p. 1.
[3] OJ C 86, 6.4.2004.
[4] OJ C 86, 6.4.2004.

[5] In this Decision, 'Legrand' refers to the whole of the Legrand group as it existed at the time Schneider's offer closed.

— 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.

(5) The Commission also found in the incompatibility decision that the planned merger would have strengthened 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 (dominant positions held by Schneider);

— the markets in miniature circuit breakers, earth leakage protection and cabinets for final panelboards in France (dominant positions held by Schneider);

— the market in sockets and switches in France (dominant position held by Legrand);

— the market in weatherproof wiring accessories in France (dominant position held by Legrand);

— the market in emergency lighting systems or self-contained emergency lighting units in France (dominant position held by Legrand).

(6) On 24 October 2001 the Commission sent Schneider a statement of objections (hereinafter 'the statement of objections') under Article 13(2) of Commission Regulation (EC) No 447/98 of 1 March 1998 on the notifications, time limits and hearings provided for in Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings [6], finding that a merger that was incompatible with the common market had been put into effect and concluding, pursuant to Article 8(4) of the Merger Regulation, that a distribution of Legrand shares to Schneider shareholders, in proportion to their holding, within a period of […]* (*) was the most appropriate means of restoring effective competition on the relevant markets. Schneider responded in writing on 7 November 2001 and gave its views orally at a hearing held on 26 November 2001.

(7) On 4 December 2001 the Commission adopted a Decision, pursuant to Article 7(4) of the Merger Regulation, authorising Schneider to appoint a trustee to exercise on its behalf the voting rights attached to the Legrand shares held by Schneider (hereinafter 'the derogation decision'). The power of attorney conferred on the trustee, as laid down in the derogation decision, stipulates that the trustee's prime objective is to ensure that Legrand enjoys the necessary independence and room for manoeuvre so that it can continue to act as a competitor in its own right on the relevant markets and that Legrand's senior management continues to manage the company in the normal manner of running a business and in line with its previous practice. The power of attorney assigns the trustee the following tasks: administering Schneider's stake in Legrand in such a way as to enable the latter's management bodies to function regularly; ensuring that Schneider does not act in breach or in excess of the derogation decision; taking part in preparations by Schneider for possible demerger; and reporting to the Commission on the implementation of its assignment.

(8) At a meeting held on 15 January 2002 Commission officials informed representatives of Schneider of the broad lines of the draft of this Decision as submitted to the Advisory Committee on Concentrations. The draft Decision allowed Schneider a free choice as regards the demerger arrangements and stipulated that the demerger had to be carried out within a period of […]*. The representatives of Schneider argued that such a deadline would not enable them to exercise their free choice as regards the demerger arrangements and pressed for at least […]* (see points 107-122).

PRINCIPLES FOR ASSESSING THE ARRANGEMENTS FOR DEMERGING SCHNEIDER AND LEGRAND

(9) A decision adopted under Article 8(3) of the Merger Regulation declares the transaction concerned incompatible with the common market and, where appropriate, with the functioning of the EEA

[6] OJ L 61, 2.3.1998, p. 1.

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

Agreement. As stated above, Schneider holds 98,1 % of the shares in Legrand and has therefore already implemented the planned merger within the meaning of Article 8(4) of the Merger Regulation.

(10) The merger that was notified to the Commission and then declared incompatible with the common market and the functioning of the EEA Agreement involved the acquisition by Schneider of the whole of Legrand. In these circumstances the transaction should be undone by means of a full demerger of Schneider and Legrand.

(11) Any proposal by Schneider involving anything other than a full demerger of Legrand could be accepted by the Commission, in accordance with the proportionality principle, only if it enabled, beyond possible doubt, effective competition to be restored on the relevant markets.

(12) The proportionality principle also means that, where it has to choose between alternatives all of which are capable of restoring effective competition, the Commission will prefer the option which affords the best protection for the individual interests of the companies concerned. The individual interests at stake in the case in point are (i) preservation, to the extent possible, of the financial value of Schneider's investment in Legrand ([7]) and (ii) maintenance of Legrand's competitiveness. Consequently, while Schneider's interest in preserving the financial value of its investment should be taken into consideration in accordance with the proportionality principle, there could be no question of accommodating any desire on the part of that group to strengthen, via the demerger, its commercial positions at the expense of its competitors, in particular by weakening Legrand. The Commission considers in this connection that the individual interests of Schneider and Legrand are subordinate to the general interest of restoring effective competition on the relevant markets and that the interest of neither of the companies should take precedence over the other.

([7]) It should be stressed that Schneider acquired its stake in Legrand by means of a public offer for the exchange of shares. Announcement of the bid before the Commission had taken its decision on the compatibility of the planned merger with the common market is allowed by Article 7(3) of the Merger Regulation; such action does not constitute an infringement of the competition rules and should not therefore be sanctioned. However, Schneider has to take the normal business consequences of its deliberate decision to go ahead with the operation in the climate of uncertainty as to the outcome of the Commission's investigation. Schneider was free to notify an agreement before announcing a bid, as other companies listed on the Paris stock exchange have done. It should also be pointed out that, after the Commission had raised serious doubts under Article 6(1)(c) of the Merger Regulation as to the compatibility of the planned merger between Schneider and Legrand, Schneider was in a position, following a dispute with Legrand's minority shareholders, to withdraw from the operation. It nevertheless decided to maintain its bid.

