

***Case No COMP/M.2403 -
SCHNEIDER /
THOMSON
MULTIMEDIA / JV***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 13/06/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.06.2001
SG (2001) D/289124

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To notifying parties

Dear Sirs,

Subject: Case No COMP/M.2403 – Schneider / Thomson Multimedia / JV
Notification of 4 May 2001 pursuant to article 4 of Council Regulation No 4064/89

1. On 4 May 2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89¹ (the “Merger Regulation”) by which the undertakings Schneider Electric Industries S.A. (“Schneider”) and Thomson Multimedia S.A. (“TMM”) intend to create a joint venture company (the “JV”).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No. 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I THE PARTIES

3. Schneider, which is based in France, is a wholly-owned subsidiary of Schneider Electric S.A. The group is active world-wide in the manufacture and sales of products and systems in the sectors of electrical distribution, industrial control and automation.

¹ OJ L 395, 30.12.1989 p. 1; corrected version OJ L 257 of 21.9.1990, p. 13; as last amended by Regulation (EC) No 1310/97, OJ L 180, 9. 7. 1997, p. 1, corrigendum in OJ L 40, 13.2.1998, p. 17

4. TMM, which is based in France, is active in the production of consumer electronics and associated services. Its main business activities include manufacture of displays, components and consumer products, digital media solutions, new media services, patents and licensing. TMM operates internationally.
5. The JV will design, develop, manufacture and sell powerline communication products. The purpose of these products is to make internet and other information accessible through electrical mains at the same time as the electrical power. [...].

II CONCENTRATION

6. According to the joint venture agreement, signed on 12 March 2001, the parties will transfer to the JV their world-wide business of powerline communication in exchange for a 50 % interest in the JV.

a) Joint control

7. Schneider and TMM will each acquire a 50 % stake in the share of the JV. The board of directors will be composed of [...] members out of which [...] members will be appointed by each party. Both parties will have equal voting rights and in case of a deadlock the situation will be resolved through negotiations rather than providing either party with a decisive vote. Consequently, Schneider and TMM have joint control over the JV.

b) Full-function joint venture

8. The parties will transfer to the JV their activities related to the powerline communication bringing about a lasting change in their structure. The JV will be an autonomous economic entity in commercial, financial and economical terms having an access to sufficient resources in order to conduct on a lasting basis its business activities. It will have its own management and staff which will have the responsibility for the day to day operations of the JV and the implementation of the JV's strategy.
9. The JV will subcontract out manufacturing to third parties, including the parent companies. However, the parties cannot propose to the JV to manufacture the JV products on the terms and conditions that are less favourable to the JV than those proposed by a third party.
10. The JV will sell its products to original equipment manufacturers, [...]. For an initial start-up period, the JV will rely entirely on sales to TMM. However, these sales will be made on the basis of normal commercial conditions. The JV will have its own separate marketing department but will rely initially mainly on the distribution networks used by the parties for their products. The JV is also expecting to expand its client portfolio as soon as it has been able to establish itself on the market.
11. Consequently, the notified joint venture will perform on a lasting basis all the functions of an autonomous economic entity. Thus, it constitutes a full-function joint venture as defined by Article 3 (2) and its setting up constitutes a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

III COMMUNITY DIMENSION

12. In 1999, Schneider achieved a world-wide turnover of € [...]. In the same year, TMM's turnover reached € [...] million. The combined aggregate world-wide turnover of the parties in 1999 thus exceeded € 5 000 million. The aggregate Community-wide turnover of each of the parties was more than € 250 million [Schneider: € [...]; TMM: € [...]]. Neither of the parties achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. According to Article 1 (2) of the Merger Regulation, the notified operation therefore has a Community dimension. It does not constitute a co-operation case pursuant to Article 57 of the EEA Agreement.

IV THE RELEVANT MARKETS

a) The relevant product market

13. The parties have identified the market of no-new-wires home networking products and technologies as the relevant product market. A home network may be defined as the establishment of communications abilities between two or more devices enabling the mutual transfer of data. The parties include in their market definition the products and technologies of the phonline networking, wireless networking, powerline networking and future no-new-wiring networking.
14. Phonline networking uses the existing in-home copper wiring for the transmission of data without interfering with normal phone conversations. Wireless networking refers mainly to radio frequency communication which employs electromagnetic waves propagating through space. Powerline networks use existing electrical wiring within walls to transmit data throughout the house. The future no-new-wiring networking is a combination of different technologies that do not require new wires or use new wires installed for the purpose of carrying data from one node to the other or to the external wide area network.
15. These competing networking technologies seem to address the same demand of a consumer to create a home network between various devices located throughout the home and could possibly be considered as substitutes for each other. It is, however, for the assessment of the present operation not necessary to define the precise scope of the relevant product market, since even on the narrowest possible product market definition (powerline products) the operation will not lead to the creation or strengthening of a dominant position.

b) The relevant geographic market

16. As to the relevant geographic market, the notifying parties submit that its scope is at least EEA-wide. However, the regulatory conditions, which differ for individual Member States, and the lack of uniform European standard seem to suggest that the relevant geographic market for no-new-wires home networking products and technologies could be national in scope. It is, however, not necessary to decide upon the scope of the relevant geographical market for the purpose of the present case as there are no indications that the operation would give rise to the competition problems regardless of how the market is defined.