ADVERSE EFFECTS ON COMPETITION CAUSED BY SCHNEIDER'S STAKE IN LEGRAND

(13) It should first be noted that Schneider's current 98,1 % stake in Legrand is far in excess of the share ownership threshold conferring specific rights such as those granted to blocking minorities and has the effect of freezing Legrand's development ([8]). Legrand will be dependent on Schneider for any fresh capital it needs to finance its planned growth (through either investment or acquisitions). However, the markets on which Legrand is active can require large investments, for example to fund acquisitions (usually the only way of entering a geographic market) or to renew product ranges (such as moulded case circuit breakers) ([9]). And Legrand cannot embark on major new projects before it has a clear enough picture of its shareholder structure, the resources on which it can expect to be able to rely, etc.

(14) Furthermore, Schneider henceforth has a direct interest in Legrand's profits, although the two companies are competitors on many markets. Such an entitlement to Legrand's profits would partly offset any loss of Schneider's sales to Legrand and would therefore reduce the incentive for Schneider to compete with Legrand on the relevant markets.

(15) Any additional price increase by an economic operator leads to two types of effects. First, the profit generated by the sale of each item is increased. Second, the quantities sold by the operator in question fall in response to the price increase, with competitors picking up the lost sales. The price increase is profitable only if the first effect is greater than the second, and the economic operator in question takes its decision on price increases having due regard in particular to the level of the likely loss of sales to competitors. The situation changes if the economic operator can recover some of the profits lost in the wake of an increase in its prices through an entitlement to the profits of one of its competitors. In such a case, the negative effect of the losses of sales and therefore profits to competitors is partly offset by the right to the profits of a competitor in which the operator holds a stake. Clearly, the greater the stake in and the market share of the competitor concerned, the stronger this offsetting effect.

(16) Before the transaction, the prices charged by Schneider were set at a level that maximised its

([8]) Under French law a blocking minority corresponds to 33 % of a company's capital. Taking account of a 50 % quorum for shareholders' meetings, this is equivalent to a stake of more than 16 %.

([9]) See points 511-516 of the incompatibility decision.

profits. Any additional price increase would have led to losses of sales (and therefore profits) that were large enough to cancel out the extra profit generated by the sale of each unit at a higher price. However, Schneider has now acquired a right to Legrand's profits through the stake it holds in its capital. Legrand's additional profits generated by losses in Schneider's sales following a price increase will ultimately revert to its shareholder Schneider. Therefore, thanks to the 98,1 % of Legrand's capital which it has acquired, Schneider has gained further room for manoeuvre for increasing its prices. This extra room for manoeuvre is all the greater if Schneider's and Legrand's products compete head-on (and the losses in Schneider's sales consequently benefit Legrand more than other competitors); the market is concentrated (in which case Schneider's lost sales are, again, picked up by Legrand more than by other competitors); and Schneider holds a large stake in Legrand. Both the first two conditions above are amply satisfied in the case in point: Schneider and Legrand manufacture, for the most part, the same product ranges, and on certain geographic markets, France in particular, they are the two largest players and, for the reasons developed in the incompatibility decision, rivalry between them is the main driving force of competition.

(17) If the reduced competition resulting from Schneider's stake in Legrand were maintained, it would have the direct effect of strengthening the dominant positions already held by Schneider or Legrand on the French markets in distribution boards (pre-merger Schneider market shares of around [between 60 and 70]* % for moulded case and miniature circuit breakers and an HHI of some [between 3 000 and 6 000]* points), final panelboards (pre-merger Schneider market shares of around [between 40 and 50]* % and an HHI of some [between 3 000 and 4 000]* points) and sockets and switches (pre-merger Legrand market shares of around [between 80 and 90]* % and an HHI of some [between 7 000 and 8 000]* points) ([10]).

(18) In the case of sockets and switches in France, Schneider is practically Legrand's sole competitor. Legrand has a [between 80 and 90]* % market share and Schneider is the only other credible player with a market share of around [between 0 and 10]* % ([11]). Any increase in prices by Schneider would thus almost entirely benefit Legrand and, in proportion to its stake in Legrand, revert to Schneider. A price increase initiated by Schneider could be followed by Legrand up to the price level at which any further increase would trigger a fall in overall demand on the market that would make it unprofitable. Legrand and Schneider are furthermore the only players on the French market in mains connection circuit breakers, with […]* ([12]). The establishment of a structural link through Schneider holding a significant stake in Legrand's capital would introduce further incentives (in particular, over and above the high entry barriers and multi-market contacts between Schneider and Legrand in France) to oligopolistic behaviour that would be detrimental to competition between the two firms. On all these markets, the change in the HHI caused by Schneider having a 98.1 % stake in Legrand would be substantial (see table in point 30), ranging from around [between 0 and 1 000]* points for distribution boards (moulded case and miniature circuit breakers), through [between 0 and 1 000]* points for sockets and switches and [between 1 000 and 2 000]* points for final panelboards to as much as [between 2 000 and 3 000]* points for mains connection circuit breakers ([13]).

(19) In its reply of 7 November 2001 to the statement of objections (hereinafter 'the reply'), Schneider nevertheless took the view that the present situation, in which Schneider holds 98,1 % of the shares in Legrand but cannot exercise its voting rights, is not detrimental to competition, especially in view of the steps taken by Schneider to ensure Legrand's independence, in particular the appointment of an independent trustee responsible for administering Schneider's stake in Legrand.

([10]) The Herfindhal-Hirschman Index (HHI) of market concentration is calculated by summing the squares of the individual market shares of the firms present in a given market. Under certain conditions it can be demonstrated that the Index reflects the average level of margins in an industry. The change in the Index caused by a transaction can be equated with a change in margins and is therefore a useful indicator of the potential effect of the transaction on prices. The HHI is therefore used to measure the intensity of competition on a particular market or the changes thereto caused by a transaction (see, for example, Case COMP/M.1383 — Exxon/Mobil or the Horizontal Merger Guidelines issued by the US Department of Justice and Federal Trade Commission: http://www.usdoj.gov/atr/public/guidelines/horiz_book/toc.html). The maximum Index is 10 000 points (the square of 100 percentage points), and a value of over 3 000 indicates a highly concentrated market where competition can be very limited.

([11]) See points 689-691 of the incompatibility decision.

([12]) See point 537 of the incompatibility decision. Schlumberger and Hager are present on this market, but only as resellers of products made by Legrand and Schneider respectively.

([13]) These calculations are based on an extension of the HHI (by Timothy F. Bresnahan and Steven C. Salop, 'Quantifying the competitive effects of production joint ventures ', International Journal of Industrial Organisation, 1986) to take account of the existence of shareholdings between competitors. In a situation where company A holds x % of the shares in company B, company A will endeavour to maximise not just its own profits but the sum of its own profits and x % of the profits of company B. According to the reasoning developed in point 15, company A will thus gain further room for manoeuvre for increasing its prices. Introducing this profit function for company A in the calculation of the HHI, all other things being equal, gives: [modified HHI] = [standard HHI] + [Schneider's market share] x [Legrand's market share] x [Schneider's stake in Legrand].

(20) The Commission does not share this view. The appointment of a trustee can indeed help to ensure that, for a transitional period, the day-to-day management of Legrand is kept at arm's length from Schneider's influence. But the existence of the trustee has no impact on Schneider's rights to Legrand's profits and the resulting adverse effects on competition. In any event, Schneider's line of argument based on the existence of a trustee presupposes that the latter will be maintained for an indefinite period. Appointment of a trustee is, on the contrary, intended only temporarily to limit the anticompetitive effects of a transaction until structural measures are set in place to restore effective competition. The existence of a trustee does not dispel the uncertainties regarding, in particular, Legrand's shareholder structure and the resources on which it can expect to be able to rely in future. It does not therefore give Legrand sufficient visibility to enable it to initiate major plans for internal or external growth.

(21) It is clear in the light of the foregoing that Schneider's holding of a significant stake in Legrand has adverse effects on competition. In this context, the Commission takes the view that, in order to restore effective competition, the two companies have to be rapidly demerged.

DEMERGER ARRANGEMENTS

(22) In the statement of objections the Commission found that Schneider could not be allowed to keep a significant stake in Legrand and that Legrand should be delineated as before. It also recommended that the demerger of Schneider and Legrand should take the form of a distribution of Legrand shares to Schneider's shareholders, in proportion to their holding. Lastly, it proposed that the divestment should be required to take place within […]* of adoption of the decision.

(23) In its reply Schneider considered those requirements to be disproportionate and challenged each of the Commission's findings.

Schneider must no longer hold a significant stake in Legrand

(24) In the statement of objections the Commission found that, if effective competition was to be restored, Schneider could not keep a significant stake in Legrand. This finding derived directly from the impact on competition which maintenance of such a holding would have, particularly in the markets where either Schneider or Legrand is dominant (see points 14-18 of this Decision).

(25) In its reply, Schneider did not challenge the substance of the Commission's findings regarding the adverse effects on competition if Schneider were to keep a significant stake in Legrand. On the other hand, Schneider considered that to require divestment over and above the disposal of a controlling stake was 'superfluous and disproportionate '. It argued that such a requirement was unnecessary in so far as all other precautions were taken, for example through the appointment of a trustee, to ensure Legrand's independent operation and competitiveness.

(26) In the first place, it is quite possible that by keeping a significant stake Schneider would be able to control Legrand. That would depend on Legrand's future ownership structure and the level of attendance of shareholders at its general meetings, two factors which are clearly unknown at this stage. At the very least, the possibility cannot be ruled out in advance that the possession of a blocking minority of Legrand's shares (33 % of the voting rights under French law) might give Schneider rights comparable to control.

(27) The adverse effects on competition would in any event persist if Schneider continued to hold a significant stake in Legrand, even if this did not enable it to exercise control over the latter. This is because of the change in economic incentives resulting from the lasting possession of such a significant stake (see points 14-18).

(28) Furthermore, as stated earlier, appointment of a trustee is only intended temporarily to maintain competitive conditions until structural measures are set in place to restore effective competition.