V COMPETITIVE ASSESSMENT

a) Dominance

17. Schneider is active in the markets for automation, electricity distribution boards and components, wiring devices and systems and TMM in the market for consumer electronics, such as televisions, cable modems and telephones. Neither of the parent companies will be active in the market for no-new-wires home networking products and technologies after the establishment of the JV. The core business of the JV will be in the powerline communication products and technologies. According to the parties, it may, however, in the future also engage to the sales of products based on the wireless technology.
18. From the parent companies only TMM has been commercially active in the market for no-new-wire home networking products and technologies to a limited extent. Schneider had only developed research and development activities. TMM activities corresponded to community-wide turnover of approximately € [small] in the year 2000. Due to the joint participation of the parties in the JV, there will be one significant player less who could have expanded its presence in the emerging market for no-new-wires home networking. However, the Commission's market investigation showed that many large multinationals are either currently active or doing research and development in the market and the amount of actual or potential competition to the JV seems therefore to be significant. This is especially the case with the powerline home networking products and technologies market, where companies are still launching their product lines and none of the technologies has proven itself in the marketplace.
19. The JV will market its products to original equipment manufacturers in the consumer electronics market, to the networking market and to the electrical utilities, including the parent companies. In the Commission's market investigation some concerns were raised about the possible foreclosure effect of the proposed concentration. However, one can note that the customer potential for the operators in the market for no-new-wire home networking products and technologies is large. Moreover, the market for consumer electronics is fairly competitive with TMM holding a relatively small market share. At the European level, the market share of TMM in the different categories of consumer electronics is [Between 0-15%]. Thus there is not sufficient certainty of this alleged effect on competition to take place.
20. It can be concluded that on the basis of the provided information, the joint venture will not lead to the creation or strengthening of a dominant position in the wider market for all no-new-wire home networking products and technologies or in the narrower markets of phonline, wireless, powerline and future no-new-wiring networking products and technologies.

b) Co-operative effect of a joint venture

21. The parties are not active in the same product markets nor in the markets which are closely related to each other. The only common interest of the parties, therefore, lies in their joint participation in the JV. Moreover, the JV will not engage in business activities in the related markets where any of the parent companies are active. Thus, the risk of co-ordination of a competitive behaviour between the parent companies as a consequence of the creation of the JV would appear to be small and it can be concluded that the JV does not have as its object or effect the co-ordination of the competitive behaviour of the parent companies (Article 2 (4) of the Merger Regulation).

VI ANCILLARY RESTRAINTS

22. The parties have requested the Commission to consider the following clauses as ancillary restrictions:

The first alleged ancillary restriction is the non-competition clause contained in Article 7 (1) of the Joint Venture Agreement binding the parties and all undertakings under their control not to (a) be involved in any way in the JV's business or (b) acquire, directly or indirectly, any shares or other interest in, take over the management of, or in any other way acquire sole or joint control over an undertaking which is involved in any way in the JV's business for as long as they hold any share in the JV. [...].

23. According to the parties, the non-competition clause is justified by the parent's lasting withdrawal from the market. The clause is also alleged to be necessary to protect the JV's start-up phase and ensure that the JV fully utilises its assets.
24. The second alleged ancillary restriction is the non-solicitation clause contained also in Article 7 (1) of the Joint Venture Agreement binding the parties and all undertakings under their control not to induce or attempt without the chairman and the chief executive officer's prior agreement to induce any director or employee of the JV or any affiliate thereof to leave the employment of such person's current employer business for as long as they hold any share in the JV.
25. According to the parties, the restrictive effect of the non-solicitation clause does not exceed that of the non-compete clause. The clause is thus alleged to be directly related and necessary to the implementation of the concentration.
26. The Commission considers that the non-competition clause and the non-solicitation clause are necessary to protect the JV's start-up phase and ensure that the JV fully utilises its assets. They are therefore directly related and necessary for the market entry of the joint venture. Beyond this period of the market entry, the parties have failed to justify the need for this clause. Therefore, the non-competition clause and non-solicitation clause are covered by the present decision for a period of 3 years.
27. The third alleged ancillary restriction gives to the parties under Article 9 (2) of the Joint Venture Agreement a right of first refusal to manufacture the products in sub-contracting. [...].
28. The Commission considers that the right of first refusal clause cannot be regarded as directly related and necessary for the implementation of the concentration. The aim to ensure a certain demand to the parties is not directly related to the concentration nor does it facilitate its implementation in any way.

VII CONCLUSION

29. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,
(*signed* : Mario MONTI
Member of the Commission)