(29) The Commission therefore takes the view that the objective of restoring effective competition would be achieved only if Schneider reduced its stake in Legrand to below a level that could give rise to adverse effects on competition such as those described earlier. Given the characteristics of the relevant markets and the range of possible market structures, a stake of less than 5 % of Legrand's capital would not lead to adverse effects on competition.

(30) This 5 % limit on Schneider's stake in Legrand exceeds the maximum obtained using the HHI. In highly concentrated markets such as the French markets in distribution boards, final panelboards, mains connection circuit breakers and sockets and switches (see the HHI values in point 17), where competition is driven by rivalry between Schneider

and Legrand, a change of more than 100 points normally raises serious doubts as to the effects on competition. With a 98.1 % stake, the change in the HHI would greatly exceed the 100 point threshold for all the relevant markets (see point 18 and the table below). With a 4 % stake, the threshold of 100 points would be reached for the market in mains connection circuit breakers only. Schneider could, however, be allowed the benefit of the doubt for a stake of less than 5 %.

Calculation of the changes in the HHI on certain French markets

Market shares	Distribution boards (moulded case circuit breakers)	Distribution boards (miniature circuit breakers)	Final panelboards	Mains connection circuit breakers	Sockets and switches
Schneider	[between 60 and 70]*	[between 60 and 70]*	[between 40 and 50]*	[between 40 and 50]*	[between 0 and 10]*
Legrand	[between 0 and 10]*	[between 0 and 10]*	[between 20 and 30]*	[between 40 and 50]*	[between 80 and 90]*
Other 1	[between 0 and 10]*	[between 0 and 10]*	[between 20 and 30]*	[between 0 and 10]*	[between 0 and 10]*
Other 2	[between 0 and 10]*	[between 0 and 10]*	[between 0 and 10]*	[between 0 and 10]*	[between 0 and 10]*
Other 3	[between 0 and 10]*	[between 0 and 10]*	[between 0 and 10]*	[between 0 and 10]*	[between 0 and 10]*
Other 4	[between 0 and 10]*	[between 0 and 10]*	[between 0 and 10]*	[between 0 and 10]*	[between 0 and 10]*
HHI	[between 3 000 and 4 000]*	[between 5 000 and 6 000]*	[between 3 000 and 4 000]*	[between 4 000 and 5 000]*	[between 7 000 and 8 000]*
Delta modified HHI					
98,1 %	[between 0 and 1 000]*	[between 0 and 1 000]*	[between 1 000 and 2 000]*	[between 2 000 and 3 000]*	[between 0 and 1 000]*
5 %	[between 0 and 1 000]*	[between 0 and 1 000]*	[between 0 and 1 000]*	[between 0 and 1 000]*	[between 0 and 1 000]*
4 %	[between 0 and 1 000]*	[between 0 and 1 000]*	[between 0 and 1 000]*	[between 0 and 1 000]*	[between 0 and 1 000]*

Source: market shares as indicated in the incompatibility decision.

(31) Furthermore, if it were accepted that Schneider could keep a significant stake in Legrand, and if Schneider were allowed, on that prior basis, to enter into negotiations with potential buyers, this could have the effect of limiting the number of investors interested in taking over Legrand. Likewise, possession of over 95 % of the shares and the voting rights attached to shares in a listed company entitles the holder to make a public repurchase offer followed by a squeeze-out of the capital held by other shareholders. Giving the buyer the possibility of acquiring more than 95 % of Legrand shares and the voting rights attached thereto would therefore encourage more potential buyers to come forward. In such an eventuality of sale to a third party, Schneider should not hold more than 3,1 % of Legrand shares and the voting rights attached thereto.

(32) Schneider also argued that requiring it to sell off its entire stake in Legrand in a single transaction would narrow down the range of potential buyers considerably, since such a requirement would prevent it from negotiating a sale with investors that were unable to raise upfront the full value of Legrand (around EUR […]* million, according to Schneider). Schneider urged the Commission to allow it, if a potential buyer so requested, to keep a minority stake in Legrand, for example of some 20 %, for a further period of two to three years.

(33) The Commission acknowledges the desirability of encouraging bids from as many buyers as possible who could help restore effective competition on the

relevant markets. To that end, any mechanism whereby, at the buyer's request, Schneider granted the latter financial facilities or even shared with the buyer, to a limited extent and for a limited period, the risks involved in buying Legrand should not be rejected out of hand. However, any risk sharing should under no circumstances create a relationship of dependency either between Schneider and the buyer or between Schneider and Legrand. Neither should such a mechanism create an incentive for Schneider to see Legrand maximise its profits. A minority shareholding, with the associated voting rights and an entitlement to dividends, should therefore be ruled out (without prejudice to the levels of non-significant shareholdings indicated in points 30 and 31). On the other hand, the holding by Schneider of instruments ranking as a claim on Legrand or its buyer (and therefore carrying remuneration set in advance and unaffected by Legrand's future performance) could, for an amount such as that suggested by Schneider (see point 32), at the buyer's request and subject to appraisal by the Commission of the precise details of this financial package, constitute an acceptable interim risk-sharing arrangement.

The separate sale of some of Legrand's subsidiaries

(34) In its statement of objections, the Commission indicated that restoring effective competition also meant that the separation procedure should not involve changing Legrand's structure.

(35) In its reply, Schneider expressed the view that it would be disproportionate to the objective of restoring effective competition to prohibit it from changing Legrand's structure. More precisely, Schneider expressed the view, on the one hand, that the disposal of some of Legrand's assets would not weaken its competitiveness in the EEA and might even promote competition. By letter of 30 November 2001, Schneider indicated to the Commission which of Legrand's assets it felt could be sold separately to a third party or retained by Schneider without going against the objective of restoring effective competition on the relevant markets. The letter referred to […]*. Schneider considered that the Commission's assessment of range effects and economies of scale and scope did not take account of the realities of the markets in question. On the other hand, since Schneider had a very strong financial incentive to maximise the selling price for Legrand and the assets it could dispose of separately, it would be very strongly encouraged not to weaken Legrand by stripping it of the assets it needs to remain competitive.

Schneider's proposal to retain or sell […] separately from Legrand*

(36) As explained in points 11 and 12, any assessment of Schneider's proposals concerning the firms […]* should first ensure, with a sufficient degree of certainty, that they are able to restore effective competition. It should also guarantee a balance between the interests of Schneider and Legrand on the basis of the following principles: the interests of one should not take precedence over those of the other, and the individual interests of the two companies are subordinate to the general interest of restoring effective competition.

(37) It should initially be stressed that, as was explained several times in the incompatibility decision, the competitive pressure exerted by a brand on a given market may also result from factors which go beyond that market on its own, such as customer-relations and promotional investment, research and development, economies of scale or scope, the presence of a complete range of products, the existence of privileged relations with wholesalers, or the general perception of the brand among installers. The separate sale of some of the businesses of Legrand to Schneider or to other third parties might alter some of these factors and affect Legrand's ability to compete on some markets. In particular, Legrand's cost structure for the markets in question would probably be adversely affected by the loss of economies of scale or scope at the level of factories, commercial and logistic structure, discounting policy, research and development, etc. A separate sale might reduce the breadth or depth of Legrand's product range by depriving it of production plant, technology or intellectual-property rights linked to one or more product categories. This would undermine the image and credibility of the Legrand brand among final customers, installers, panel builders and wholesalers.

(38) Finally, the Commission has established that the combined turnover of […]* is almost EUR [between 400 and 1 000]* million ([…]*), or some [between 10 % and 30 %]* of Legrand's overall turnover and […]* of its operating result over the same period. Approximately [between 10 % and 30 %]* of this turnover is generated in Europe. Consequently,

splitting […]* of these assets off from Legrand would significantly affect the Legrand's group's general financial position and thus its competitiveness. The same conclusion applies if only […]* is split off because it accounts for some [between 5 % and 25 %]* of Legrand's total turnover.

(39) The possibility of Schneider retaining or separately selling off […]* is examined below on the basis of its impact of the restoration of effective competition and its effect on the safeguarding of Schneider's and Legrand's respective interests.

(40)–(97) […]*

The argument that Schneider, having a very strong financial incentive to maximise the sale price of Legrand and the assets that it could divest separately, would be very strongly encouraged not to weaken Legrand

(98) The Commission also considers that Schneider's argument that its incentive to maximise the proceeds of selling Legrand or certain assets separated from Legrand ruled out any weakening of Legrand, cannot be accepted as it is. Admittedly, the financial proceeds of disposal of a Legrand group slimmed down in advance would a priori be reduced accordingly. But the lost profit, from Schneider's point of view, would be offset by the acquisition of assets of its choice on financial terms that it necessarily could not have obtained in normal circumstances and by the weakening of its principal competitor. But in its reply to the statement of objections Schneider did not show how the result of this arbitrage would lead it to favour the immediate financial proceeds of its sale of Legrand instead of a lasting competitive advantage on the relevant markets by the weakening of its principal competitor and by its own strengthening resulting from the integration of the assets taken over from Legrand.

Conclusion

(99) It follows that Schneider's proposal to demerge from Legrand by hiving off […]* must be rejected.

THE TERMS FOR THE SALE OF SCHNEIDER'S STAKE IN LEGRAND

(100) In the light of the foregoing, the Commission considers that to restore effective competition Schneider must sell Legrand without hiving off from the Legrand group the subsidiary companies that it proposed keeping or selling separately. The sale of Schneider's stake in Legrand must be carried out in such a way that Schneider will no longer have a significant holding in Legrand, so that effective competition is restored.

(101) For that purpose, Schneider has two possible options: the private sale of Legrand to a third party or the sale of Legrand shares on the stock exchange (where they are still listed). A private sale can be made to a third party already active in the relevant industry or to financial investors. Legrand shares could be disposed of on the stock exchange either by a flotation or by a distribution of Legrand shares (or of shares in a new entity to which the Legrand shares had been transferred) to holders of Schneider shares, for example in proportion to their holdings. In the statement of objections the Commission indicated that distribution of Legrand shares to Schneider shareholders appeared to be the most suitable solution.

(102) In the Commission's view, private sale would require its approval of the purchaser, who should meet a number of conditions to do with the restoration of competition: independence from Schneider, proven capacity to restore effective competition and absence of uncertainties as to the implementation of the sale. Moreover, a private sale would probably require the price to be negotiated, which would in turn require Schneider to obtain from Legrand certain sensitive information that could be detrimental to competition. Lastly, a private sale and a flotation have the disadvantage of being dependent on market conditions and would in all likelihood take longer than a share distribution. A share distribution offers the advantage of not being dependent on market conditions and therefore of being easier to carry out at short notice.

(103) But the statement of objections pointed out that the effect of a share distribution would be that Schneider and Legrand would, initially at least, have the same shareholders. This raises a risk of coordination of competitive conduct if both companies are controlled by the same group of shareholders, or if the same group of shareholders can exert major influence on at least one of the companies. To avert this risk, no shareholder or group of shareholders common to Schneider and Legrand must be in a position to exert a major influence on one of the two companies.

(104) In its reply, Schneider explained that for complex legal and tax reasons demerging from Legrand by means of a distribution of shares or a division would take at least as long as the other possible separation solutions to carry out and that it should be left the choice of separation solution. But it did not reject the principle of a share distribution out of hand.

(105) In view of the arguments put forward by Schneider, the Commission considers that it is preferable to leave Schneider to choose the legal methods of demerging from Legrand provided they make it possible to achieve a separation in line with the conclusions presented earlier: Schneider must no longer have a significant holding in Legrand's capital, and Schneider must sell the Legrand group without hiving off certain businesses […]*.

TIME LIMITS

(106) Since a significant Schneider stake in Legrand has serious, adverse effects on competition, the disposal of the Schneider holding in Legrand should therefore be carried out as soon as possible. In the statement of objections the Commission took the view that the maximum time limit should be […]*, starting from the adoption of the Decision under Article 8(4) of the Merger Regulation.

(107) In its reply, Schneider considered that such a time limit would be disproportionate, and for three main reasons.

(108) Schneider first argued that it had appealed to the Court of First Instance of the European Communities (CFI) against the incompatibility decision ([14]). It believed that any decision requiring it to dispose of shares in Legrand before the CFI and, if appropriate, the Court of Justice gave judgment in this case would irreparably render any annulment decision ineffective.

(109) Second, Schneider believed that the imposition of a […]* time limit would be disproportionate, because the merger and the measures taken by Schneider to ensure Legrand's independence had no adverse effect on competition, and Schneider would run a considerable risk of making a capital loss if it had to sell Legrand quickly.

([14]) The appeal was lodged on 13 December 2001.

(110) Third, the company believed that, in any event, a […]* time limit would not be long enough for practical reasons to sell Legrand. It based this view on the time taken for other recent disposals or acquisitions to be completed. According to Schneider, such examples showed that the sale of undertakings of comparable size to Legrand generally took a considerable time, maybe more than […]*, particularly where the companies involved were French.

(111) In view of the complexity and scale of the transaction, the Commission considers that a period of […]* would allow Schneider ample time to demerge from Legrand by means of the separation arrangements of its choice. In any event, an additional period of […]*, in which the trustee would be granted irrevocable, exclusive authority to sell, should also be granted to Schneider.

Impact of the time limit for the demerger on the effectiveness of an appeal by Schneider against the incompatibility decision

(112) The Commission considers that Schneider's analysis, according to which a decision imposing demerger before all possible appeals against the incompatibility decision are exhausted would render those appeals ineffective, is not sound.

(113) If a demerger decision did render the appeal ineffective, Schneider could always lodge an application for interim measures asking for the decision to be suspended. Furthermore, the line taken by Schneider would mean that any appeal against an incompatibility decision would automatically be suspensory, which is contrary to Article 242 of the Treaty. Such a situation would also be tantamount to ruling out reliance on Article 8(4) of the Merger Regulation as a basis for imposing a demerger in order to restore effective competition, and hence to rendering an incompatibility decision ineffective whenever an appeal is lodged against it.

A time limit of […]* is not enough for practical reasons

(114) As explained above (see points 14-21), the Commission does not share Schneider's opinion that, in view in particular of the measures taken by the company to ensure Legrand's independence (appointment of a trustee), its stake in Legrand did not have an adverse effect on competition. The mere existence of a significant Schneider stake in Legrand

adversely affects competition on the relevant markets, since it undermines Schneider's incentive to be competitive and arrests Legrand's expansion. Similarly, the appointment of an independent trustee does not appreciably reduce the principal restrictions of competition resulting from Schneider's significant stake in Legrand; the appointment of a trustee therefore does not alter the fact that the situation needs to be resolved quickly.

(115) A distinction has to be made between the two possible causes of the capital losses that might be incurred if Legrand were sold too soon. The first could be adverse developments on the stock market. This is not a relevant factor in the Commission's analysis, since future stock-exchange trends clearly cannot be predicted. The second could be that too little time would not allow Schneider to negotiate with third parties or with financial markets on favourable terms, particularly since it would leave no room for manoeuvre as far as the constraints of the different timetable options are concerned.

(116) The Commission considers that Schneider's argument that it is impossible to carry out the demerger in […]* is unsound.

(117) The Commission finds in particular that several transactions on the list of examples supplied by Schneider were completed in less than […]*. As the merchant bank commissioned by Schneider points out, these examples do not seem to be exceptions but simply 'cases involving no special difficulty'.

(118) Legrand has also provided examples of the times required for completing recent mergers and acquisitions, involving French companies in particular. These show that a period of […]* from the date of the decision to sell is generally sufficient.

(119) Schneider argued that although an individual sale or division transaction could technically be carried out within […]*, such a time limit would not enable Schneider to explore, at least initially, all the possible demerger arrangements. Schneider's counsel nevertheless indicated that if the Commission increased the time limit to […]* it would give Schneider the necessary flexibility to explore each of the options envisaged (sale and division) before deciding, while being able to complete the demerger within the time allowed.

(120) Lastly, it should be noted that Schneider was able to start organising the demerger after the Commission adopted the incompatibility decision on 10 October 2001. It was with this goal in mind, moreover, that on 22 November, Schneider asked the Commission for a derogation under Article 7(4) of the Merger Regulation so that a start could be made on preparing a possible demerger; that derogation was granted. The time limit of […]* referred to in point 119 would be added, therefore, to the period which has already elapsed between 10 October 2001 and the date of adoption of this Decision, thus giving a total of more than […]*.

(121) In addition, […]*.

(122) It is therefore clear that a time limit of […]* for carrying out the demerger would be enough in practical terms. In any event, the Commission is ready to grant an additional period of […]*, in which the trustee would be given irrevocable, exclusive authority to sell, so as to leave Schneider the necessary room for manoeuvre in its negotiations with potential buyers or investors. To counter any adverse circumstances that might jeopardise compliance with the time limits of […]*, the Commission may extend these periods if it is requested to do so by Schneider or the trustee, if Schneider or the trustee can show that it has made every effort to meet the deadline.

(123) Consequently, Schneider should be granted an initial period of […]* in which to carry out the demerger. If Schneider has not done this by then, the trustee will be instructed to sell Schneider's shares in Legrand during a further period of […]*.

(124) In its reply, Schneider suggests that it should be allowed to dispose of its Legrand holding in stages. However, as the Commission has already found (see points 32 and 33), any delay in the disposal by Schneider of its stake in Legrand would harm competition. Other arrangements enabling Schneider to attract other buyers that were unable to make an offer for the entire value of its stake in Legrand should nevertheless, under certain conditions, be able to be examined by the Commission on a duly substantiated request from Schneider.

INDEPENDENT TRUSTEE

(125) The […]* time limit, possibly extended by a further […]* for the benefit of the trustee, will mean that Schneider will continue to hold about 98 % of Legrand's capital during that period. The Commission therefore considers that, along the lines of the arrangements introduced by the derogation decision of 4 December 2001, the restoration of effective competition requires that the power of attorney assigned to the trustee appointed by the derogation decision be immediately extended. The trustee should be granted all the necessary powers and independence to manage Schneider's stake in Legrand during the transitional period preceding the demerger of the two companies; leave Legrand the necessary independence and room for manoeuvre so that it can continue to act as a competitor in its own right on the relevant markets; ensure that Schneider does not take any action in breach or in excess of this Decision; and take part in Schneider's preparations for and implementation of the demerger. If Schneider does not manage to complete the demerger within the […]* period, the trustee will be given exclusive, irrevocable power to sell Schneider's shares in Legrand by means of a further amendment to the power of attorney. Amendments to the power of attorney endorsed by the Commission in the derogation decision will have to be approved by the Commission,

HAS ADOPTED THIS DECISION:

Article 1

To restore effective competition, Schneider Electric is required to demerge from the Legrand group in accordance with Annex II.

Article 2

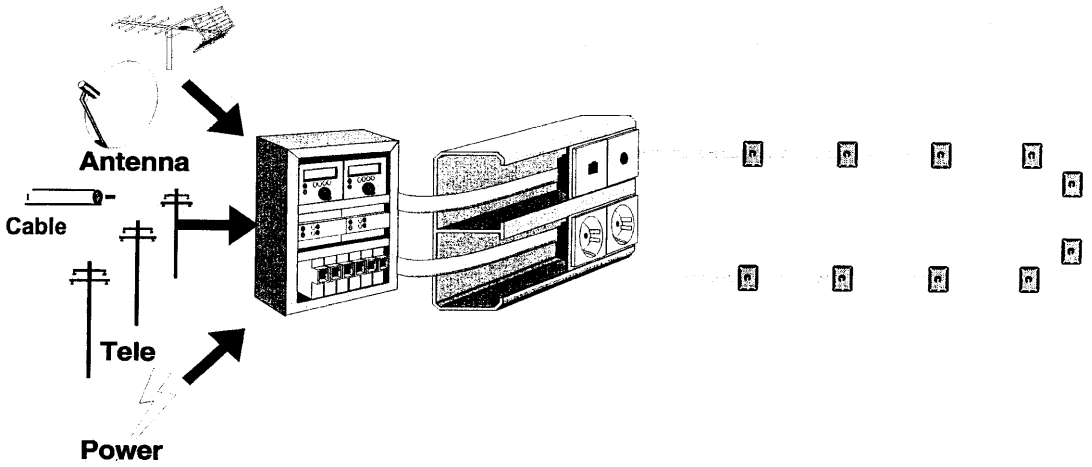
This Decision is addressed to:

SCHNEIDER ELECTRIC S.A.
43-45, Boulevard Franklin Roosevelt
F 92500 RUEIL-MALMAISON
France

Done at Brussels, 30 January 2002.

For the Commission
Mario MONTI
Member of the Commission

ANNEX I



ANNEX II

Point 1

Schneider Electric (hereinafter 'Schneider') shall demerge from the Legrand group (hereinafter 'Legrand'), without hiving off any individual businesses of Legrand, within […]* of the date of reception of this Decision.

The demerger may be carried out as Schneider determines, provided that the principles laid down in point 2 are adhered to.

Point 2

1. If Schneider chooses to sell, or have sold, the shares it owns in Legrand's capital to one or more buyers, it shall sell the requisite number of shares that will enable the buyer(s) to make a public repurchase offer followed by a squeeze-out so that the Legrand shares can be withdrawn from the official list of securities.

2. Once the disposal has been carried out, Schneider and the other minority shareholders should between them have less than 5 % of Legrand's capital and the voting rights attached thereto. If the buyer(s) does/do not ask to be allowed to make a public repurchase offer followed by a squeeze-out, Schneider may keep a stake of less than 5 % in Legrand's capital.

3. If Schneider decides to place, or have placed, on a stock market shares in Legrand or another entity that controls Legrand, it shall assure the Commission in advance that as a result of this flotation no shareholder or group of shareholders common to Schneider and Legrand will exert a major influence over one of the two companies. Neither may Schneider keep a stake of 5 % or more in the capital.

4. If Schneider chooses a demerger arrangement other than those referred to in paragraphs 1 and 2, it shall seek the Commission's prior approval for that arrangement, with special reference to any possibility for Schneider of retaining for a limited period a limited number of instruments ranking as a claim on Legrand or on any other company acquiring control of Legrand. The Commission may in that case impose further requirements on Schneider to ensure that effective competition is restored. Prior to the sale of Legrand, and provided — especially in the event of a flotation — that Schneider can identify the purchasers of Legrand, Schneider shall ask the Commission to approve any purchaser.

The approval request shall contain the information that will allow the Commission to check whether the purchaser(s) meet(s) the purchaser standards laid down in point 49 of the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98 ([1]).

Any transaction which would lead to the subsequent transfer by one or more purchasers of any individual businesses of Legrand to Schneider shall disqualify those purchasers.

Point 3

Schneider shall submit to the Commission at the earliest opportunity:

(a) the draft(s) of the information document intended for potential purchasers or investors;

(b) a list of the potential buyers which Schneider intends to contact and information on the outcome of such contacts.

These documents shall be deemed to have been accepted by the Commission if the latter has not given its opinion on them within five working days of the date of delivery.

([1]) OJ C 68, 2.3.2001, p. 3.

Point 4

1. Schneider shall, within five working days of the date of receipt of this Decision, submit for the Commission's approval an amendment to the contract binding it to the trustee appointed in accordance with the Commission Decision adopted on 4 December 2001 in this case pursuant to Article 7(4) of Regulation (EEC) No 4064/89.

   If no draft amendment is forthcoming by the end of that period, or if the Commission and Schneider do not agree on the draft amendment, the Commission may impose such an amendment after consulting the trustee.

2. The amendment referred to in paragraph 1 shall be drawn up in accordance with the following principles:

   (a) the power of attorney shall be extended until the demerger between Schneider and Legrand is complete;

   (b) the trustee shall ensure that Schneider does not take any action which is in breach or in excess of this Decision;

   (c) the trustee shall take part in Schneider's preparations for and implementation of the demerger;

   (d) the amendment shall include any other measure deemed necessary for the implementation of this Decision and the preservation of the independence and room for manoeuvre that will enable Legrand to remain a competitor in its own right on all the relevant markets.

3. If Schneider does not respect its commitments in practice, the Commission may extend the trustee's powers to include all possible means of ensuring that this Decision is complied with.

4. As soon as the tasks which have been assigned to it have been accomplished, Schneider shall request the Commission to authorise it to discharge the trustee.

Point 5

The time limit laid down in point 1 shall cease to run when an irrevocable sale agreement is signed, a public offering of shares is published or the general meeting of Schneider's shareholders decides on a division.

The effective demerger of Schneider and Legrand shall occur within […]* of that date.

Point 6

1. If Schneider is not able to sign an irrevocable sale agreement with a third party or to publish a public offering of shares within the […]* time limit referred to in point 1, it shall give irrevocable, exclusive power to the trustee referred to in point 4 to carry out the demerger between Schneider and Legrand at the best possible price, without stipulating a minimum price.

   To that end, Schneider shall, not later than ten working days before the expiry of the time limit, submit for the Commission's approval an amendment to the trustee contract.

   If no draft amendment is forthcoming not later than ten working days before the expiry of the time limit, or if the Commission and Schneider do not agree on the draft amendment, the Commission may impose such an amendment after consulting the trustee.

2. The trustee shall have […]* in which to sign an irrevocable sale agreement with a third party or to publish a public offering of shares.

Point 7

If exceptional circumstances should prevent the signing of an irrevocable sale agreement with a third party or the publication of a public offering of shares by Schneider or the trustee referred to in point 4, the time limit mentioned in point 1 or the time limit mentioned in point 6(2) may be extended, at the Commission's discretion, on a duly substantiated request from Schneider or the trustee. Such a request shall be submitted immediately after the exceptional circumstances have occurred and shall show that every effort has been made to meet the deadlines.